

NEWSFLASH BOOKLET

DEFENCE FORCES [MILITARY]

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Important

This booklet is simply a collection of Newsflash articles relevant to the Australian Defence Forces. The articles are transferred from Newsflash into this booklet so it is best read from the back page forwards to ensure you are reading the latest article on the topic first. Note that the information contained in this booklet is not updated regularly so it is important that you seek professional advice before acting on it.

Using your Motor Vehicle for Work

If you qualify to claim your motor vehicle for work you are entitled to around 60 cents a kilometre depending on the engine capacity of your car. Examples of when you would be able to claim your car:

- 1) Running around on the base in your own car.
- 2) Carrying bulky tools to and from work. For example a chef may have more than 18kgs in cooking equipment which belong to him or her personally. If the Defence Force do not provide a personal locker in which to store this equipment the chef can claim for taking it home each day. Bulky equipment does not have to weigh more than 18kg to qualify it can be just awkward in nature such as a ladder or drum kit.
- 3) Once you have arrived at work for the day any use of your car for work from that point on is deductible, so take note when you have to use it to go to meetings etc.
- 4) If you have a normal workplace but have to go to an abnormal workplace for the day or part of it, you can claim for your travel to and from that abnormal workplace even if it is from or to your home.
- 5) Even if you use your car for something that is not part of your actual duties but is in relation to your work, for example Extra Regimental Duties or a course related to work, you can claim for the cost of travel to and from that course. Though if the course is through a recognised educational body there are limits to the journeys you can claim. These are discussed under self education in the Other Work Related Tax Deductions section of this booklet.
- 6) In very limited circumstances your home can be considered your base so you are entitled to claim a deduction for your car from the moment you leave home. The following is an example of successful cases on this principle:

Case W4 - a semi retired University Lecturer was allowed a claim for home to work travel because he did not have an office at the University where he could prepare his Lectures so his home was the base where most of his work was performed. This case is very narrowly interpreted by the ATO.

In Collings Case 1976 – A computer programmer was required to be on call at all times and her employer installed a computer terminal in her home so that she could access the main computer through the telephone line. On the occasions that she couldn't fix the main computer from home she would have to travel into work. The court found that the trips into work were tax deductible because she had already started work before she left home, in that she had tried to fix the computer through the telephone line. This changed the nature of the journey. Instead of being travel to work it became travel on work because her duties had already commenced.

Owen V Pook 1970 – A medical practitioner was required to be on call in the case of an emergency at the Hospital where he is employed. When contacted on the telephone he would give instructions on the patient's care before travelling to the hospital. Accordingly, the court found that his responsibility for the patient began before leaving home so the travel was while working not to get to work. **IT112, which is available on the ATO web site (www.ato.gov.au) discusses this matter in great detail.**

- 7) Travel for medical examinations relating to your work is also tax deductible.
- 8) If it is peculiar to your particular job that you maintain a very high level of fitness, not just the fitness level required of all members of the Defence Force. For example Physical training instructors or special combat squads. You are entitled to claim a tax deduction for the cost of travel to a Gym

If you are on any of the qualifying journeys above and you incur parking fees or tolls these are also deductible.

Substantiating Your Claim:

There are 4 methods of substantiation available by far the most popular is number 3:

