
SOUTH AFRICAN REVENUE SERVICE

Draft Tax Guide on the Deduction of Medical Expenses



TAX GUIDE ON THE DEDUCTION OF MEDICAL EXPENSES

Another helpful guide brought to you by the South African Revenue Service

Foreword

The purpose of this guide is to provide guidelines as to what comprises qualifying medical expenditure and what may be claimed, who may claim such expenditure, when it may be claimed, what certain terms mean, in which circumstances these terms apply as well as the limitations applicable in the determination of the medical allowance. This guide does not reflect or explain every scenario that could possibly exist but does attempt to provide clarity on the majority of issues that are likely to arise in practice. Where this guide does not address a specific issue, it must be taken up with the local SARS Branch Office.

It must also be noted that this guide is not meant to go into the precise technical and legal detail that is often associated with tax. This guide should accordingly not be used as a legal reference.

This guide is based on the legislation as at 25 July 2006, including the amendments effected by section 25(1)(a) of the Revenue Laws Amendment Act, Act 31 of 2005 which are applicable in respect of any year of assessment commencing on or after 1 March 2006.

Should you require additional information, you may:

- Contact any SARS office
- Visit SARS online at <http://www.sars.gov.za>
- Contact your own tax advisors
- Contact the SARS Call Centre on 0860 12 12 18

Comments and/or suggestions regarding this brochure may be sent to the following e-mail address: policycomments@sars.gov.za.

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SOUTH AFRICAN REVENUE SERVICE

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Glossary

| | |
|----------------|--|
| Act: | Income Tax Act, No. 58 of 1962 |
| MS Act: | Medical Schemes Act, No.131 of 1998 |
| MH Act: | Medical Health Act, No.18 of 1973 |
| SARS: | South African Revenue Service |
| Commissioner: | Commissioner for the South African Revenue Service |
| Contributions: | Medical scheme contributions |

1 Background

As a general rule, expenditure of a domestic or private nature is not deductible for tax purposes. However, an individual's ability to pay tax may well be adversely affected by costs incurred as a result of illness or disability and for this reason a certain degree of relief is provided by the South African tax system in respect of medical expenditure. This relief is provided in the form of a deduction of an allowance in respect of medical expenditure incurred and paid (the medical allowance) from your income. Section 18 of the Act provides for the deduction of the medical allowance (see **Annexure**).

This section *inter alia* provides that -

- certain expenditure will be taken into account in the determination of your medical allowance, namely –
 - a) contributions paid to registered medical schemes (contributions)
 - b) expenses paid in respect of medical services and prescribed medical supplies which have not been recovered from a medical scheme; and
 - c) other expenditure necessarily incurred and paid in consequence of any physical disability.
- these expenditure will only be taken into account if it was incurred and paid in respect of yourself or certain other persons.

It, furthermore, provides that –

- your claim for the medical allowance will be subject to certain limitations; and
- there are certain circumstances in which the limitations will not apply.

Amendments to section 18 of the Income Tax Act, 1962 that were effected by section 25(1)(a) of the Revenue Laws Amendment Act, No. 31 of 2005 introduced new limitations in

respect of the determination of the medical allowance which are applicable in respect of any year of assessment that commences on or after 1 March 2006.

These limitations include:

- “Capping” of contributions.
- Limitation of –
 - contributions that exceed the capped amounts; and
 - qualifying medical and disability expenses,to an amount that exceeds 7.5% of the taxpayer’s taxable income as determined before allowing any amount as a medical allowance.

These limitations do, however, not apply to any person that is 65 years of age or older or where the person, his/her spouse or one of their children suffers from a handicap.

2 Qualifying persons in respect of which expenditure may be claimed

Only qualifying expenditure incurred and paid in respect of yourself and certain other persons may be taken into account in the determination of the medical allowance.

Regarding contributions, only contributions paid in respect of yourself, your spouse and your dependants may be taken into account in the determination of the medical allowance.

In respect of other qualifying expenditure, only expenditure incurred and paid in respect of yourself, your spouse and any of your or your spouse’s children may be taken into account in the determination of the medical allowance.

2.1 The meaning of “spouse”

A spouse is defined in section 1 of the Act and means –

- “a person –
- who is the partner of such person in a marriage or customary union recognised in terms of the laws of South Africa; or
 - in a union recognised as a marriage in accordance with the tenets of any religion; or in a same-sex or heterosexual union of a permanent nature.”

2.2 The meaning of “dependant”

A dependant is defined in terms of section 1 of the Medical Schemes Act 131 of 1998 (MS Act) and means –

“the spouse or partner, dependent children or other members of the member’s immediate family in respect of whom the member is liable for family care and support; or any other person who, under the rules of a medical scheme, is recognised as a dependant of a member.”

2.3 The meaning of “child”

The term “child in relation to the taxpayer” is defined in section 18 of the Act and means –

“your child or child of your spouse, who was alive during any portion of the year of assessment and who was unmarried on the last day of the year of assessment and was -

- not yet 18 years of age;
- 18 but not yet 21 years of age and wholly or partially dependent for his/her maintenance upon you and not liable for the payment of normal tax for the year in his/her own right;
- 21 but not yet 26 years of age and wholly or partially dependent for his/her maintenance upon you, not liable for the payment of normal tax for the year, and a full-time student at an educational institution of a public character;
- any age and incapacitated by physical or mental infirmity from maintaining himself/herself, wholly or partially dependent for his/her maintenance upon you, and not liable for the payment of normal tax for the year, other than for Standard Income Tax on Employees (SITE).“

SITE is currently levied on the first R60 000 of normal salary income.

As it is clear from the above requirements, the child must be your own child or that of your spouse. The following children are excluded for purposes of medical expenses:

- A foster child (the period for which the child is in your care does not play any role).
- A child who has not yet been legally adopted.
- A child that is under your custodianship.

