



# **Tax Laws Amendment (2012 Measures No. 4) Act 2012**

**No. 142, 2012**

**An Act to amend the law relating to taxation, and  
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**No. 142, 2012**

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**An Act to amend the law relating to taxation, and for related purposes**

*[Assented to 28 September 2012]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2012 Measures No. 4) Act 2012*.

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## 2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 September 2012
2. Schedules 1 and 2	The day this Act receives the Royal Assent.	28 September 2012
3. Schedule 3	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) immediately after the commencement of Part 4 of Schedule 3 to the <i>Tax Laws Amendment (2012 Measures No. 2) Act 2012</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Reform of living away from home allowance and benefit rules**

### **Part 1—Main amendment**

#### ***Fringe Benefits Tax Assessment Act 1986***

##### **1 Subdivision B of Division 7 of Part III**

Repeal the Subdivision, substitute:

##### **Subdivision B—Taxable value of living-away-from-home allowance fringe benefits**

###### **31 Taxable value—employee maintains a home in Australia**

- (1) This section applies to a living-away-from-home allowance fringe benefit covered by subsection 30(1) in relation to a year of tax to the extent that the employee satisfies all of the following for the fringe benefit and the period to which it relates:
  - (a) section 31C (about maintaining an Australian home);
  - (b) section 31D (about the first 12 months);
  - (c) section 31F (about declarations).
- (2) Subject to this Part, the taxable value of the fringe benefit in relation to the year of tax is the amount of the fringe benefit reduced by:
  - (a) any exempt accommodation component; and
  - (b) any exempt food component.
- (3) Paragraph (2)(b) does not apply to the extent that the fringe benefit relates to a period during which the employee resumes living at his or her normal residence.
- (4) Neither paragraph (2)(a) nor (b) applies to the extent that the period to which the fringe benefit relates happens while the 12-month period referred to in subsection 31D(1) is paused.

Note: The employer may pause that 12-month period (see paragraph 31D(2)(a)).

### **31A Taxable value—fly-in fly-out and drive-in drive-out employees**

- (1) This section applies to a living-away-from-home allowance fringe benefit covered by subsection 30(1) in relation to a year of tax to the extent that the employee satisfies all of the following for the fringe benefit and the period to which it relates:
  - (a) the requirement that the employee has residential accommodation at or near his or her usual place of employment;
  - (b) section 31E (about extra requirements for these employees);
  - (c) section 31F (about declarations).
- (2) Subject to this Part, the taxable value of the fringe benefit in relation to the year of tax is the amount of the fringe benefit reduced by:
  - (a) any exempt accommodation component; and
  - (b) any exempt food component.

### **31B Taxable value—any other case**

- (1) This section applies to a living-away-from-home allowance fringe benefit in relation to a year of tax to the extent that neither section 31 nor 31A applies to the fringe benefit and the period to which it relates.
- (2) Subject to this Part, the taxable value of the fringe benefit in relation to the year of tax is the amount of the fringe benefit.

## **Subdivision C—Related provisions**

### **31C Maintaining a home in Australia**

The employee satisfies this section if:

- (a) the place in Australia where the employee usually resides when in Australia:
  - (i) is a unit of accommodation in which the employee or the employee's spouse has an ownership interest (within the meaning of the *Income Tax Assessment Act 1997*); and
  - (ii) continues to be available for the employee's immediate use and enjoyment during the period that the duties of

that employment require the employee to live away from it; and

(b) it is reasonable to expect that the employee will resume living at that place when that period ends.

### **31D First 12 months employee is required to live away from home**

- (1) The employee satisfies this section if the fringe benefit relates only to all or part of the first 12 months that the duties of that employment require the employee to live away from the place in Australia where he or she usually resides when in Australia.
- (2) Each of the following paragraphs applies for the purposes of subsection (1):
  - (a) the employer may pause the 12-month period;
  - (b) start a separate 12-month period if:
    - (i) the employer later requires the employee to live at another location for the purposes of that employment; and
    - (ii) it would be unreasonable to expect the employee to commute to that other location from an earlier location for which the employer provided a benefit of the same kind to the employee;
  - (c) other changes in the nature of that employment are irrelevant;
  - (d) treat as one employer any of the employee's earlier employers that is or has been an associate of the current employer.

### **31E Fly-in fly-out and drive-in drive-out requirements**

The employee satisfies this section if:

- (a) the employee, on a regular and rotational basis:
  - (i) works for a number of days and has a number of days off (but not the same days in consecutive weeks); and
  - (ii) on completion of the working days, travels from his or her usual place of employment to his or her normal residence and, on completion of the days off, returns to that usual place of employment; and
- (b) the basis of work described in paragraph (a) is customary for employees performing similar duties in that industry; and

- (c) it would be unreasonable to expect the employee to travel on a daily basis on work days between:
  - (i) his or her usual place of employment; and
  - (ii) his or her normal residence;having regard to the location of those places; and
- (d) it is reasonable to expect that the employee will resume living in his or her normal residence when the duties of that employment no longer require him or her to live away from it.