- 1) The flat 12% of the cost of the motor vehicle or market value when leased method which is available only to motor vehicles that travel more than 5,000 kilometres for work that year. Note – consult your accountant if the vehicle was more expensive than the average family car.
- 2) Claim a deduction for one third of the motor vehicle's expenses. The car must have travelled more than 5,000 kilometres for work that year. You will need odometer records and written evidence of all expenses.
- 3) If the motor vehicle travels less than 5,000 kilometres for work you may choose to use the cents per kilometre method. This method is also available for motor vehicles that travel more than 5,000 kilometres for work provided you reduce the claim to 5,000 kilometres only. You are required to keep a "detailed reasonable estimate" i.e. if you do the same number of kilometres per week, keep a record for one week and multiply by the number of weeks. If travel is irregular a list or diary entry of kilometres travelled is sufficient. Detailed means you cannot pull a number out of your head for the full year. According to TD93/177 it is the distance travelled by the taxpayer's car not the taxpayer that is relevant in calculating the kilometres travelled and each owner of the car is entitled to 5,000 kilometres. This means that if a car is owned jointly and both parties are travelling in the car together then you are still entitled to claim only up to 5,000 kilometres combined. Obviously a husband and wife can not both claim for the same trip. On the other hand, if the car is owned jointly each owner is entitled to claim up to 5,000 kilometres each for business travel as an individual. For example, a husband and wife may own 2 cars and both cars are in joint names. The husband could use car one for 6 months and clock up 5,000 kilometres then swap with his wife and use car two for 6 months to clock up another 5,000 kilometres. The wife could do the same with the cars reversed. As a result, they would both be entitled to claim 10,000 kilometres, 5,000 kilometres for each car they own. If you change cars during the year, you can claim 5,000 kilometres for each car. Husband and wife can make a declaration of joint ownership to change a car from only being owned by one of them to both, this is regardless of the fact the registration is in one name. Depending on the size of the engine of the car you can claim around 60 cents a kilometre, it soon adds up and is well worth keeping the records.
- 4) The log book method requires written evidence for all expenses and odometer records to be kept each year. You may use the log book method if the car travels less than 5,000 kilometres for work but it is unlikely that this method will give you the best deduction. Log books are required to be kept at least every 5 years. The log book is to be kept for 12 continuous weeks (or the period you own the car if less than 12 weeks). If you have more than one car using the log book method a log book must be kept for each car at the same time. The log book should include the following:

At each entry:

- a) The date the journey began and the date it ended or for each day if journey longer than a day.
- b) The odometer reading at the start and end of the journey.
- c) The number of kilometres the car travelled on the journey.
- d) The reason for the journey, a pedantic auditor may also require the destination
(MT2026 Archived).

In each log book:

- a) The period the log book begins and ends.
- b) The odometer readings at the start and end of the log book period.
- c) The total kilometres travelled during the log book period.
- d) The business kilometres.
- e) The percentage of total kilometres that were business during the period.

Note – the actual percentage applied to the motor vehicle expenses is not necessarily that calculated in the log book because you are also required to take into account any other records including the odometer readings for that year, variations in the pattern of use and changes in the number of cars you own.

DON'T FORGET TO TAKE YOUR SPEEDO READING EACH 30TH JUNE

Allowances

This is quite a large area for Defence Force Members but allowances really only fall into two categories. Those that are not included in your taxable income and those that are.

Allowances that are not included in your taxable income are those on which the Defence Force has already paid Fringe Benefits Tax or the allowance is exempt from Fringe Benefits Tax for example Living Away From Home Allowance. Other exempt allowances that a Defence Force Member may receive are; Child Education Allowance, Deployment Allowance, Disturbance Allowance, Education Allowance, Education Assistance Overseas Allowance, Living Out Allowance, Living Out Away From Home Allowance, Re-engagement Allowance, Scholarship Allowance, Separation Allowance and Transfer Allowance. These allowances should not appear in the Allowance box on your PAYG summary.

Deployment Allowances paid while on duty with the United Nations in non-warlike service are not taxable but subparagraph 23(t)(iii) and subregulation 5(1) of the Regulations requires a determination to be made under the Defence Act 1903. Even though the Deployment Allowance is not taxable your wages may still be taxable in Australia.

If it is in the allowance box on your PAYG summary it must be included in your tax return as income. With the exception of overtime meal and travel allowances, the fact that you receive an allowance does not in anyway enhance your chances of claiming a tax deduction in relation to the expense the allowance covers. Your tax deductions must stand on their own merit ie they must be a cost of earning your income whether you receive an allowance or not.

Travel Allowances:

If the Defence Force pay you an allowance to cover your food and/or accommodation expenses while travelling it may not be included in the allowance box on your PAYG summary. That's ok because you would have been paid an amount that is the same or less than the "reasonable" amount so you would be entitled to a corresponding tax deduction against the allowance anyway. By not putting it on your summary the Defence Force has saved you the trouble of putting entries in your tax return that cancel each other out. But if the allowance you received is less than the "reasonable" amount it may be worth getting the details and including the allowance in your tax return so you can claim the "reasonable" amount as a deduction. The difference can then be offset against your other taxable income. You can claim even higher than the reasonable amount if you keep receipts. To use the ATO reasonable amounts you will have to find out just how much travel allowance you have received for each day and where you were. If the Defence Force pays you a Travel Allowance you do not need to have receipts for the expenses you incurred, as long as you do not claim more than what the ATO considers reasonable. That's right you can claim more than the allowance you received as long as it is not more than what the ATO considers reasonable even though you do not have receipts. You do have to have some form of record as to how you calculated the amount you claimed. For example receipts kept on one occasion being used to estimate costs at other times or using a diary to record the costs.

