

# EXPOSURE-DRAFT

1 Inserts for

2 **Tax Laws Amendment (2012 Measures**  
3 **No. 3) Bill 2012: deducting expenses for**  
4 **living away from home**

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1.		
2. Schedule ??	The day this Act receives the Royal Assent.	
3.		

7 **Schedule ??—Deducting expenses for living**  
8 **away from home**

9 **Part 1—Main amendment**

10 *Income Tax Assessment Act 1997*

11 **1 At the end of Division 25**

12 Add:

13 **25-115 Living away from home**

14 *When you can deduct expenses for living away from home*

- 15 (1) You can deduct an amount for an accommodation, food or drink  
16 expense you incur if:
- 17 (a) you incur the expense because your employer requires you to  
18 live away from your usual place of residence for the purposes  
19 of your employment; and
  - 20 (b) that residence:

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- 1 (i) is a \*dwelling in Australia in which you or your \*spouse  
2 have an \*ownership interest; and  
3 (ii) continues to be available for your use and enjoyment  
4 during the period you are required to live away from it;  
5 and  
6 (c) it is reasonable to expect that you will resume living in that  
7 residence when that period ends; and  
8 (d) the expense is for accommodation, food or drink for you, or  
9 for your spouse or \*children when your spouse or children are  
10 living with you away from that residence; and  
11 (e) any of the following subparagraphs applies:  
12 (i) the expense relates to all or part of the first 12 months  
13 that you live away from that residence as required by  
14 your employer;  
15 (ii) you are provided with a transport benefit as described in  
16 subsection 47(7) of the *Fringe Benefits Tax Assessment*  
17 *Act 1986* during all of the period you are required to live  
18 away from that residence;  
19 (iii) you would be provided with such a transport benefit  
20 during all of that period if paragraph 47(7)(a) of that Act  
21 were ignored.

## 22 *How much you can deduct*

- 23 (2) The amount you can deduct for an accommodation expense is so  
24 much of the expense as is reasonable.  
25 (3) The amount you can deduct for the food or drink expenses you  
26 incur in relation to all or part of a 7-day period is so much of the  
27 total of those expenses as:  
28 (a) is reasonable; and  
29 (b) exceeds your ordinary weekly food and drink expenses,  
30 which for a 7-day period wholly or mainly in the 2011-12  
31 income year is the total of \$110 and the following amounts:  
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### Your ordinary weekly food and drink expenses

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Item	If, during the 7-day period, this individual is living with you away from your usual place of residence:	count this amount:
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1	your *spouse	\$110
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2	your *child aged 12 or over	\$110
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3	your *child aged under 12	\$44
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- 1 (4) The amounts in paragraph (3)(b) (including the table) are indexed  
2 annually, with each result rounded down to the nearest dollar, for  
3 7-day periods wholly or mainly in later income years.

4 Note: Subdivision 960-M shows you how to index amounts.

5 *Working out if expense relates to first 12 months away from home*

- 6 (5) For the purposes of subparagraph (1)(e)(i) and this subsection:  
7 (a) pause that 12-month period if, and while, you temporarily  
8 resume living in your usual place of residence; and  
9 (b) start a separate 12-month period if:  
10 (i) your employer later requires you to live at another  
11 location for the purposes of your employment; and  
12 (ii) you could not reasonably be expected to commute to  
13 that other location from an earlier location for which  
14 you incurred an expense that you can deduct under this  
15 section in relation to that employer; and  
16 (c) other changes in the nature of your employment are  
17 irrelevant; and  
18 (d) treat as one employer any of your earlier employers that is or  
19 has been a \*connected entity of your current employer.

## 20 **Part 2—Other amendments**

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

#### 22 **2 Subparagraph 17(4)(e)(i)**

23 Repeal the subparagraph, substitute:

- 24 (i) the employee can deduct under section 25-115 of the  
25 *Income Tax Assessment Act 1997* expenses, or could so  
26 deduct if it had incurred expenses, in respect of that  
27 accommodation;

#### 28 **3 Section 21**

29 Repeal the section.

#### 30 **4 Subparagraph 24(1)(e)(i)**

31 After “benefit”, insert “(other than a benefit relating to expenditure the  
32 recipient can deduct under section 25-115 of the *Income Tax*  
33 *Assessment Act 1997*)”.

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## 5 Division 7 of Part III

Repeal the Division.

## 6 Paragraphs 36(a) and (b)

Repeal the paragraphs, substitute:

- (a) if the recipient is aged 12 or over at the start of the year of tax—the amount worked out by:
  - (i) working out  $\frac{1}{21}$  of the amount applicable, at the start of the year of tax, under paragraph 25-115(3)(b) of the *Income Tax Assessment Act 1997* (ignoring the table) to an individual deducting an amount under section 25-115 of that Act; and
  - (ii) rounding down that result to the nearest dollar; or
- (b) otherwise— $\frac{1}{2}$  of the amount worked out under paragraph (a);

## 7 Subparagraph 44(1)(c)(i)

After “benefit”, insert “(other than a benefit relating to expenditure the recipient can deduct under section 25-115 of the *Income Tax Assessment Act 1997*)”.

## 8 Subsection 47(5)

Repeal the subsection.

## 9 Subparagraph 52(1)(c)(i)

After “benefit”, insert “(other than a benefit relating to expenditure the recipient can deduct under section 25-115 of the *Income Tax Assessment Act 1997*)”.

## 10 Paragraph 58E(d)

Repeal the paragraph, substitute:

- (d) the employee can deduct under section 25-115 of the *Income Tax Assessment Act 1997* expenses, or could so deduct if it had incurred expenses, in respect of that accommodation;

## 11 Section 63

Repeal the section.