### **31F Declarations**

- (1) The employee satisfies this section if the employee gives the employer a declaration, in a form approved by the Commissioner, purporting to set out:
  - (a) for a fringe benefit to which section 31 (about employees who maintain an Australian home) applies:
    - (i) the address of the place in Australia where the employee usually resides when in Australia; and
    - (ii) that section 31C is satisfied for that place; and
    - (iii) the address of each place where the employee actually resided during the period to which the benefit relates; or
  - (b) for a fringe benefit to which section 31A (about employees who fly-in fly-out or drive-in drive-out) applies:
    - (i) the address of the employee's usual place of residence; and
    - (ii) that paragraph 31E(d) is satisfied for the employee's normal residence; and
    - (iii) the address of each place where the employee actually resided during the period to which the benefit relates.
- (2) The employee must give the employer the declaration before the declaration date for the year of tax during which the benefit was provided.

### **31G Substantiating related expenses**

- (1) This section applies to the following expenses incurred by the employee:

- (a) an expense for the accommodation of eligible family members during the period to which a living-away-from-home allowance fringe benefit relates;
- (b) an expense for food or drink for eligible family members during the period to which a living-away-from-home allowance fringe benefit relates, if the total of those food or drink expenses for that period exceeds the amount the Commissioner considers reasonable.

(2) The employee substantiates the expense if the employee:

- (a) before the declaration date for the year of tax during which the fringe benefit was provided, gives the employer:
  - (i) documentary evidence of the expense, or a copy; or
  - (ii) a declaration, in a form approved by the Commissioner, purporting to set out information about the expense; and
- (b) if the employee gives a declaration under subparagraph (a)(ii)—retains documentary evidence of the expense for a period of 5 years starting at that declaration date.

Note: Substantiating expenses increases the exempt accommodation component, and exempt food component, for working out the taxable value of the relevant fringe benefit.

### **31H Exempt food component**

(1) The *exempt food component*, in relation to a living-away-from-home allowance fringe benefit, is so much of the result of subsection (2) as is equal to the total of the expenses that:

- (a) are incurred by the employee for food or drink for eligible family members during the period to which the fringe benefit relates; and
- (b) if section 31G applies to the expenses—are substantiated under that section.

(2) Work out the result of the following:

Food component – Applicable statutory food total

where:

***applicable statutory food total*** means the total of the statutory food amounts for eligible family members for the period to which the

fringe benefit relates, reduced (but not below zero) by any amount that:

- (a) might reasonably be expected to be the total normal food or drink expenses for those eligible family members had they remained living in their normal residence during that period; and
- (b) was taken into account in working out the food component.

## **Part 2—Other amendments**

### ***Fringe Benefits Tax Assessment Act 1986***

#### **2 At the end of paragraphs 21(a), (b) and (ba)**

Add “and”.

#### **3 Paragraphs 21(c) and (d)**

Repeal the paragraphs, substitute:

- (c) the accommodation is required solely because the duties of that employment require the employee to live away from his or her normal residence; and
- (d) the employee satisfies:
  - (i) sections 31C (about maintaining an Australian home) and 31D (about the first 12 months); or
  - (ii) section 31E (about fly-in fly-out and drive-in drive-out requirements); and
- (e) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
  - (i) if the employee satisfies sections 31C and 31D—the matters in subparagraphs 31F(1)(a)(i) to (iii); or
  - (ii) if the employee satisfies section 31E—the matters in subparagraphs 31F(1)(b)(i) to (iii);

#### **4 Paragraph 30(1)(b)**

Omit “employee is required to live away from his or her usual place of residence in order to perform the duties of that employment”, substitute “duties of that employment require the employee to live away from his or her normal residence”.

#### **5 Paragraph 30(2)(f)**

Omit “employee is required to live away from his or her usual place of residence in order to perform the duties of that employment”, substitute “duties of that employment require the employee to live away from his or her usual place of residence”.

**6 At the end of paragraph 47(5)(a)**

Add “and”.

**7 Paragraph 47(5)(b)**

Repeal the paragraph, substitute:

- (b) the unit of accommodation is for the accommodation of eligible family members and is provided solely because the duties of that employment require the employee to live away from his or her normal residence; and
- (ba) the employee satisfies:
  - (i) sections 31C (about maintaining an Australian home) and 31D (about the first 12 months); or
  - (ii) section 31E (about fly-in fly-out and drive-in drive-out requirements); and

**8 Paragraph 47(5)(d)**

Omit “either”, substitute “any”.