Each year the ATO publishes a list of what it considers a reasonable travelling allowance. For the 2005/2006 financial year the ruling was called TD 2005/32. It is available on the ATO web site. For example, to cover food, accommodation and incidentals, for employees earning less than \$81,400pa the ruling allows a daily rate based on destination:

Adelaide	\$222	Brisbane	\$226	Canberra	\$199	Darwin	\$219	Hobart	\$195
Melbourne	\$241	Perth	\$209	Sydney	\$248	Gold Coast	\$197	Mt Isa	\$170

If your accommodation is provided and you are just paid an allowance for meals you can claim, per day, without receipts up to \$76.45 for meals plus \$14.55 for incidentals in capital cities and high cost country centres, in other country centres you are allowed \$69.45 for meals and \$14.55 for incidentals, per day, without receipts. Note this will change for the 2006/2007 and following years. There are also rates for overseas travel but they only cover food and incidentals. Accommodation costs must be covered by a receipt when travelling overseas.

Even if you do not receive an allowance but are required to sleep away from home for work purposes you can claim the food, accommodation and incidental costs but you will need receipts.

Overtime Meal Allowance:

If you work overtime and are entitled to a meal allowance under your industrial agreement you are entitled to claim back \$21.10 in the 2005/2006 year for each day, without receipts. Again this allowance probably won't appear on your PAYG summary so you will need to ask for the details of each overtime shift and the amount you received. You then include the meal allowance as part of your income and you claim the expenses you incurred against it. You do not necessarily have to incur the meal expense while you are working overtime. You can buy the meal on your way home from overtime and still claim it. Ideally keep a receipt for at least one meal as an example of how much you incurred at other times.

Other Work Related Tax Deductions

Self Education:

To be deductible against your income the course you are doing must be related to your work obligations either because it is improving the skills you need in your current job or keeping you up to date. You can also claim for expenses that will qualify you for advancement with your current employer but you cannot claim expenses relating to study that will lead to a job with a different employer. If you quit work to undertake the study no deduction will be available. Don't just limit your thoughts to traditional courses. If it relates to your employment, the cost of learning a language would be tax deductible.

If the organisation providing you with the education is predominately a place of education you are not entitled to claim a tax deduction for the first \$250 in expenses but there are ways around this which will be discussed later. An example of self education that may not be provided in a place of education could be personal tutoring in another language. Basically if you are not attending a University, College or TAFE you may have to reduce your claim by \$250 but this \$250 amount can be first reduced by education expenses you have incurred that you do not have receipts for, child care while you attend the course, money expended this year on capital items which you will be claiming depreciation on. If you are claiming motor vehicle expense qualifying under the list below claimed under the cents per kilometre method or the 12% of cost method this amount has a double claim in that it can be used to reduce the \$250 and claimed as a deduction. If they are not claimable as per the list below ie travel between your place of education and work then they still reduce the \$250. In short while you are required to reduce your claim by \$250 something is terribly wrong if it comes down to this. Claimable motor vehicle expenses are;

Home – Place of Education – Home

Work – Place of Education – Work

Work – Place of Education – but not the home journey if next

Home – Place of Education – but not the work journey if next

The confusion created by the above is best explained by taking into account that the ATO does not want you claiming for any trips that are purely between your home and work.

Other self education expenses you should be thinking about are Text books, stationery, Student Union and Course Fees (not including HECS), computer depreciation or rental, electricity at 26 cents per hour for your home study, desks and chairs.

Clothing:

If an item of clothing qualifies under the following you are entitled to claim a tax deduction for its original cost and the cost of laundering, repairing or dry cleaning it. It is not just enough that a uniform be compulsory it must also be unique and distinctive to the Military. Once you have met the requirements of a compulsory distinctive uniform other items of clothing can also be claimed if the compulsory uniform policy specifies their colour, style and type. This extends to items of clothing that do not have the employers name on them such as pants, shoes, socks and stockings. An example would be the requirement to wear black, closed in leather shoes. But you must meet the first requirement that the shoes are part of a distinctive, unique and compulsory uniform.

If a uniform is not compulsory it is not deductible unless it is listed in the Register of Approved Occupational Clothing or has a logo that is a registered design. This means that simply putting your regiment's logo on your clothing will not make it deductible unless it is a registered design or the clothing is compulsory.