3 Qualifying expenses and their applicable limitations

Qualifying expenses consist of:

- a) Contributions paid to a registered medical scheme (contributions);

- b) Expenses paid in respect of medical services and prescribed medical supplies which have not been recovered from a medical scheme (qualifying medical expenses); and
- c) other expenditure necessarily incurred and paid in consequence of any physical disability (qualifying disability expenses).

The medical allowance in respect of these expenses is, however, subject to certain limitations.

These limitations include:

- “Capping” of contributions.
- Limitation of –
 - contributions that exceed the capped amounts; and
 - qualifying medical and disability expenses, to an amount that exceeds 7.5% of the taxpayer’s taxable income as determined before allowing any amount as a medical allowance.

3.1 Contributions to medical schemes

3.1.1 Qualifying contributions

a) Contributions paid by you

Any contributions paid by you in respect of yourself, your spouse and any dependants as defined, to a medical scheme registered in terms of section 24(1) of the MS Act may be taken into account when the medical allowance is determined.

Contributions paid by you to any other funds which are registered under similar provisions contained in the laws of any other country, may also be taken into account.

Examples:

Example 1:

Facts: AA paid monthly contributions of R2 000 to XYZ Health SA (which is not a registered medical scheme) in respect of himself, his spouse and their two children (they are all considered to be dependants in terms of the rules of the medical scheme).

Determination of the qualifying contributions

The yearly contributions of R24 000 do not constitute qualifying contributions, as the contributions were not made to a registered medical scheme.

Example 2:

Facts: AB paid monthly contributions of R2 000 to ABC Health SA (which is a registered medical scheme) in respect of himself, his spouse and their two children (they are all considered to be dependants in terms of the rules of the medical scheme).

Determination of the qualifying contributions

The yearly contributions of R24 000 constitute qualifying contributions.

Example 3

Facts: AC who lives and pays taxes in South Africa paid monthly contributions of R1 000 to British Health in respect of himself, his spouse and their children (they are all considered to be dependants in terms of the rules of the medical scheme). British Health is not registered as a medical scheme in terms of section 24(1) of the MS Act, but is registered in Britain under similar provisions that are contained in the laws of that country.

Determination of the qualifying contributions:

The yearly contributions of R24 000 constitute qualifying contributions.

Example 4

Facts: AD paid monthly contributions of R1 000 to Excellent Health SA (which is a registered medical scheme) on behalf of AE as well as AE's spouse and children (they are all considered to be dependants of AE in terms of the rules of the medical scheme).

Determination of the qualifying contributions:

The yearly contributions do not constitute qualifying contributions, as the contributions were not paid by AE.

b) “Deemed contributions”

Where contributions are paid by a person other than you, it will **not** be taken into account when the medical allowance is determined, except in the following circumstances:

- Where contributions were paid by the estate of a deceased taxpayer, it will be deemed to have been paid by the taxpayer on the day before his or her date of death.
- Where contributions were paid by an employer of a taxpayer, it will be deemed to have been paid by the taxpayer to the extent that such an amount has already been included in the income of the taxpayer as a taxable benefit.

Example:

Example 5

Facts: AF (45 years of age) paid monthly contributions of R500 to ABC Health SA (which is a registered medical scheme) in respect of himself, his spouse and their child (they are all considered to be dependants in terms of the rules of the medical scheme). His employer also paid a contribution over to this scheme, namely, R2 000 per month (this is over and above the R500 that AF paid).

Determination of the total contributions to be taken into account:

| | |
|--|----------|
| AF's contributions for the year (R1 500 x 12) | R6 000 |
| <u>Add:</u> Deemed contributions (amount of contributions made by employer that is regarded as a fringe benefit : | |
| Contributions by employer that exceeds the capped amount of R1 300 p.m. (R 24 000 – R15 600 (R1 000 i.r.o AF and his spouse plus R300 per child x 12)) | R8 400 |
| Total contributions for purposes of the medical allowance | R 14 400 |

3.1.2 Capping of contributions

The medical allowance in respect of qualifying contributions as described above is subject to a capping amount as from 1 March 2006. However, if you are 65 years of age or older as at the end of a year of assessment or where you, your spouse or one of your children is a “handicapped person” as defined, no capping is applicable and the total expenses may be claimed as a deduction.

If you are not yet 65 years old, a medical allowance in respect of the contributions will be limited to the capped amount. The medical allowance in respect of contributions that exceed the capped amount, together with other medical and disability expenses will, however, be subject to the 7.5% limitation (see paragraph 3.2.4 for more information in this regard).

a) Capped amount where all contributions are paid by you

The capped amounts (per month) in respect of the contributions are as follows:

- R500 per month in respect of yourself;
- R1 000 per month in respect of yourself and one dependant; or
- R1 000 per month in respect of yourself and one dependant, plus R300 per month for every additional dependant thereafter.

Example:

Example 6

Facts: AG (45 years of age) paid monthly contributions of R2 000 to ABC Health SA (which is a registered medical scheme) in respect of himself, his spouse and their two children (they are all considered to be dependants in terms of the rules of the medical scheme). AG's employer does not pay any contributions on his behalf.

Determination of the capped amount for contributions:

| | |
|--|----------------|
| AG's contributions for the year of assessment (R2 000 x 12) | R24 000 |
| Allowance i.r.o contributions limited to capped contributions: | <u>R19 200</u> |
| R1 600 x 12 [(R 1000 i.r.o BB and his spouse plus R300 per child) x 12] | |
| Excess contributions for the year | R 4 800 |

A medical allowance will be allowed in respect of the capped contributions of R19 200, as well as the excess contributions of R4 800, but the allowance in respect of the R4 800 will be added to any other allowable medical expenses and be subject to the 7.5% limitation.

b) Capped amount where contributions paid by you and your employer

Where contributions were paid by you and your employer the above-mentioned capped amounts must, furthermore, be reduced by any amounts pertaining to contributions paid by your employer which have, by virtue of paragraph 12A(1) of the Seventh Schedule to the Act, not been regarded as a fringe benefit granted to you by your employer.

