

TR 97/2 - Income tax: income tax concessions for members of the Australian Defence Force serving overseas

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Taxation Ruling

Income tax: income tax concessions for members of the Australian Defence Force serving overseas

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*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Ruling is about

Class of person/arrangement

1. This Ruling discusses the operation of section 79B of the *Income Tax Assessment Act 1936* (ITAA 1936)¹ which authorises a rebate of tax for members of the Australian Defence Force (ADF) serving in certain overseas localities or when the member died at an overseas locality during the year of income.
2. Specific section 79B issues discussed in this Ruling are:
 - the areas that have been declared overseas localities;
 - the circumstance under which an ADF member will be entitled to the rebate;
 - the method of calculating the rebate allowable under paragraph 79B(2)(a);
 - the method of calculating the proportionate rebate allowable under paragraph 79B(2)(b); and
 - the interaction between the section 79B rebate and sections 23AC and 23AD.

¹ All subsequent legislative references in this Ruling are to the ITAA 1936 unless indicated otherwise.

3. This Ruling also discusses the operation of:
- section 23AC which provides a tax exemption for the pay and allowances of ADF members derived from **operational service** performed in a declared **operational area**;
 - section 23AD (effectively replacing section 23AC for areas declared after 9 June 1993) which provides a tax exemption for the pay and allowances of ADF members who have a certificate from the Chief of the Defence Force (CDF) stating that they are on **eligible duty** with a **specified organisation in a specified area**; and
 - item 1.1 and 1.2 of the table contained in section 51-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) which provides an income tax exemption for deployment allowances.
4. Specific section 23AC and section 23AD issues discussed in the Ruling are:
- the areas covered by section 23AC; and
 - the operation of sections 23AC and 23AD.

Previous Rulings

5. This Ruling replaces and updates Taxation Ruling IT 2600, which is now withdrawn.

Date of effect

6. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Ruling and explanations

Introduction

7. The category and level of income tax concession available to ADF personnel depends on whether the deployment is declared, by the Minister for Defence, to be either 'warlike' or 'non-warlike' service. What constitutes 'warlike' and 'non-warlike' service is outside the scope of this Ruling. Except for the income tax exemption for deployment allowances provided by item 1.1 and 1.2 of the table contained in section 51-5 of the ITAA 1997, the receipt of a concession is contingent upon either:

- a declaration being made by the Treasurer in the case of a rebate under section 79B of the ITAA 1936; or
- an amendment to the Income Tax Regulations 1936 (the Regulations) for the purposes of section 23AD of the ITAA 1936.

8. In the case of 'non-warlike' service, ADF personnel may, once a declaration has been made by the Treasurer, receive a rebate under section 79B of the ITAA 1936. In addition, deployment allowances payable on or after 31 July 1994 to ADF personnel engaged in this type of service are exempt from income tax if the deployment allowance is payable under a determination made under the *Defence Act 1903*. However, the pay or any other allowances earned by these ADF personnel remain taxable.

9. ADF personnel engaged in 'warlike' service may, provided the appropriate provision has been enacted or the regulation has been made, receive an exemption from income tax for their pay and allowances under either section 23AC or 23AD of the ITAA 1936. As explained above, section 23AD effectively replaces section 23AC for areas declared after 9 June 1993. Therefore, section 23AC will not normally be used for deployments after that date. Deployment allowances paid to ADF personnel engaged in this type of service are exempt from income tax if the deployment allowance is payable under a determination made under the *Defence Act 1903*.

The rebate under section 79B

10. The rebate applies for service in a locality outside Australia which is declared by the Treasurer, by reason of the uncongenial nature of service in the locality and the isolation of the locality, to be a locality to which section 79B applies.

11. However, the rebate is not available to members of the ADF who are attached to Australian embassies or legations in overseas localities.

Overseas localities under section 79B

12. Areas that have been declared to be overseas localities to which section 79B applies can be found by searching 'overseas forces tax offset – specified localities' on our website www.ato.gov.au.

Calculation of the rebate under section 79B

13. The maximum rebate is allowable where the total period of service at overseas localities in a year of income exceeds one-half of the year of income, or the taxpayer dies at an overseas locality. The total period of overseas service in a year of income includes any period in the year during which the taxpayer served in an area comprised in Zone A or Zone B (isolated areas in Australia), as defined for the purposes of section 79A.