## 12 Subsection 136(1) (definition of *eligible family member*)

Repeal the definition.

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- 1 **13 Subsection 136(1) (definition of *exempt accommodation***  
2 ***component*)**  
3 Repeal the definition.
- 4 **14 Subsection 136(1) (definition of *exempt food component*)**  
5 Repeal the definition.
- 6 **15 Subsection 136(1) (definition of *food component*)**  
7 Repeal the definition.
- 8 **16 Subsection 136(1) (definition of *living-away-from-home***  
9 ***allowance benefit*)**  
10 Repeal the definition.
- 11 **17 Subsection 136(1) (definition of *living-away-from-home***  
12 ***allowance fringe benefit*)**  
13 Repeal the definition.
- 14 **18 Subsection 136(1) (definition of *living-away-from-home***  
15 ***food fringe benefit*)**  
16 Repeal the definition.
- 17 **19 Subsection 136(1) (definition of *recipients allowance*)**  
18 Repeal the definition.
- 19 **20 Subsection 136(1) (definition of *recipients allowance***  
20 ***period*)**  
21 Repeal the definition.
- 22 **21 Subsection 136(1) (definition of *statutory food amount*)**  
23 Repeal the definition.

24 ***Income Tax Assessment Act 1997***

25 **22 Section 12-5 (after table item headed “limited recourse**  
26 **debt”)**

27 Insert:

**living away from home**

expenses for accommodation, food or drink..... 25-115

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## 23 Subsection 20-30(1) (after table item 1.8A)

Insert:

1.8AA 25-115 living away from home expenses

## 24 Section 900-10 (after table item 3)

Insert:

4. Living away from home expenses Subdivision 900-DA

## 25 After Subdivision 900-D

Insert:

### Subdivision 900-DA—Substantiating living away from home expenses

#### Table of sections

900-97 Getting written evidence

900-98 Retaining the written evidence

#### 900-97 Getting written evidence

(1) To deduct an expense under section 25-115 (about living away from home), you need to substantiate it to the extent that:

(a) it is for accommodation; or

(b) it is for food or drink specified in a determination under subsection (2), if it exceeds the corresponding amount specified in that determination.

You substantiate it by getting written evidence in accordance with Subdivision 900-E.

(2) The Commissioner may, by legislative instrument, specify an amount for expenses for specified food or drink.

Note: Food or drink can be specified by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

#### 900-98 Retaining the written evidence

(1) Once you have the material required by section 900-97, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see Subdivision 900-G. The period for which you must retain it is called the *retention period*.

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- 1 (2) The 5 years start on the due day for lodging your \*income tax  
2 return for the income year. If you lodge your return later, the 5  
3 years start on the day you lodge it.
- 4 (3) However, the \*retention period is extended if, when the 5 years  
5 end, you are involved in a dispute with the Commissioner that  
6 relates to the expense. See section 900-170.
- 7 (4) If you do not retain the material for the \*retention period, you  
8 cannot deduct the expense. If you have already deducted it, your  
9 assessment may be amended to disallow the deduction.
- 10 (5) If you lose any of the material, there are rules that might help you  
11 in section 900-205.

## 26 Section 960-265 (Before table item 1)

12 Insert:

13 1A ordinary weekly food and drink expenses Subsection 25-115(3)

## 27 After subsection 960-280(1)

14 Insert:

15 *Ordinary weekly food and drink expenses*

- 16 (1A) For calculating ordinary weekly food and drink expenses (see  
17 subsection 25-115(3)), the *index number* for a quarter is the index  
18 number for the food group of the Consumer Price Index, being the  
19 weighted average of the 8 capital cities, first published by the  
20 Australian Statistician for the quarter.  
21

## 22 *Taxation Administration Act 1953*

## 23 28 Subsection 12-1(2) in Schedule 1

24 Repeal the subsection.

## 25 Part 3—Application and transitional provisions

## 26 29 Application of amendments

27 The amendments made by this Schedule apply in relation to living away  
28 from home on or after 1 July 2012.

## 29 30 Transitional—existing employment arrangements

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- 1 (1) During the transitional period, you can disregard paragraphs  
2 25-115(1)(b) and (e) of the *Income Tax Assessment Act 1997* if:  
3 (a) you are neither a temporary resident nor a foreign resident;  
4 and  
5 (b) during the entire period:  
6 (i) starting at the Budget time; and  
7 (ii) ending on 30 June 2012;  
8 your employment was covered by an eligible employment  
9 arrangement that was not varied or renewed.
- 10 (2) During the transitional period, you can disregard paragraph  
11 25-115(1)(e) of the *Income Tax Assessment Act 1997* if:  
12 (a) you are a temporary resident or a foreign resident; and  
13 (b) during the entire period:  
14 (i) starting at the Budget time; and  
15 (ii) ending on 30 June 2012;  
16 your employment was covered by an eligible employment  
17 arrangement that was not varied or renewed.
- 18 (3) In this item:  
19 **Budget time** means 7.30 pm, by legal time in the Australian Capital  
20 Territory, on 8 May 2012.  
21 **eligible employment arrangement** means an arrangement under which:  
22 (a) your employer; or  
23 (b) a connected entity of your employer;  
24 commits to provide you with an allowance or benefit for your  
25 accommodation, food or drink while you are required to live away from  
26 your usual place of residence for the purposes of that employment.  
27 **transitional period** means the period:  
28 (a) starting on 1 July 2012; and  
29 (b) ending at the earliest of:  
30 (i) 30 June 2014; and  
31 (ii) the time your eligible employment arrangement referred  
32 to in paragraph (1)(b) or (2)(b) ends; and  
33 (iii) the first time that eligible employment arrangement is  
34 varied or renewed.