TR 2003/16 is based on Morris' case which gave us sunscreen deductions and has opened up the possibilities for claiming protective items. Basically you can claim for a protective item if, by its nature, it

would be reasonable to conclude that it will protect you from the risk of injury or illness in your workplace and that risk is not remote or negligible. This is unlikely to apply to items of clothing that are conventional in nature and you need to have a risky workplace so office workers haven't got a chance.

Overalls etc designed to protect your other clothing qualify as deductible.

Protection:

A deductible item can be conventional in nature providing it is used principally for your protection. An example of this would be moisturiser with sunscreen included. This also opens up the opportunities to claim special non slip shoes if they are required for your work. Conventional clothing such as rain coats, woollen underwear and jumpers are protective if your job exposes you to water or extreme temperatures whether mechanical or climatic.

Of course traditional protective items such as steel cap boots, helmets, gloves, safety glasses, masks etc are deductible.

The risk of injury must be as a result of your work not a personal factor such as poor eyesight, however prescription sunglasses are claimable if you need protection from the sun. Prescription sunglasses can count twice as it also counts towards your medical expenses rebate if those expenses exceed \$1,500.

If the protective item is also used for private purposes, such as sunglasses, a diary should be kept for 1 month so that the cost can be apportioned between business and private use on a time basis.

Using Your Home Phone, Computer or Study:

The ATO has released practice statement PS2001/6 which reinforces the importance of keeping diaries to substantiate claims, whether you are a wage earner or in business. Diaries should be kept for one month **every year**. They are necessary when an item has both work and private use. The diary must record both the work and private use. Examples of expenses that this ruling could apply to are telephones, computers, photocopiers, etc. A record should also be kept as to the number of hours an office is used for work as you are entitled to a tax deduction of 26 cents per hour. With a computer you need to record each hour of work use and each hour of private use for a month to work out the percentage of work use which is then applied to depreciation on the original cost price of the computer. To claim internet connection you need to record, for one month, both the work and private use, to calculate a percentage that is work related.

The ruling points out that a deduction is allowable only where additional running costs are incurred. For example if the family room is also used as an office there would be no deduction for the electricity to light the room if the room was also being used, at the same time, by family members to watch TV.

Claiming electricity, depreciation of equipment and telephone will not trigger capital gains tax.

Courses and Training:

If this relates to your occupation you can not just claim the cost of the course but also the travel costs associated and meals and accommodation if you are required to sleep away from home. It does not have to be recommended by the Defence Force but it does have to be connected with your work duties. Yes this does mean, if it relates to your job, you can claim the cost of travelling to Canada to attend a training course on the use of special weapons systems. But if you also holiday, other than incidental days off, while you are there you will have to apportion part of the expenses as private and therefore not deductible.

Depreciation of Equipment:

If you spend more than \$300 on durable items for your work you cannot claim a tax deduction outright for the expense. It must be depreciated over the effective life of the item. Even if your employer has reimbursed you for the cost of the equipment you are still entitled to claim a tax deduction for the depreciation on it, TD 93/145.

Drivers Licence:

Only an additional fee over and above that of a normal licence is claimable as a tax deduction if that extra qualification is required for your work.

Union and Professional Associations:

A deduction is allowed for annual fees paid to a union or professional association but not for any up front joining fees. No deduction is allowable for social club subscriptions.

Fitness and Sporting Activities:

You are not entitled to claim a deduction for the expenses of keeping fit (ie high impact shoes, depreciation on gym equipment and or gym fees) unless it is peculiar to your particular job that you maintain a very high level of fitness, not just the fitness level required of all members of the Defence Force. For example Physical training instructors or special combat squads.

The costs of sporting activities are only deductible if you are an official representative of the Defence Force on duty. Also consider any motor vehicle costs you incur in this regard.

Unique to the Special Air Services regiment is that they are entitled to claim a tax deduction for conventional sports clothing and shoes.

Mess Fees:

If you can apportion your mess fees so that you know the amount that does not relate to food, drink and entertainment then you are entitled to claim that portion as a tax deduction. No matter how compulsory a function, the cost of it cannot be claimed as a tax deduction because it is entertainment TR 95/17.

Watches:

Watches are only tax deductible if they have special characteristics relating to your occupation that are not conventional in nature.

Ceremonial Swords:

Yes, according to TR 95/17 the cost of purchasing a ceremonial sword to wear on parade is tax deductible.