14. The maximum rebate allowable under paragraph 79B(2)(a) for the 1993-94 and later years of income is \$338, plus 50 % of the 'concessional rebate amount' to which the taxpayer is entitled. Under subsection 79B(6) 'concessional rebate amount' means the total of certain rebates to which a taxpayer is entitled in a particular year of income. These entitlements are covered under sections 159K (sole parent) and 159L (housekeeper) and include any rebates or notional rebates, including the notional dependent spouse rebate, to which the taxpayer may be entitled under section 159J. The notional spouse rebate is not affected by amounts received as part of the parenting allowance.

15. A proportionate rebate is allowable under paragraph 79B(2)(b) where the period of service in overseas localities is not more than half of the year of income. For the purpose of calculating the proportionate rebate, the denominator used in the calculation is 183 days. The rebate can be calculated using the following formula:

$$\frac{A}{183 \text{ Days}} \quad \times \quad \text{Full Allowable Rebate}$$

where A = the number of days served in an overseas locality (including any period in the year during which the taxpayer served in an area comprised in Zone A or Zone B, as defined for the purposes of section 79A).

16. Periods of service at an overseas locality that qualify for an exemption from income tax under sections 23AC or 23AD are, by virtue of subsection 79B(3A), to be excluded when calculating the period served at an overseas locality for the purpose of the section 79B rebate.

17. The aggregate of rebates allowable under sections 23AB (concessions available to civilian personnel serving with an armed force of the United Nations, for example, the Australian Federal Police) and 79B or sections 79A and 79B, in a year of income, shall not exceed the maximum rebate allowable under section 79B.

18. Where a taxpayer is entitled to a rebate under section 79A and the amount of that rebate exceeds the maximum rebate allowable under section 79B, the taxpayer is not entitled to a rebate under section 79B. This could be the case where the taxpayer is entitled to a special area zone rebate.

19. Subsection 79B(5B) permits the amendment of an assessment at any time for the purpose of allowing a rebate under this section.

Section 23AC

20. Section 23AC provides an income tax exemption for the pay and allowances of members of the ADF when their pay and allowances are earned during a period of **operational service** in an **operational area**. This section has effectively been replaced by section 23AD and is not expected to be further amended for deployments after 9 June 1993.

Operational service

21. Subsection 23AC(2) defines 'operational service' and provides the classes of ADF personnel who can qualify for operational service:

- ADF members who are attached to a body, contingent or detachment of the ADF that is allotted for duty in the operational area;
- ADF members who are allotted for duty in the operational area, on an individual basis; and
- ADF members who are attached to part of the Armed Forces of the United Kingdom (UK) or the United States of America (US), where that part is allotted for duty in the operational area.

22. ADF members covered by any of these categories will be taken to be on operational service if the CDF (or an officer delegated under subsection 23AC(4)) issues a certificate in writing to the effect that the member's allotment for duty to the operational area was in response to a specified event or in respect of the member's service as part of a specified operation. This requirement does not apply to ADF members who were serving with UK or US Forces on 2 August 1990 in certain parts of the Middle East covered by paragraphs 23AC(6)(a) - (d), this is where the member's allotment to the above mentioned operational area preceded Iraq's invasion of Kuwait.

23. Service as or under an attache at an Australian embassy or legation does not qualify as operational service.

Operational area

24. The operational service must be in an 'operational area' as defined in subsections 23AC(6), 23AC(6A), 23AC(6B), 23AC(6C) or 23AC(6D).

25. [Omitted.]

Period of operational service

26. The 'periods of operational service' are defined by subsection 23AC(3A) for the former Yugoslavia and for Somalia, and by subsection 23AC(3) for operational service in the other defined areas.

The former Yugoslavia and Somalia

27. For periods of operational service in the former Yugoslavia and in Somalia, the period commences from the later of:

- the date of the ADF member's arrival in the operational area; and
- the date of allotment shown in the certificate from the CDF.

28. Operational service ends at the earliest of:

- the date of the ADF member's departure from the operational area;
- the time the allotment period, as specified in the certificate from the CDF, ends; and
- the end of the termination date, if prescribed by the Regulations.