**9 Subparagraph 47(5)(d)(ii)**

Repeal the subparagraph, substitute:

- (ii) if the employee satisfies sections 31C and 31D—the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out the matters in subparagraphs 31F(1)(a)(i) to (iii);
- (iii) if the employee satisfies section 31E—the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out the matters in subparagraphs 31F(1)(b)(i) to (iii);

**10 At the end of paragraphs 63(1)(a) and (b)**

Add “and”.

**11 Paragraph 63(1)(d)**

Repeal the paragraph, substitute:

- (d) the employee satisfies:
  - (i) sections 31C (about maintaining an Australian home) and 31D (about the first 12 months); or

- (ii) section 31E (about fly-in fly-out and drive-in drive-out requirements); and
- (da) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
  - (i) if the employee satisfies sections 31C and 31D—the matters in subparagraphs 31F(1)(a)(i) to (iii); or
  - (ii) if the employee satisfies section 31E—the matters in subparagraphs 31F(1)(b)(i) to (iii);

## **12 Subsection 136(1)**

Insert:

*accommodation component*, in relation to a living-away-from-home allowance fringe benefit, means so much (if any) of the fringe benefit as might reasonably be concluded to be compensation for expenses to be incurred by the employee for the accommodation of eligible family members during the period to which the fringe benefit relates.

## **13 Subsection 136(1) (paragraph (a) of the definition of *eligible family member*)**

Omit “who is required to live away from his or her usual place of residence during a period in order to perform the duties of his or her employment”, substitute “whose duties of employment require the employee to live away, for a period, from his or her normal residence”.

## **14 Subsection 136(1) (sub subparagraph (b)(ii)(A) of the definition of *eligible family member*)**

Omit “recipients allowance”, substitute “fringe benefit”.

## **15 Subsection 136(1) (sub subparagraph (b)(ii)(B) of the definition of *eligible family member*)**

Omit “recipients allowance period”, substitute “period to which the fringe benefit relates”.

## **16 Subsection 136(1) (definition of *exempt accommodation component*)**

Repeal the definition, substitute:

*exempt accommodation component*, in relation to a living-away-from-home allowance fringe benefit, means so much of the accommodation component as is equal to the total of the expenses that:

- (a) are incurred by the employee for that accommodation; and
- (b) are substantiated under section 31G.

**17 Subsection 136(1) (definition of *exempt food component*)**

Repeal the definition, substitute:

*exempt food component* has the meaning given by section 31H.

**18 Subsection 136(1) (definition of *food component*)**

Repeal the definition, substitute:

*food component*, in relation to a living-away-from-home allowance fringe benefit, means so much (if any) of the fringe benefit as might reasonably be concluded to be compensation for expenses to be incurred by the employee for food or drink for eligible family members during the period to which the fringe benefit relates.

**19 Subsection 136(1) (at the end of subparagraph (a)(i) of the definition of *living-away-from-home food fringe benefit*)**

Add “and”.

**20 Subsection 136(1) (subparagraph (a)(iii) of the definition of *living-away-from-home food fringe benefit*)**

Repeal the subparagraph, substitute:

- (iii) the food or drink was for consumption by eligible family members at a time when the duties of that employment required the employee to live away from his or her normal residence; or

**21 Subsection 136(1) (at the end of subparagraph (b)(i) of the definition of *living-away-from-home food fringe benefit*)**

Add “and”.

**22 Subsection 136(1) (subparagraph (b)(iii) of the definition of *living-away-from-home food fringe benefit*)**

Repeal the subparagraph, substitute:

- (iii) the food or drink was for consumption by eligible family members at a time when the duties of that employment required the employee to live away from his or her normal residence.

### **23 Subsection 136(1)**

Insert:

*normal residence*, in relation to an employee, means:

- (a) if the employee's usual place of residence is in Australia—the employee's usual place of residence; or
- (b) otherwise—either:
  - (i) the employee's usual place of residence; or
  - (ii) the place in Australia where the employee usually resides when in Australia.

### **24 Subsection 136(1) (definition of *recipients allowance*)**

Repeal the definition.

### **25 Subsection 136(1) (definition of *recipients allowance period*)**

Repeal the definition.

## **Part 3—Application and transitional provisions**

### **26 Application of amendments**

The amendments made by this Schedule apply in relation to an employee who, on or after 1 October 2012, lives away from his or her normal residence (whether a benefit provided for living away from that residence on or after that day was paid before, on or after that day).

