TR 93/37 - Income tax: Medicare levy - Defence Force personnel on overseas postings

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This document has changed over time. This is a consolidated version of the ruling which was published on *30 January 2013*

Taxation Ruling

Income tax: Medicare levy - Defence Force personnel on overseas postings

other Rulings on this topic

TD 93/103; TR 93/35

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This publication (excluding appendixes) is a public ruling for the purposes of the ***Taxation Administration Act 1953****.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

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

What this Ruling is about

1. This Ruling deals with the liability to Medicare levy of Defence Force personnel on overseas postings.

2. This Ruling should be read in conjunction with Taxation Ruling TR 93/35.

Ruling

Exemption from Levy

3. In accordance with paragraph 251T(a) and paragraph 251U(1)(a) of the *Income Tax Assessment Act 1936* (ITAA 1936),[1] a Defence Force member on an overseas posting is fully exempt from the Medicare levy where:

- the member is entitled to receive free medical treatment; and
- the member's dependants are entitled to receive free medical treatment.

[1] All legislative references are to the ITAA 1936 unless otherwise indicated.

Dependants not Entitled to Free Medical Treatment

4. Where a Defence Force member on an overseas posting is entitled to free medical treatment but the member's dependants are not entitled to receive free medical treatment, the member is generally liable to half the Medicare levy.

Relief from Partial Levy from 1 July 1989

5. From the year of income commencing 1 July 1989, relief from liability to half the Medicare levy is available to a Defence Force member where:

- the dependant is required to pay the levy or;
- the spouse is liable to pay the levy and contributes to the maintenance of a dependant.

Taxpayer and Spouse both Defence Force Members

6. Where both the taxpayer and his/her spouse are Defence Force members, a child of theirs may be treated as a dependant of only one spouse. Only that spouse will be liable to pay one half of the levy and the other spouse will be exempt. In these cases a 'family agreement' must be entered into as explained in Taxation Ruling TR 93/35.

Part Reimbursement of Medical Costs

7. A Defence Force member on an overseas posting, other than to Butterworth Airbase in Malaysia (where special arrangements apply), is entitled to a part reimbursement of any medical costs on 'prescribed services' in respect of an 'eligible person'. It is considered that these reimbursement arrangements do not constitute free medical treatment and in these circumstances the member is generally liable to half the Medicare levy.

Butterworth Airbase in Malaysia

8. Because of special arrangements that apply, dependants of a Defence Force member who accompany that member to Butterworth Airbase in Malaysia, are entitled to free medical treatment. The member is therefore exempt from the levy in respect of these dependants.

9. However, if, for example, a dependant of a Defence Force member does not accompany the family to Butterworth Airbase but remains at school in Australia and is not otherwise entitled to free medical treatment, then not all dependants of the member are entitled to free medical treatment and in these circumstances the member would generally be liable to half the levy.

Date of effect

10. This Ruling applies to years of income commencing both before and after its date of issue. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Definitions

11. The following definitions of key terms apply for this Ruling:

dependants

- has the same meaning as appears in subsection 251R(3) that is a spouse, a child less than 21[2] years of age or a child aged 21 to 24 who is a full time student and the Defence Force member contributes to their maintenance.

prescribed service

- is defined by the Department of Defence to mean a health service rendered outside Australia for which, if rendered in Australia by a duly qualified practitioner, a person would be entitled to be paid a Medicare benefit.

eligible person

- is defined by the Department of Defence in relation to a member to mean:

- a spouse of the member; and
- a dependant child less than 21 years of age.

[2] As amended by Item 3 of Schedule 5 to the *Tax Laws Amendment (2005 Measures No. 3) Act 2005*.

Explanations

Reimbursement Arrangements for Prescribed Services

12. Where a Defence force member on an overseas posting necessarily incurs medical costs for a 'prescribed service' for an 'eligible person', the member is entitled to part reimbursement of these costs. It is considered that these reimbursement arrangements do not constitute free medical treatment in terms of paragraph 251U(1)(a).

Arrangements for Postings to Butterworth Airbase in Malaysia

13. Special conditions of service exist for Defence Force members posted to the Butterworth Airbase in Malaysia. Under long-standing arrangements the families of members accompanying them to Malaysia are entitled to free medical, dental, hospitalisation and optometry treatment from the RAAF medical organisation at Butterworth. Provided all dependants of a member are entitled to free medical treatment, the member is exempt from the Medicare levy. Otherwise the member is generally liable to half the levy.

Previous Rulings

14. The relevant principles from Taxation Ruling IT 2342 have been incorporated into this Ruling. Accordingly, Taxation Ruling IT 2342 is now withdrawn.

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Related Rulings/Determinations
IT 2342; TR 93/35; TR 2006/10

Subject references
- Defence Forces
- Medicare levy
- overseas postings

Legislative references
- ITAA 1936
- ITAA 1936 251R(3)
- ITAA 1936 251T(a)

- ITAA 1936 251U(1)(a)
- ITAA 1936 251U(1)(a)
- Tax Laws Amendment (2005 Measures No. 3) Act 2005 Sch 5
- TAA 1953