Paragraph 12A(1) of the Act provides that you will be deemed to have derived a taxable benefit where your employer contributes, directly or indirectly, to a medical scheme registered under the MS Act for the benefit of you and your dependants.

The value that is to be placed on the benefit derived by you is the amount by which the following prescribed monthly amounts are exceeded:

- R500 in respect of yourself; or
- R1 000 in respect of yourself and one dependant; or
- R1 000 in respect of yourself and one dependant, plus R300 for every additional dependant thereafter.

However, no value will be placed on the taxable benefit described above where the benefit is derived by –

- a person who by reason of superannuation, ill-health or other infirmity retired from the employ of his/her employer;
- the dependants of a person after the death of that person if person retired from the employ of such employer by reason of superannuation, ill-health or other infirmity;
- the dependants of a deceased employee after that employee's death, if that deceased employee was in the employ of the employer on the date of death; or
- an employee who is 65 years of age or older.

Example 7

Facts: AH (45 years of age) paid monthly contributions of R1 500 to ABC Health SA (which is a registered medical scheme) in respect of himself, his spouse and their two children (they are all considered to be dependants in terms of the rules of the medical scheme). His employer's contributions to the medical scheme were R500 per month (this is over and above the R1 500 that AH paid). These contributions were not included in his income as a taxable benefit as they do not exceed the capped amount of R1 600 for purposes of the determination of a fringe benefit (R1 000 in respect of AH and his spouse plus R300 per child).

Determination of the capped amount for contributions:

| | |
|---|---------|
| AH's contributions for the year (R1 500 x 12) | R18 000 |
|---|---------|

| | |
|--|--------------|
| <u>Add:</u> deemed contributions (amount of contributions made by employer that is regarded as a fringe benefit) | <u>R Nil</u> |
|--|--------------|

| | |
|---|---------|
| Total contributions for purposes of the medical allowance | R18 000 |
|---|---------|

| | |
|--|----------------|
| Contributions limited to capped contributions: | <u>R13 200</u> |
|--|----------------|

| | |
|---|---------|
| R1 600 x 12 [(R 1000 i.r.o AH and his spouse, plus R300 per child) x 12] | R19 200 |
|---|---------|

| | |
|--|----------------|
| <u>Less:</u> contributions paid by employer that is not regarded as a fringe benefit (contributions < R19 200) | <u>R 6 000</u> |
|--|----------------|

| | |
|-----------------------------------|---------|
| Excess contributions for the year | R 4 800 |
|-----------------------------------|---------|

A medical allowance will be allowed in respect of the capped contributions of R13 200, as well as the excess contributions of R4 800, but the allowance in respect of the R4 800 will be added to any other allowable medical expenses and be subject to the 7.5% limitation.

Example 8

AI (45 years of age) paid monthly contributions of R500 to ABC Health SA (which is a registered medical scheme) in respect of himself, his spouse and their two children (they are all considered to be dependants in terms of the rules of the medical scheme). His employer also pays a portion of his contributions, namely, R1 500 per month (this is over and above the R500 that AI pays). These contributions were not included in his income as a taxable benefit as they do not exceed the annual capped amount of R19 200 for purposes of the determination of the fringe benefit [12 x (R1 000 in respect of BE and his spouse plus R300 per child)].

Determination of the capped amount for contributions:

| | | |
|--|----------------|----------------|
| AI's contributions for the year | | R6 000 |
| <u>Add:</u> deemed contributions (amount of contributions made by employer that is regarded as a fringe benefit) | | <u>R Nil</u> |
| Total contributions for purposes of the medical allowance | | R 6 000 |
| | | |
| Capped contributions for the year: | | <u>R 1 200</u> |
| R1 600 x 12 [(R 1000 i.r.o AI and his spouse, plus R300 per child) x 12] | R19 200 | |
| <u>Less:</u> contributions paid by employer that is not regarded as a fringe benefit (contributions < R19 200) | <u>R18 000</u> | |
| Excess medical aid contributions for the year | | R 4 800 |

A medical allowance will be allowed in respect of the capped contributions of R1 200, as well as the excess contributions of R4 800, but the allowance in respect of the R4 800 will be added to any other allowable medical expenses and be subject to the 7.5% limitation.

3.2 Expenses that are subject to the 7.5% limitation

The following expenses may also be taken into account in the determination of the medical allowance, but will be subject to the 7,5% limitation (see paragraph 3.2.4 for more information in this regard):

- Contributions that exceed the capped amounts
- Medical expenses relating to services and prescribed supplies; and
- Expenses necessarily incurred in consequence of a physical disability.

Where qualifying medical expenses have been incurred during a year of assessment but have not yet been paid for during that year of assessment, such expenses cannot be claimed during that year of assessment, but can only be claimed during the year of assessment in which they have actually been paid. This will, for example, be the case where expenses have been incurred towards the end of a year of assessment, but have only been paid for during the next year of assessment. A year of assessment in respect of an individual commences on 1 March of the one year and ends on 28/29 February of the following year.

Examples:

Example 9

BA suffers from paralysis of both legs and requested Vehicle Conversions to convert the foot controls of his motor vehicle to hand controls. The quote was R30 000. BA accepted the quote and signed a formal contract on 1 July 2005. Work commenced on his vehicle on 2 July 2005. The conversion job took two months to finalise and BA took delivery of his motor vehicle on 1 September 2005. According to the contract, the amount of R30 000 had to be paid within 15 days after delivery of the vehicle. BA paid the R30 000 on 10 September 2005. As BA incurred and paid this expense during the same (2006) year of assessment, the expense will be taken into account in the determination of the medical allowance for the 2006 year of assessment.

Example 10

B suffers from paralysis of both legs and requested Vehicle Conversions to convert the foot controls of his motor vehicle to hand controls. The quote is R30 000. BB accepted the quote and signed a formal contract on 1 January 2006. Work commenced on his vehicle on 2 February 2006. The conversion job took two months to finalise and BB took delivery of his motor vehicle on 1 April 2006. According to the contract, the amount of R30 000 had to be paid within 15 days after delivery of the vehicle. BB paid the R30 000 on 10 April 2006. As BB incurred this expense during the 2006 year of assessment but only paid this expense during the 2007 year of assessment, the expense will only be taken into account in the determination of the medical allowance for the 2007 year of assessment.

