

EXPLANATORY STATEMENT
SELECT LEGISLATIVE INSTRUMENT NO. 78, 2015

Issued by authority of the Assistant Treasurer

Income Tax Assessment Act 1936

Income Tax Amendment (Defence Force Income Tax Exemptions) Regulation 2015

Section 266 of the *Income Tax Assessment Act 1936* (Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Income Tax Amendment (Defence Force Income Tax Exemptions) Regulation 2015* (Regulation) is to exempt from income tax the remuneration of Australian Defence Force (ADF) personnel engaged in service on Operations ACCORDION, AUGURY, HIGHROAD, MANITOU, OKRA and PALATE II.

Subsection 23AD(1) of the Act provides that the pay and allowances of ADF personnel are exempt from income tax if:

- the individual is on ‘eligible duty’ (but not as, or under, an attaché at an embassy or legation); and
- the Chief of the ADF has issued certificate to the effect the person is on eligible duty.

Subsection 23AD(2) of the Act also provides that the regulations may prescribe duty with a specified organisation in a specified area outside Australia and after a specified day, to be eligible duty. Subparagraph 23AD(3)(b)(iii) of the Act provides that the regulations may prescribe that the certificate issued by the Chief of the ADF continues in force until the earlier of the person’s departure from the specified area, its revocation, or such time prescribed by the regulations.

Regulation 7A of the *Income Tax Regulations 1936* (Principal Regulations) prescribes certain duty as eligible duty.

Schedule 1 to the Regulation amends regulation 7A of the Principal Regulations to update for new or continuing operations, and specifies the relevant operations as eligible duty for the purposes of section 23AD of the Act. The Regulation also improves readability by redrafting regulation 7A as a table.

Details of the Regulation are set out in the [Attachment](#).

Compliance cost impacts

The amendments made by the Regulation are minor and machinery in nature and have a negligible compliance cost impact.

Consultation

Consultation was undertaken with the Department of Defence on the amendments. No public consultation was undertaken as they are minor and technical in nature.

Conditions and commencement

The Act specifies no conditions that need to be met before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered.

Details of the *Income Tax Amendment (Defence Force Income Tax Exemptions) Regulation 2015*

Section 1 — Name of Regulation

This section provides that the title of the Regulation is the *Income Tax Amendment (Defence Force Income Tax Exemptions) Regulation 2015* (Regulation).

Section 2 — Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 — Authority

This section provides that the Regulation is made under the *Income Tax Assessment Act 1936* (Act).

Section 4 — Schedule(s)

This section provides that each instrument that is specified in the Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule.

Schedule 1 — Amendments

Item 1

Item 1 in Schedule 1 repeals regulation 7A of the *Income Tax Regulations 1936* (Principal Regulations) and replaces regulation 7A as a table for ease of navigation.

The table provides that for subsection 23AD(2) and subparagraph 23AD(3)(b)(iii) of the Act, duty with an organisation specified in an item of the table is eligible duty if:

- the duty is in an area specified in the item; and
- the duty occurs after a specified day and before a specified day (if any).

The operations that are declared as eligible duty in regulation 7A are as follows:

Item	Organisation and operation	Area	After the day	Before the day
1	Australian Defence Force on Operation Accordion	The land area, territorial waters, airspace and superjacent airspace of the following countries: - the Kingdom of Bahrain; - the State of Qatar; and - the United Arab Emirates.	30 June 2014	1 July 2016
2	Australian Defence Force on Operation Augury	The land area, territorial waters, airspace and superjacent airspace of the Hashemite Kingdom of Jordan.	3 July 2014	
3	Australian Defence Force on Operation Highroad	The land area, territorial waters, airspace and superjacent airspace of Afghanistan.	31 December 2014	1 July 2016
4	Australian Defence Force on Operation Manitou	The sea (including adjacent ports and the area within a 10 kilometres radius of such ports) and superjacent airspace of: - the Arabian Sea north of latitude 11°00'00"S and west of longitude 68°00'00"E; - the Gulf of Aden; - the Gulf of Oman; - the Persian Gulf; - the Red Sea; and - the Strait of Hormuz.	30 June 2014	1 July 2016

Item	Organisation and operation	Area	After the day	Before the day
5	Australian Defence Force on Operation Okra	The following areas: (a) the land area, territorial waters, airspace and superjacent airspace of the following countries: - Albania; - Bosnia and Herzegovina; - Bulgaria; - Croatia; - Cyprus; - Czech Republic; - Estonia; - Hungary; - Iraq; - Kuwait; - Montenegro; - Poland; - Romania; - the Hashemite Kingdom of Jordan; - the Kingdom of Bahrain; - the State of Qatar; - the United Arab Emirates; and (b) the waters and superjacent airspace of the Persian Gulf.	8 August 2014	1 July 2016
6	United Nations— Assistance Mission in Afghanistan (Operation Palate II)	The land area, territorial waters, airspace and superjacent airspace of Afghanistan.	26 June 2005	1 January 2016

Item 1 of Schedule 1 also repeals paragraphs 7A(aa) and (ab) of the Principal Regulations, which are redundant.

Item 2

Item 2 of Schedule 1 repeals item 15 of Schedule 1 to the *Treasury Laws Amendment (2015 Measures No. 1) Regulation 2015*. Item 15 of Schedule 1 to the *Treasury Laws Amendment (2015 Measures No. 1) Regulation 2015* repeals paragraph 7A(aa) of the Principal Regulations from 1 July 2015 and therefore conflicts with the amendments in item 1 of the Regulation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Income Tax Amendment (Defence Force Income Tax Exemptions) Regulation 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 23AD of the Act provides an exemption from income tax of pay and allowances of Australian Defence Force (ADF) members performing certain overseas duty. The exemption is available to members on ‘eligible duty’, as declared by the regulations.

Regulation 7A of the Principal Regulations specifies duty with certain organisations in certain areas outside Australia and declares that duty to be ‘eligible duty’ for the purposes of section 23AD of the Act.

Schedule 1 to this Legislative Instrument amends regulation 7A of the Principal Regulations to update for the following new or continuing operations: Operations ACCORDION, AUGURY, HIGHROAD, MANITOU, OKRA and PALATE II and specifies these operations as eligible duty for the purposes of section 23AD of the Act. The Regulation also improves readability by redrafting regulation 7A as a table.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.