29. Subsection 23AC(7) defines 'termination date' to mean, in relation to the former Yugoslavia and Somalia, a date prescribed by regulations as the termination date for these operational areas. The termination date for Somalia is 30 November 1994 and for the former Yugoslavia is 23 January 1997 (regulation 7 of the Regulations).

30. By virtue of paragraph 23AC(3A)(c) the period of operational service is extended to include any period of hospital treatment resulting from an illness contracted or injuries sustained during the period of operational service, wherever the treatment is given.

Other defined areas

31. In the case of areas other than the former Yugoslavia and Somalia the commencement date depends on the member's location at the time of allotment.

32. Where the ADF member was in Australia at the time of allotment or was in Australia and was allotted for duty prior to the area becoming an operational area, operational service commences on the date of departure, from the last port of call (which includes an airport) in Australia, for duty in the operational area.

33. However, where the ADF member was outside Australia at the time of allotment or was outside Australia and was allotted for duty prior to the area becoming an operational area, operational service commences at the date of allotment.

34. Operational service is taken to have ended at the earlier of the end of the termination date for the particular operational area and:

- where the ADF member returns to Australia, at the time at which the member arrives at the first port of call in Australia, unless the member leaves for further duty in an operational area within 14 days of arrival; or
- where the ADF member is allotted for duty in an area outside Australia other than an operational area:
 - at the time at which the member arrives in the area; or
 - if the member arrives in the area prior to being allotted to that area, the time of allotment to the area.

35. The termination date depends on the operational area. In the case of Cambodia the termination date is 7 October 1993 (paragraph 23AC(7)(b) and regulation 7 of the Regulations). The termination date for the other areas is 9 June 1991 (paragraph 23AC(7)(a)).

36. By virtue of paragraph 23AC(3)(c) the period of operational service is extended to include any period of hospital treatment resulting from an illness contracted or injuries sustained during the period of operational service, wherever the treatment is given.

Section 23AD

37. Section 23AD exempts from income tax the pay and allowances of ADF personnel who have a certificate from the CDF (or an officer delegated under subsection 23AD(5)) stating that they are on **eligible duty** with a **specified organisation** in a **specified area**.

38. Section 23AD serves the same function as section 23AC and was introduced to simplify the process of designating operational areas by allowing the Regulations to prescribe the service eligible for the concession. In effect, section 23AD replaces section 23AC for areas designated after 9 June 1993.

Eligible duty

39. 'Eligible duty' replaces the concept of operational service in section 23AC. It relates to the period a person serves with a specified organisation in a specified area after a specified day. Subsection 23AD(2) allows eligible duty to be declared by the Regulations.

40. The conditions surrounding eligible duty in section 23AD are similar to those surrounding operational service in the effectively superseded section 23AC:

- service as, or under, an attache at an Australian embassy or legation does not qualify as eligible duty; and
- the period of eligible duty is extended to include any period of hospital treatment resulting from an illness contracted or injuries sustained during the period of eligible duty, wherever the treatment is given.

Specified organisation

41. This term is equivalent to the allotment for duty with a particular operational force in section 23AC.

Specified area

42. 'Specified area' replaces operational area and covers an area designated as eligible for the concessions under the Regulations.

Specified areas for the purposes of section 23AD

43. Specified areas for the purpose of section 23AD are prescribed in regulation 71 of the Regulations.

Specified date

44. This is equivalent to the date that an area becomes an operational area under section 23AC. The specified date is the earliest date from which service in a specified area with a specified organisation can be eligible for the income tax exemption and may be prescribed in the Regulations.

Period of eligible duty

45. The period of eligible duty is determined by reference to the period that the certificate issued by the CDF is in force. A certificate from the CDF comes into force from the later of:

- the time specified in the certificate (which cannot be earlier than the specified day in the Regulations); and
- the time of arrival for duty in the specified area.

46. The certificate continues in force until the earliest of:

- the time of departure from the specified area;
- the time when, in accordance with a certificate of revocation issued by the CDF, the certificate ceases to be in force; and
- a time prescribed by the Regulations for the purpose of specifying a termination date for eligible duty.