Example 11

BC suffers from paralysis of both legs and requested Vehicle Conversions to convert the foot controls of his motor vehicle to hand controls. The quote was R30 000. BC accepted the quote and signed a formal contract on 1 January 2006. Work commenced on his vehicle on

2 February 2006. The conversion job took two months to finalise and BC took delivery of his motor vehicle on 1 April 2006. According to the contract, the amount of R30 000 had to be paid within 15 days after delivery of the vehicle. BC defaulted on payment and this expense was eventually written off by Vehicle Conversions. Even though BC incurred this expense during the 2006 year of assessment, it has never been paid by him and will, therefore, not be taken into account in the determination of the medical allowance in respect of any year of assessment.

3.2.1 Contributions that exceed the capped amounts

Contributions that exceed the above capped amounts, will together with qualifying medical and disability expenses be taken into account in the determination of the medical allowance, but will be subject to the 7,5% limitation.

3.2.2 Medical expenses relating to services and prescribed supplies

a) Qualifying medical expenses

The following expenses that have been paid by you during the year of assessment to any duly registered –

- medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopedist (for professional services rendered and medicines supplied); or
- hospital or nursing home (in respect of illness or confinement); or
- nurse, midwife or nursing assistant (or to any nursing agency in respect of providing such persons); or
- pharmacist (for medicines as prescribed by a person indicated in the first bullet point above),

will be taken into account when the medical allowance is determined, as long as such expenses have been incurred in respect of yourself, your spouse or one of your children and were not recovered from your medical scheme.

Expenses paid by your employer on your behalf may, however, not be taken into account, even if it resulted in a taxable benefit deemed to have been received by you.

Example:

Example 12

Facts: BD paid R1 000 to Dr. Feelgood in respect of consultation fees. Dr. Feelgood is a

registered medical practitioner. BD belongs to a registered medical scheme. BD submitted a claim of R1 000 to his medical scheme. The medical scheme reimbursed BD with R600.

Determination of the qualifying expenses:

The difference of R400 that was not reimbursed by the medical scheme constitutes a qualifying expense and will be taken into account when the medical allowance is determined.

Example 13

Facts: BE paid R1 000 to Mr. Student for a medical consultation. Mr. Student is a second year medical student.

Determination of the qualifying expenses:

The payment of R1 000 does not constitute a qualifying expense and will not be taken into account when the medical allowance is determined, as Mr. Student is not a duly registered medical practitioner.

Example 14

Facts: BF purchased headache powder off the shelf at the local pharmacy at a cost of R50.

Determination of the qualifying expenses:

As this is not medicine as prescribed by a registered medical practitioner, the expenditure does not constitute qualifying expenses and will not be taken into account when the medical allowance is determined.

b) Expenditure incurred outside the Republic

Where expenses for the medical services and medical supplies as reflected above have been paid outside South Africa and such medical services and medicines are substantially similar to medical services rendered and medicines supplied in South Africa, they may also be taken into account in the determination of the medical allowance during the year of assessment during which such expenses were paid by you.

3.2.3 Expenses relating to a physical disability

In addition to qualifying contributions made to medical funds and qualifying medical expenses incurred and paid, you will also be able to take expenses **necessarily incurred and paid** during a year of assessment in consequence of a physical disability suffered by you, your spouse or one of your children into account in the determination of the medical allowance in respect of that year of assessment.

Section 18(1)(d) of the Act provides as follows:

“Notwithstanding the provisions of section 23, there must be allowed to be deducted from the income of any taxpayer who is a natural person an allowance in respect of – any expenditure (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical disability suffered by the taxpayer, his or her spouse or any child.”

The terms “necessarily incurred”, “physical disability” and “in consequence of” are not defined in the Act and consequently the ordinary meaning as described in dictionaries, case law, etc. must be given to them.

Therefore, in order for an expense to be taken into account in this regard the taxpayer must provide the following information -

- full details of the nature of the physical disability;
- that the expense was incurred in consequence of the physical disability, i.e. directly connected with the physical disability and/or incurred as a necessary result of the physical disability; and
- why it was necessary (i.e. inevitable, unavoidable, in such a way that it cannot be otherwise, of necessity, etc.) to incur the expense.

When a claim for an allowance under section 18(1)(d) is made each case will be considered having regard to the nature of the disability together with the facts and circumstances of the case and whether the expense claimed was necessarily incurred.

a) What is regarded as a physical disability?

A physical disability can be described as a condition/dysfunction, of a permanent nature, which requires the person that has such a condition/dysfunction to use special equipment or receive medical treatment in order to perform general life functions. A temporary condition or illness that can be treated with, for example, medication or exercise would not be regarded as a physical disability. It is not a requirement that it is a condition that resulted from physical injury, but can also be a medical condition such as diabetes.

The following are some examples of physical disabilities that a person may suffer from:

- bad eyesight
- hearing problems

- diabetes;
- paralysis of a portion of the body;
- multiple sclerosis
- asthma;
- brain dysfunction such as dyslexia, hyperactivity or lack of concentration.

b) Qualifying physical disability expenses

Various expenses necessarily incurred in respect of the physical disabilities could be taken into account in the determination of the medical allowance.