Other Non Deductible Items

TR 95/17 states the following items are not tax deductible:

- Hair cuts & Grooming
- Newspapers
- Costs of Installing a Telephone Line
- Silent Telephone Numbers
- Weight Loss Programs

Relocation Expenses

The cost you incur transferring your household to another work location are not deductible but they are an exempt fringe benefit so you should negotiate with the Defence Force to have them pay these costs even if there is a corresponding reduction in your income before tax.

Medicare

Medicare Levy:

Members of the Defence Force that are entitled to free medical treatment do not have to pay the Medicare levy but if they have dependants that do not qualify for free medical they have to pay half the Medicare Levy. Note a dependant in this case includes a spouse. A Defence Force Member with dependants does not have to pay the half levy if one of the following applies:

- 1) All the member's dependants pay the Medicare Levy in their own right
- 2) The Member's spouse pays the Medicare Levy and the spouse contributes to the maintenance of the children, or
- 3) All of the Members dependants are also covered for free medical treatment by the Defence Force.

If both parents are Members of the Defence Force only one of them is required to pay the half levy to cover their children but they must complete a written family agreement naming the spouse who the child is not to be treated as a dependant of and which spouse the child is to be treated as a dependant of.

Children are considered dependants if they are less than 16 years of age. Older children are also considered dependants if they are full time students between 16 and 25 years of age, the member contributes to their maintenance and their income is under \$1,785. In the case of separated parents, the child is only the dependant of the custodial parent. If custody is shared the child is considered a dependant of each parent but only for the number of days they are with each parent.

When posted overseas a Defence Force Member is sometimes only entitled to a part reimbursement of medical expenses. This is not considered "free medical" for the purposes of the levy exemption so they would technically still be subject to the Medicare Levy. This may not be a big issue as quite often when a member is overseas their income is exempt from tax in Australia anyway.

If you are no longer entitled to free medical care, for example you have left the Defence Force, and you receive a payment relating to the time you were in the Defence Force you will be subject to the Medicare Levy on that payment as during the period it was received you were not covered by free medical.

Medicare Surcharge:

If you are single, with no dependants and your taxable income plus reportable fringe benefits exceeds \$50,000 you are required to pay a Medicare Levy Surcharge of 1% of your taxable income and reportable fringe benefits if you do not have adequate private hospital insurance. If you are single with no dependants and covered by the Defence Force for free medical treatment you will not be subject to the surcharge. But note the definition of dependant for surcharge purposes is different to that for the Medicare Levy.

If you are paying maintenance for a child then that child is your dependant even though they do not live with you. But because you have dependants you are entitled to the family threshold of \$100,000 (section 251V) (plus \$1,500 for each extra child). Nevertheless, if you are single, pay child maintenance and your taxable income plus reportable fringe benefits exceeds \$100,000 you will be subject to the surcharge if that child is not covered by private health insurance. With the surcharge being 1% of your income plus fringe benefits it would probably be cheaper to have the private health insurance if your income plus reportable fringe benefits exceeds \$100,000. If you have only one child and you are covered by free medical you only need to purchase single cover for the child which should be half the cost of family cover.

If you are a couple and your combined taxable income plus reportable fringe benefits exceeds \$100,000 you are required to pay the Medicare Levy Surcharge of 1% of your taxable income and reportable fringe benefits if you do not have adequate private hospital insurance. If you have more than one child the threshold increases by \$1,500 for each additional child. It does not matter even if both spouses are covered by free medical the surcharge must be paid if you have children and there is no half surcharge like there is with the Medicare Levy.

Adequate private health insurance must cover your spouse and your dependants (whether they live with you or not) for private hospital with an excess not exceeding \$500 for singles and \$1,000 for families.

Reserves

The payments of wages and allowances a member of the Reserves receives are tax free but this is only in regard to their activities in the Reserves which are part time in nature. Section 51-5 Item 1.4 of the ITAA 1997 states that income received by a Reserve for full time work is not exempt. Cash prizes under the Military Stills Awards are tax free.

If a member of the Reserves is injured while participating in Reserve activities and is unable to work, the military would normally pay him or her compensation to cover loss of earnings in his or her other occupation. These payments whether paid periodically or in one lump sum are taxable as normal income (ID 2003/260)

As the income you receive as part of the Reserves is exempt you are not entitled to claim any tax deductions against it.