Income tax exemption for Deployment Allowances paid during 'non-warlike' service

47. Deployment Allowances are paid to ADF personnel assigned for duty with United Nations missions or similar forces to compensate for military, environmental and other hazards.

48. Item 1.1 and 1.2 of the table contained in section 51-5 of the ITAA 1997 exempts, from income tax, payments of any allowance or bounty of a prescribed kind payable to, or in respect of, a member of the ADF.

49. By virtue of item 1.1 and 1.2 of the table contained in section 51-5 of the ITAA 1997 and regulation 51-5.01 of the Income Tax Assessment Regulations 1997. Deployment Allowances payable under a determination made under the *Defence Act 1903*, in respect of 'non-warlike' service, are exempt from tax. However, the pay earned by the ADF personnel remains taxable.

Examples - section 79B

Example 1

50. Corporal A has a fully dependent spouse and two children who are both students. The taxpayer served as a member of the ADF at an overseas locality for seven months of the 1995/96 income year. Notional dependant rebates allowable under section 159J are:

	\$
Spouse	1,488 (indexed 'with child' spouse rebate)
Student 1	376
Student 2	<u>376</u>
	<u>2,240</u>

51. The Corporal is entitled to the full rebate for the 1995-96 income year under paragraph 79B(2)(a), calculated as follows:

$$\$338 + (50\% \times 2,240) = \$1,458.$$

Example 2

52. Sergeant B served as a member of the ADF at an overseas locality from 1 September 1995 to 31 January 1996. The taxpayer is not entitled to rebates under sections 159J, 159K or 159L, nor is he entitled to a zone rebate.

53. Sergeant B is entitled to a proportionate rebate for the 1995-96 income year under paragraph 79B(2)(b), calculated as follows:

$$(153 / 183) \times (\$338 + (50\% \times 0)) = \$282.$$

Example 3

54. Petty Officer C served as a member of the ADF at an overseas locality for five months of the 1995-96 income year. On her return from the overseas locality she was posted to an area comprised in Zone A for a further four months. The taxpayer is not entitled to rebates under sections 159J, 159K or 159L, nor is she entitled to a zone rebate.

55. The Petty Officer is entitled to the full rebate for the 1995-96 income year under paragraph 79B(2)(a) as the sum of the periods spent in the overseas locality and in Zone A exceeds one-half of the 1995-96 year of income:

$$\$338 + (50\% \times 0) = \$338.$$

Example 4

56. Flying Officer D served as a member of the ADF, in a defined operational area under section 23AC, from 1 August 1995 to 20 March 1996 at which time the area ceased to be a defined operational area and was declared a locality to which section 79B applies.

57. Flying Officer D remained in the overseas locality for a further six months. The Flying Officer has a fully dependent spouse and child who is a student.

58. The taxpayer is entitled to the notional spouse and the notional student rebates under section 159J:

	\$
Spouse	1,488 (indexed 'with child' spouse rebate)
Student	<u>376</u>
	<u>1,864</u>

59. He is therefore entitled to a proportionate rebate for the 1995-96 income year from 20 March 1995 to 30 June 1996 under paragraph 79B(2)(b), calculated as follows:

$$(103 / 183) \times (\$338 + (50\% \times 1,864)) = \$714.$$

Commissioner of Taxation

19 February 1997

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ATO references		- ITAA 1936 23AC(3A)
NO	NAT 93/3961-2	- ITAA 1936 23AC(3A)(c)
	NAT 97/946-5	- ITAA 1936 23AC(4)
BO		- ITAA 1936 23AC(5)
Not previously released to the public in draft form		- ITAA 1936 23AC(6)
		- ITAA 1936 23AC(6)(a)
		- ITAA 1936 23AC(6)(d)
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- overseas Defence Force income tax exemption		- ITAA 1936 79B(2)(b)
- overseas Defence Force rebate		- ITAA 1936 79B(3A)
- rebates		- ITAA 1936 79B(5B)
- zone rebates		- ITAA 1936 159J
		- ITAA 1936 159K
		- ITAA 1936 159L
<i>legislative references</i>		- ITAA 1997 51-5
- ITAA 1936		- TAA 1953 Pt IVAA
- ITAA 1936 23AB		- Defence Act 1903
- ITAA 1936 23AC		
- ITAA 1936 23AC(3)		