The following are examples of such expenses:

- Costs relating to the purchase of aids such as spectacles, hearing aids; orthopedic or surgical equipment or appliances, wheelchairs, crutches, leg or arm braces.
- Where a child suffers from a brain dysfunction such as dyslexia or lack of concentration, remedial teaching fees paid. This includes school fees of a child sent to a special school (for example, a school for the visually impaired). Where such a child is sent to a special school which is a boarding school, the travel expenses of the parents to take and fetch the child from such a school may also be allowed as a deduction. However, where such travel expenses are purely for visitation purposes, such expenses will not be allowed as a deduction. It must also be noted that the cost of school uniforms will not constitute qualifying expenses.
- Where a person suffers from diabetes, insulin tablets or injections. The disablement here is the permanent inability of cells of the pancreas to generate insulin which would deprive him/her of the ability to function. The cost of a special diet cannot be claimed as it is not necessarily incurred in respect of the disablement.
- Where a child has either a speech and/or hearing impediment, costs incurred by the parents with regard to a parent training clinic in respect of such impediments.
- Where a person is suffering from a physical disability, for example, multiple sclerosis, and certain modifications are required to the home dwelling, the cost of the modifications. These may include –
 - support railings
 - adapted toilets, sunken baths or a shower seat.
- Where a person is suffering from a physical disability and certain adaptations are required to a motor vehicle, the cost of such adaptations.
- Where a person whose bodily functions have so deteriorated that he/she can no longer walk, eat his/her meals or put on clothes without the aid of an attendant, the wage/salary of the attendant. Where such a person is admitted to an institution to be permanently

cared for, the fees paid to the institution will also constitute qualifying expenses even though part of the fees is for board and lodging.

- Where a chronically sick person who is admitted to an institution to be permanently cared for (instead of employing an attendant), the fees paid to the institution even though part of the fees is for board and lodging.

In the last-mentioned two examples the expenditure is regarded as having been incurred mainly because of the physical disability and the board and lodging are merely incidental. Old age in itself is not a physical disability. Where an elderly person lives in an old-age home for the sake of convenience and not for the purpose of receiving treatment and care as in the case of a chronically sick person, the cost of staying in the old-age home will not constitute qualifying expenses.

Example:

Example 15

BG (45 years of age), is married and has two children who are 10 and 12 years of age. The 10 year old child suffers from a brain dysfunction and BG spent R25 000 on remedial teaching fees. BG claims medical expenditure as follows:

| | |
|--|----------------|
| Contributions to a registered medical scheme | R19 000 |
| Medical expenses (non-recoverable from a medical scheme) | R 6 000 |
| Remedial teaching fees | <u>R25 000</u> |
| Total qualifying medical expenses | <u>R50 000</u> |

Taxable income before the deduction of medical expenses: R220 000

Less: Portion of medical expenditure that exceeds 7.5% limitation: (R14 500)

 Qualifying expenses R31 000

 Less: 7.5% on taxable income before medical expenditure (R220 000 x 7.5%) R16 500

Less: Contributions limited to capped amount (R19 000)

Taxable income after medical expenditure deduction R186 500

(R220 000 – R19 000 (contributions) - R14 500 (other expenses))

3.2.4 Limitation of the allowable medical expenses – 7.5%

An allowance in respect of the expenses discussed in paragraphs 3.2.1, 3.2.2 and 3.2.3 will only be allowed to the extent that the aggregate of the expenses exceeds 7.5% of your

taxable income as determined before allowing any deduction in respect of the medical allowance, i.e. after for example deductions in respect of annuity fund contributions and donations to approved bodies have been taken into account, but before any amount in respect of the medical allowance, for example, the medical allowance in respect of contributions has been taken into account.

A medical deduction may create an assessed loss for the current year of assessment or increase an assessed loss brought forward from a previous year of assessment. It must also be noted that where an assessed loss is brought forward from a previous year of assessment, the assessed loss must first be set off against the taxable income of the current year of assessment before calculating the 7.5% limitation.

Examples:

Example 16

BI (45 years of age) is married and has two children aged 5 and 7. His taxable income is R220 000. This is before taking into account any qualifying medical and physical disability expenditure. BI claims medical expenditure as follows:

| | |
|---|----------------|
| Medical aid contributions for the year (R2 000 x 12): | R24 000 |
| Other qualifying medical expenditure including physical disability expenses | <u>R16 000</u> |
| Total medical expenses claimed | <u>R40 000</u> |

Determination of the taxable income after the medical allowance has been taken into account:

| | |
|---|----------------|
| Total contributions for the year | R24 000 |
| Capped medical aid contributions for the year (R1 600 x 12) | <u>R19 200</u> |
| Excess medical aid contributions for the year (R24 000 - R19 200) | R 4 800 |
| <u>Add:</u> Qualifying medical and physical disability expenses | <u>R16 000</u> |
| Amount subject to the 7.5% rule | <u>R20 800</u> |

| | |
|--|----------|
| Taxable income before the deduction of the medical allowance | R220 000 |
| <u>Less:</u> Portion of medical expenditure that exceeds 7,5% limitation | R4 300 |
| (R20 800) x 7,5% of taxable income before medical allowance | |
| Less: Contributions limited to capped amount | R19 200 |
| Taxable income after taking into account allowable medical expenses | R196 500 |

As can be seen, for purposes of calculating the 7.5% limitation, the capped medical aid contributions of R19 200 must not be deducted from taxable income.

Example 17:

Facts:

Assessed loss brought forward from a previous tax year: (R 40 000)

Taxable income before the deduction of medical expenses: R50 000

Qualifying medical expenses: R30 000

Result:

| | |
|--|------------------|
| Taxable income before the deduction of medical expenses | R50 000 |
| Assessed loss brought forward from previous year of assessment | <u>(R40 000)</u> |
| Taxable income for current year of assessment before medical allowance | R10 000 |
| <u>Less:</u> Portion of medical expenditure that exceeds 7,5% | R29 250 |
| Qualifying medical expenses | R 30 000 |
| Less: 7,5% of taxable income before medical allowance is taken into account | <u>R750</u> |
| <u>[(50 000 – R40 000) x 7,5%]</u> | |
| Assessed loss after medical allowance | (R19 250) |

4 Circumstances in which the medical allowance will not be limited

4.1 Persons that are 65 years or older

Where a person is 65 years of age or older as at the end of a year of assessment a medical allowance will be allowed in respect of all qualifying contributions and qualifying medical and physical disability expenses for that year of assessment. The limitation of 7.5% is, therefore, not applicable.