Death & Taxes and the Defence Forces

If you die in the Defence Force, you are released from any unpaid liability for tax on Defence Force pay and allowances. Not something to get too excited about as the tax has probably been deducted correctly from your pay anyway. Section 265A 1936 ITAA.

Zones Tricks

To claim an Australian zone rebate (tax offset) you must be in a zone for 183 days of the financial year. The 183 days can be accumulated over 2 years. If in the previous year you did not claim a zone rebate and over the 2 years you have been in a zone for 183 days you can claim the zone rebate in the second year. For some workers on fly in fly out arrangements this means they may only be able to claim a zone rebate every second year.

The rebate for being in a special zone is \$1,173 in tax credits that you can use to pay your tax instead of the instalments deducted from your pay. Accordingly, when you do your tax return some of your instalments should be refunded. Certainly worth the effort of tracking where you have been. You can check what zone applies to your area by going to the ATO web site www.ato.gov.au, simply put the word zone in the search box. While you are there you should read TR 94/27 to get more detail on how to qualify.

On the bottom end of the scale the rebate for a zone B resident is only \$57. Many parts of Queensland are zone B including big towns such as Mackay and Townsville. While the \$57 might not be worth much being in any zone helps towards your 183 days. The calculation first asks has the taxpayer been in any or various zones for 183 days. If so they can claim a rebate. How much they can claim is determined by picking the best 183 days. For example if you have spent 200 days in a zone B and 50 days in a special zone your rebate would be made up of two parts. \$1,173 divided by 183 times 50 would be your entitlement for the special zone rebate. The balance would only be paid at the zone B rate i.e. \$57 divided by 183 times 133. The total rebate is \$361 which is a vast improvement on \$57 simply for being in a special zone for 50 days. As you can see the main purpose in zone B is to get your 183 days up so you can benefit from every day in other zones. You only have to be in the zone for part of the day for the whole day to qualify.

This trick can be useful when planning your holidays. If you live in a zone B record every day or part there of that you are in another zone area to boost your claim. If you work in a mine on a fly in fly out basis and don't quite spend 183 days per year there, you only need to go to a zone B to top up your quota.

If you have dependant children and or a spouse you are entitled to claim a zone rebate for them too if they were with you.

Members of the Defence Force who serve in a qualifying overseas locality for more than 182 days are entitled to a rebate of \$338 plus 50% of the notional rebates if they have dependants. A spouse receiving parenting allowance does not reduce the notional rebate you are entitled to receive for him or her and it does not matter that these dependants are not in that zone with you. If you serve less than 183 days the amount is apportioned. If you qualify for both an Australian zone rebate or an overseas rebate you are only entitled to claim the one that gives you the biggest entitlement. In order to get your 183 days up you can combine the time you spend in an Australian zone and a qualifying overseas location. You can use in the 183 days your calculation is based on the best 183 days you can come up with for the year. For example if you have 183 days overseas but 10 days in a special zone A. Then your zone rebate can be based on 10 days in special zone A and 173 days overseas. If your overseas income is exempt, as discussed below, you do not qualify for the rebate during that time. The rebate is not available if you are part of the Australian Embassy or Legation. Qualifying overseas areas are decided by the Federal Treasurer. TR 97/2 lists some of these but it has not been updated since 1998 so it is better to go to www.ato.gov.au for a more up to date list. TR 97/2 also explains when you are considered to have arrived or left and area.

If you have been missing out on claiming this rebate subsection 79B(5B) allows you unlimited time to go back and amend your tax return.

Overseas Postings

Members of the Defence Force who serve in a qualifying overseas locality for more than 182 days are entitled to a rebate of \$338 plus 50% of the notional rebates if they have dependants. For the full details on this refer to the section on zones above.

The rest of this section is heavy going and not necessary for most members of the Defence Force to concern themselves with, as they will be informed by their pay office if their overseas earnings are taxable in Australia or not. But if you always wanted to know why some are and some aren't here is everything you ever wanted to know but were rightly afraid to ask.

IT 2650 examines the relevant factors in depth. Generally if a person leaves Australia for more than two years and sets up a home in another country they will be considered not to be a resident of Australia for tax

purposes right from the time they leave Australia. If they only leave the country for 6 months they are still considered a resident of Australia for tax purposes. It is the area between 6 months and 2 years that is uncertain. Note it is possible to become a resident of more than one country at the same time.