### **27 Transitional—existing employment arrangements**

- (1) During the transitional period, disregard paragraph 31C(a) and section 31D of the *Fringe Benefits Tax Assessment Act 1986* if:
  - (a) the employee is neither a temporary resident nor a foreign resident; and
  - (b) during the entire period:
    - (i) starting at the Budget time; and
    - (ii) ending on 30 September 2012;that employment was covered by an eligible employment arrangement that was neither varied in a material way nor renewed.
- (2) During the transitional period, disregard section 31D of the *Fringe Benefits Tax Assessment Act 1986* if:
  - (a) the employee is a temporary resident or a foreign resident; and
  - (b) during the entire period:
    - (i) starting at the Budget time; and
    - (ii) ending on 30 September 2012;that employment was covered by an eligible employment arrangement that was neither varied in a material way nor renewed.
- (3) In this item:

**Budget time** means 7.30 pm, by legal time in the Australian Capital Territory, on 8 May 2012.

**eligible employment arrangement** means an arrangement under which:

  - (a) the employer; or
  - (b) an associate of the employer;

commits to provide the employee with an allowance or benefit for the employee's accommodation, food or drink while the duties of that employment require the employee to live away from his or her normal residence.

**foreign resident** has the same meaning as in the *Income Tax Assessment Act 1997*.

**temporary resident** has the same meaning as in the *Income Tax Assessment Act 1997*.

**transitional period** means the period:

- (a) starting on 1 October 2012; and
- (b) ending at the earliest of:
  - (i) 30 June 2014; and
  - (ii) the time the eligible employment arrangement referred to in paragraph (1)(b) or (2)(b) ends; and
  - (iii) the first time that eligible employment arrangement is varied in a material way or renewed.

## **28 Transitional—first 12 months for existing arrangements**

- (1) This item applies if, on 1 October 2012:
  - (a) an employee's duties of employment require the employee to live away from the place in Australia where he or she usually resides when in Australia; or
  - (b) the employee expects that his or her duties of employment will require him or her to resume living away from the place in Australia where he or she usually resides when in Australia.
- (2) Treat the 12-month period referred to in subsection 31D(1) of the *Fringe Benefits Tax Assessment Act 1986* as if it were the first 12 months on or after 1 October 2012 that the employee lives away from that place as so required.

## **Schedule 2—GST supplies by representatives who are creditors**

### ***A New Tax System (Goods and Services Tax) Act 1999***

#### **1 At the end of section 58-1**

Add:

Note: This Division does not apply to a representative to the extent that paragraph 105-5(1)(a) (which is about supplies by creditors in satisfaction of debts) will apply to its supplies. See section 58-95.

#### **2 At the end of Division 58**

Add:

#### **58-95 Division does not apply to the extent that the representative is a creditor of the incapacitated entity**

This Division does not apply in relation to a \*representative of an entity to the extent that paragraph 105-5(1)(a) will apply to a supply by the representative of the entity's property.

Note: For example, if the representative:

- (a) is a mortgagee in possession of the entity's property; and
- (b) is not a representative of the entity for any other reason;

the representative need not register under section 58-20 if it will supply that property in or towards the satisfaction of a debt owed to it by the entity.

#### **3 At the end of section 105-1**

Add:

Note: This Division overrides Division 58 to the extent that the creditor is a representative of the debtor and the debtor is an incapacitated entity (see section 58-95).

#### **4 Application of amendments**

- (1) The amendments made by this Schedule apply in relation to supplies made on or after the start of the first quarterly tax period starting on or after the day this Act receives the Royal Assent.

- (2) For the purposes of subitem (1), it does not matter whether quarterly tax periods are the tax periods that apply to you.

## **Schedule 3—Consolidation**

### ***Tax Laws Amendment (2012 Measures No. 2) Act 2012***

#### **1 At the end of Schedule 3**

Add:

#### **53 No overpayments interest arises from pre rules**

- (1) Disregard a deduction covered by subitem (2) in working out:
  - (a) the amount (if any) of an excess mentioned in paragraph 8G(1)(d) of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
  - (b) the amount (if any) of an excess mentioned in paragraph 8G(2)(c) of that Act; and
  - (c) the extent (if any) to which an amount of relevant tax is overpaid as mentioned in paragraph 9(1)(b) of that Act.
- (2) A deduction is covered by this subitem if the pre rules apply in working out the amount of the deduction.
- (3) This item does not apply to the extent that its application would affect an amount of interest paid by the Commissioner of Taxation under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* before 25 November 2011.

#### **54 No shortfall interest charge or shortfall penalty arises from pre or interim rules**

- (1) Disregard a deduction covered by subitem (3) in working out under subsection 280-100(1) in Schedule 1 to the *Taxation Administration Act 1953* the extent (if any) to which an entity is liable to pay an additional amount of income tax because of an amended assessment.
- (2) Disregard a deduction covered by subitem (3) in working out the amount (if any) of a shortfall amount under subsection 284-80(1) in that Schedule.
- (3) A deduction is covered by this subitem if the pre rules or interim rules apply in working out the amount of the deduction.

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*[Minister's second reading speech made in—  
House of Representatives on 28 June 2012  
Senate on 23 August 2012]*

(132/12)

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