4.2 Handicapped persons

Where a person, his/her spouse or one of their children is a handicapped person, a medical allowance will be allowed in respect of all qualifying contributions and qualifying medical and physical disability expenses for that year of assessment. The limitation of 7.5% is, therefore, also not applicable.

It must be noted that all qualifying medical expenditure can be claimed even if no physical disability expenditure was necessarily incurred and paid as a result of being a handicapped person. The only requirement is that you, your spouse or your child/children must suffer from a handicap.

Where you, your spouse or one of your children is regarded as a handicapped person as defined in the Act, the medical allowance will, therefore, be equal to the aggregate of the following –

- contributions to a registered medical scheme;
- qualifying medical expenses; and
- qualifying disability expenses.

Example 18

The taxable income of CA (75 years of age) is R220 000. This is before taking into account qualifying medical and physical disability expenditure. CA claims qualifying medical expenditure of R30 000, including expenses of R10 000 necessarily incurred and paid as a consequence of being a blind person.

Determination of the medical allowance:

CA's taxable income before the deduction of medical expenses: R220 000

As the 7.5% limitation provision is not applicable, a deduction of R30 000 in respect of the medical allowance will be allowed.

Taxable income after medical allowance: R190 000 (R220 000 – R30 000)

Example 19

Facts: The taxable income of CB (45 years of age) is R220 000. This is before taking into account qualifying medical and physical disability expenditure. He has a child that is nine years old and blind. CB claims qualifying medical expenditure of R30 000 and claims no physical disability expenditure related to the child's blindness.

Determination of the medical allowance:

Taxable income before the deduction of medical expenses: R220 000

As the 7.5% limitation provision is not applicable, a deduction of R30 000 in respect of the medical allowance will be allowed.

Taxable income after medical allowance: R190 000 (R220 000 – R30 000)

4.2.1 Who is regarded as a handicapped person?

A handicapped person is defined in terms of section 18 of the Act and means –

- “(a) a blind person as contemplated in the Blind Persons Act, 1968 (Act No. 26 of 1968);
- (b) a deaf person, being a person whose hearing is impaired to such extent that he

- cannot use it as a primary means of communication;
- (c) a person who as a result of a permanent disability requires a wheelchair, caliper or crutch to assist him to move from one place to another;
 - (d) a person who requires an artificial limb; or
 - (e) a person who suffers from a mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973)."

a) Blind persons

It is SARS’s policy, in determining whether a person is a blind person for the purposes of section 18(3)(a) of the Act, to follow the guidelines specified by the World Health Organisation.

These criteria are either based on a person’s -

- visual acuity (clarity or sharpness of vision measured by means of an eye chart known as a “Snellen chart”), or
- visual field (how wide you can see).

The minimum requirements are set out in the table below.

Table 1 – Alternative minimum requirements for a person to be classified as a blind person

| Criteria | Minimum requirement |
|-----------------|--|
| Visual acuity | In the better eye with best possible correction, less than 6/18 (0,3). |
| Visual field | 10 degrees or less around central fixation. |

“6/18” means that what a person with normal vision can read at 18 metres, the person being tested can only read at 6 metres.

“Best possible correction” refers to the position after a person’s vision has been corrected by means of spectacles, contact lenses or intra-ocular (implanted) lenses.

A letter confirming the diagnosis and classification of the individuals eyesight, based on the above criteria, from a registered health or rehabilitation practitioner who is trained to use the Snellen chart (for example, an optometrist or ophthalmologist), will be acceptable to SARS and must be submitted with a person’s claim for medical expenses.

b) Deaf persons

In terms of section 18(3)(b) of the Act a deaf person is one whose hearing is impaired to such an extent that he/she cannot use it as a primary means of communication. It follows that a person does not have to be completely deaf to qualify as a handicapped person.

DEAFSA (Deaf Federation of South Africa) statistically makes a distinction between the following four categories:

- a) Persons who have a mild hearing loss;
- b) Persons who are moderately hard of hearing;
- c) Persons who are severely hard of hearing;
- d) Persons who are profoundly deaf.

In terms of these criteria, SARS will accept that a person is a deaf person if he/she is

- profoundly deaf, or
- severely hard of hearing,

as tested without any hearing aids. Alternatively, a person who is impaired by 65% or more in either one or both ears will also be regarded as a deaf person.

Written confirmation of the category or percentage of impairment must be submitted from an appropriately qualified medical practitioner (e.g. an ear, nose and throat specialist) and submitted with a person's claim for medical expenses.

c) Persons who as a result of permanent disabilities require wheelchairs, calipers or crutches to assist them to move from one place to another

The disability must be of a permanent nature. For example, a person who has to use crutches for a few months as a result of a broken leg would not qualify. A medical certificate confirming the permanent nature of the disability must be provided.

d) Persons who require artificial limbs

A medical certificate confirming the requirement of an artificial limb must be provided. An arm or leg is classified as a limb, but a finger, thumb or toe is not classified as a limb but rather as a digit. A person with a missing limb will still be regarded as person suffering from a handicap even if he/she chooses not to have an artificial limb fitted.

e) Persons suffering from mental illnesses

The MH Act defines "mental illness" as any disorder or disability of the mind, and includes any mental disease and any arrested or incomplete development of the mind.

Where either a psychiatrist or a registered psychologist confirms, by way of a medical report, that a person is mentally ill as defined by the MH Act it will be accepted that such person is a handicapped person. This confirmation must be done on an annual basis and be submitted with the person's claim for medical expenses. Where the report specifically indicates that the condition is irreversible a copy of the original report by the psychiatrist or psychologist can be submitted with the claim.