In ID 2001/226 a member of the Defence Forces is posted overseas for more than 6 months. He and his family are provided with rental accommodation provided by the Government. He has considerable assets in Australia, the only asset he has overseas is a bank account. Basically the ruling says that he fails the permanent place of abode overseas test because he intends to return to Australia at the end of his posting. It relies on the fact he has substantial assets in Australia, the posting is for a limited period, the accommodation overseas is rental, he has diplomatic privileges and contributes to an Australian superannuation fund.

Even if you are caught as an Australian resident for tax purposes the income you earn overseas may be specifically exempt under section 23AD which states:

“The pay and allowances earned by a person serving as a member of the Defence Force are exempt from tax if:

- (a) they are earned while there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the person is on eligible duty with a specified organisation in a specified area outside Australia

And

- (b) the eligible duty is not as, or under, an attaché at an Australian embassy or legation.”

Section 23AC exempts income earned by members of the Defence Force serving in operational areas during the time it was actually an operational area. Examples of areas that have been considered operational are:

<i>Cambodia</i>	<i>Bahrain</i>	<i>Oman</i>	<i>Qatar</i>
<i>Iraq and Kuwait</i>	<i>Saudi Arabia</i>	<i>Cyprus</i>	<i>United Arab Emirates</i>
<i>Yugoslavia</i>	<i>Gulf of Suez</i>	<i>Gulf of Aqaba</i>	<i>Red Sea</i>
<i>Somalia</i>	<i>Gulf of Adem</i>	<i>Persian Gulf</i>	<i>Gulf of Oman</i>

And Parts of:

<i>Arabian Sea</i>	<i>Suez Canal</i>	<i>Mediterranean Sea</i>
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Section 23AG of ITAA 1936 exempts from Australian tax, income earned while working overseas for a continuous period of 91 days or more. But this is not the case if the income is exempt from tax in the country it is earned, because of our double tax agreement, the country does not tax employment income or due to diplomatic immunities.

Just because a member of the Defence Forces is serving in a diplomatic post does not mean he or she is immune from tax in that country. Diplomatic rights may not be recognised in times of turmoil. For example there was a time that diplomatic privileges were not available in East Timor (ID 2002/600). ID 2002/601 gives an example of a non diplomatic posting in East Timor, as the income was technically subject to tax in East Timor it was exempt in Australia. This was the case even though it was not taxed in East Timor because there was not a functioning collection authority at the time.

In ID 2004/705 income earned by ADF members serving in Cambodia as part of Operation Banner during the time it was not an operational area were still exempt from income tax in Australia even though the income was not taxed in Cambodia. This is because the income was exempt under a Memorandum of Understanding not because Cambodia did not tax employment income or due to diplomatic immunity or our double tax agreement.

ADF members deployed as part of the Peace Monitoring Group on the Island of Bougainville who were there for 91 days or more qualified to have their earnings exempted from Australian tax under Section 23AG. But just when you thought you could see the consistency, get this, the bonuses they received weren't (ID 2003/373). The bonuses weren't exempt because they were not technically earned for overseas service they were earned for remaining in the Defence Force. And one final twist, if the retention bonus was instead received while serving overseas in a military operation on eligible duty as discussed above re section 23AD, it would be exempt income (ID 2004/80).

TR 97/2 explains when you are considered to have arrived or left an area. Section 23AC(3A)(c) expands the period of service to include time in hospital receiving treatment related to an illness or injury from overseas service. This is the case even if the hospital is not in the service area.

Navy Personnel Overseas

It has come to our attention that the Navy is very secretive about where they send their ships. So secretive in fact that they do not always tell their own pay office where they are.

Normally the members of our armed forces can rely on their PAYG summary and associate documentation giving enough information to work out what income they have earned overseas and the associated tax concessions. But from a very candid comment we received from their pay office we now understand that if they are on a ship, details are not always given to the pay office so it is up to the individual personnel to keep a diary for every day they are on board. This diary should cover their position for each day and if possible whether it is classified as a war zone.

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Disclaimer: Please note in many cases the legislation referred to above has only just passed through parliament. The full effect is not clear yet but it is already necessary to make you aware of the ramifications despite the limited commentary available. On the other side of the coin by the time you read this information it may be out of date. The information is presented in summary form and intended only to draw your attention to issues you should further discuss with your accountant. Please do not act on this information without further consultation. We disclaim any responsibility for actions taken on the above without further advice as to your particular circumstances.