4.2.2 Qualifying expenses relating to handicap

Examples of expenses necessarily incurred in respect of a physical disability suffered by a handicapped person are expenses relating to:

- the purchase of reading aids such as CCTV readers, video magnifiers and machines that convert printed material into braille.
- the purchase of white canes
- the purchase of talking watches, alarm clocks, cell phones or scales
- costs of keeping a guide dog
- purchase of software that converts speech to text and vice versa
- purchase of electronic or other devices used by deaf persons (for example, a flashing light indicating that a door bell is ringing)
- purchase of hearing aids
- purchase of wheelchairs, calipers, crutches
- ramps for wheelchairs
- enlargements of doorways to accommodate wheelchairs
- installation of support railings
- purchase of adapted toilets, sunken baths or a shower seat
- purchase of artificial limb(s)
- the adaption of a vehicle to a person's special needs made essential as a result of the handicap

5 How to claim the medical allowance

5.1 Persons registered for income tax

The following documentation must be submitted with your annual return of income when a medical allowance is claimed in respect of that year of assessment:

- Proof of contributions paid to a registered medical scheme or to any other funds which are registered under similar provisions contained in the laws of any other country. In the case of salary earners, contributions paid to a registered medical scheme will normally be reflected on the employees' tax certificate (IRP 5).
- A statement from the medical scheme indicating the total amount of claims submitted to the fund that was not refunded to you. The February statements usually reflect the total amount for the year of assessment.
- A completed prescribed list in respect of amounts not submitted to/recovered from your medical scheme. The list to be completed forms part of the Information Brochure that accompanies the annual return of income.
- Where applicable, a letter from your medical scheme, stating that the benefits allocated in respect of certain medical procedures are exhausted.
- Documentary proof of handicap (see paragraph 4.2.1 for requirements).

Receipts must be available on request in order to substantiate your medical claims. You are required to keep records such as receipts, paid cheques, bank statements, deposit slips, invoices, etc. for a period of five years from the date on which the return for that year of assessment was received by SARS. However, in cases where objections and appeals have been lodged against assessments, you must keep all records and data relating to the assessments under objection/appeal until such time that the objection/appeal has been finalised, even if the timeframe for finalisation exceeds five years.

5.2 Persons not registered for income tax

If you are a SITE taxpayer, who is not required to submit an income tax return, that have qualifying medical expenses that could reduce the amount in respect of which you are liable for the payment of tax, you may apply for a refund. An IT 12SE form must be requested from your local SARS Branch Office, be completed and handed in at that office. Should the deduction result in a reduction of the SITE paid, you will be refunded accordingly.

You may only apply for a refund of an amount if –

- the application is made within a period of three years from the end of the year of assessment during which the amount was deducted;
- the amount deducted constituted an amount of employees' tax deducted from remuneration paid to you;
- your income for that year of assessment only consisted of remuneration; and

- you were not required to submit a return of income for that year of assessment and did not render such a return during the period of three years since the end of that year of assessment.

6 How to object to the disallowance of the medical allowance

Where a person that claimed a deduction in respect of a medical allowance is not satisfied with the assessment issued, he/she may object to such an assessment.

The objection must be in the prescribed form (ADR 1), state the grounds on which the objection is lodged and reach the relevant branch office where he/she is on register for income tax within a period of 30 business days after the date of the assessment.

Where a person failed to attach the necessary documentation, as discussed in paragraph 4.2.1 above to the relevant return of income, such documentation must be attached to the objection.

Further information regarding the objection and appeal procedure is available on the SARS website www.sars.gov.za and is set out in the *Guide on Tax Dispute Resolution*.

7 Other information

7.1 Relief of customs and excise duty where motor vehicle adapted for physically disabled/handicapped person

In the case where motor vehicles which are principally designed for the transport of persons, including station wagons (excluding racing cars), are adapted or are to be adapted to be solely driven by a physically disabled person, the full customs or excise duty may by specific permit be claimed as a rebate under certain conditions as prescribed by the International Trade Administration Commission (ITAC) or SARS, after consultation with the National Council for Persons with Physical Disabilities in South Africa. The following provisions are applicable -

- the adaptation of the motor vehicle must be of such a nature that the physically disabled driver of the motor vehicle has easy access to all controls necessary to drive such a vehicle;
- such permit may not be issued within a period of 5 years of the issue of a previous permit to such disabled person;

- permits may, however, be issued within a shorter period provided that proof is submitted that the motor vehicle previously entered under rebate of duty was stolen or written off by the licensing authorities; and
- if such vehicle is offered, advertised, lent hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of 5 years from the date of entry under rebate items 460.17 or 630.16, such foregoing acts shall render such vehicle liable to the payment of duty on a *pro rata* basis.

The full rebate of either customs or excise duty of such vehicles is regulated as follows:

- Imported vehicles: Part 2, Schedule 4 to the Customs and Excise Act, rebate item 460.17, rebate code 02.04
- Locally manufactured vehicles: Part 2, Schedule 6 to the Customs and Excise Act, rebate item 630.16, rebate code 01.00

7.2 Value-added tax: Associations not for gain and welfare organizations

With regard to goods acquired by an association not for gain refer to Chapter Four, under the heading “Importation of certain goods not for resale” of the VAT 414 *Guide for Associations not for Gain and Welfare Organizations* available on the SARS website under Taxes – VAT – Guides. The relevant paragraph is quoted below.

“Importation of certain goods not for resale

Goods forwarded unsolicited and free of charge to an association not for gain, are exempt from VAT on importation. The association must satisfy the Commissioner that the goods will be used exclusively:

- for educational or welfare purposes; or
- in the furtherance of that association’s objectives i.e. for the provision of educational, medical or scientific research; or
- for issue to indigent persons at no charge.

The exemptions are processed and granted in respect of each individual shipment. The following must be furnished:

- a letter from the donor stating that the goods are on unsolicited goods;
- a letter from the recipient organization stating how the goods will be used;

- the airway bill, bill of lading or notification from the postmaster; and
- a description of the goods together with the mass or volume thereof for statistical purposes.”

7.3 Useful links

Below are examples of useful links to websites relating to medical/health issues in one form or another?

- SA Federation for Mental Health: www.safmh.org.za
- The QuadPara Association of South Africa: www.qasa.co.za
- Parkinson Association South Africa: www.parkinsons.co.za
- South African Orthotic and Prosthetic Association: www.saopa.co.za
- Blind SA: www.blindsa.org.za
- Deaf Federation of South Africa: www.deafsa.co.za
- The Southern African Association for Learning and Educational Difficulties: www.saaled.org.za
- South African Association of Audiologists: www.audiologysa.co.za
- Association for the Physically Disabled: www.apd.org.za
- Dystonia Association SA: www.dystonia.org.za
- Leprosy Mission: www.leprosymission.co.za
- South African National Council for the Blind: www.sancb.org.za
- Council for Medical Schemes: www.medicalschemes.com

8 Annexure 1

Section 18 of the Income Tax Act, No. 58 of 1962

“18. Deduction in respect of medical and dental expenses. - (1) Notwithstanding the provisions of section 23, there must be allowed to be deducted from the income of any taxpayer who is a natural person an allowance in respect of –

- (a) any contributions made by that taxpayer during the year of assessment in respect of that taxpayer, his or her spouse and any dependant, as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998), of that taxpayer to –
 - (i) any medical scheme registered under the provisions of that Act; or
 - (ii) any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered;
 - (b) any amounts (other than amounts recoverable by the taxpayer or his or her spouse) which were paid by the taxpayer during the year of assessment to any duly registered –
 - (i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopaedist for professional services rendered or medicines supplied to the taxpayer, his spouse or his or her children; or
 - (ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or any nursing agency in respect of services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the taxpayer, his or her spouse or his or her children; or
 - (iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the taxpayer, his or her spouse or his or her children; and
 - (c) any amounts (other than amounts recoverable by the taxpayer or his or her spouse) which were paid by the taxpayer during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the taxpayer or his or her spouse or children and which are substantially similar to the services and medicines in respect of which a deduction may be made under paragraph (b) of this subsection; and
 - (d) any expenditure (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical disability suffered by the taxpayer, his or her spouse or any child.
- (2) The allowance under subsection (1) is equal to –
- (a) where the taxpayer is entitled to a rebate under section 6 (2) (b), the sum of the amounts referred to in subsection (1);
 - (b) where the taxpayer, his or her spouse or child is a handicapped person, the sum of the amounts referred to in subsection (1); or
 - (c) in any other case-
 - (i) so much of any contributions made by the taxpayer during the relevant year of assessment as contemplated in subsection (1) (a), as does not exceed-
 - (aa) R500 for each month in that year in respect of which those contributions were made solely with respect to the benefits of that taxpayer;
 - (bb) R1 000 for each month in that year in respect of which those contributions were made with respect to the benefits of that taxpayer and one dependant; or
 - (cc) where those contributions are made with respect to the taxpayer and more than one dependant, R1 000 in respect of the taxpayer and one dependant plus R300 for every additional dependant for each month in that year in respect of which those contributions were made:Provided that the amounts in items (aa) to (cc) must be reduced by any amount contributed by the employer of the taxpayer to any such fund which has by virtue of

paragraph 12A of the Seventh Schedule not been included in his or her gross income;
and

- (ii) so much of-
 - (aa) any contributions contemplated in subsection (1) (a) as have not been allowed as a deduction under subparagraph (i); and
 - (bb) the sum of all amounts contemplated in subsection (1) (b), (c) and (d), as in aggregate exceeds 7,5 per cent of the taxpayer's taxable income as determined before allowing any deduction under this section.

(3) For the purposes of this section “**handicapped person**” means-

- (a) a blind person as contemplated in the Blind Persons Act, 1968 (Act No. 26 of 1968);
- (b) a deaf person, being a person whose hearing is impaired to such an extent that he cannot use it as a primary means of communication;
- (c) a person who as a result of a permanent disability requires a wheelchair, calliper or crutch to assist him to move from one place to another;
- (d) a person who requires an artificial limb; or
- (e) a person who suffers from a mental illness as defined in section 1 of the Medical Health Act, 1973 (Act No. 18 of 1973).

(4) For the purposes of this section the expression “**child in relation to the taxpayer**” means the taxpayer's child or child of his or her spouse who was alive during any portion of the year of assessment, and who on the last day of year of assessment-

- (a) was unmarried and was not or would not, had he lived, have been-
 - (i) over the age of 18 years;
 - (ii) over the age of 21 years and was wholly or partially dependent for his maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of such year; or
 - (iii) over the age of 26 years and was wholly or partially dependent for his maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of such year and was a full-time student at an educational institution of a public character; or
- (b) in the case of any other child, was incapacitated by physical or mental infirmity from maintaining himself or herself and was wholly or partially dependent for his maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of the year of assessment:

Provided that any child of the taxpayer who has become liable for the payment of normal tax in respect of any year of assessment solely by reason of the provisions of section 5 (1A) shall be deemed for the purposes of this section not to have become liable for the payment of normal tax in respect of such year.

- (5) For purposes of this section, any amount contemplated in subsection (1), which has been paid by-
 - (a) the estate of a deceased taxpayer is deemed to have been paid by the taxpayer on the day before his or her death; or
 - (b) an employer of the taxpayer must, to the extent that the amount has been included in the income of that taxpayer as a taxable benefit in terms of the Seventh Schedule, be deemed to have been paid by that taxpayer.”

Section 1 of the Medical Schemes Act, No. 131 of 1998

“dependant” means -

- (a) the spouse or partner, dependant children or other members of the member’s immediate family in respect of whom the member is liable for family care and support; or
- (b) any other person who, under the rules of a medical scheme, is recognised as a dependant of a member;’

Section 24 of the Medical Schemes Act, No. 131 of 1998

“24. Registration as medical scheme.-(1) The Registrar shall, if he or she is satisfied that a person who carries on the business of a medical scheme which has lodged an application in terms of section 22, complies or will be able to comply with the provisions of this Act, register the medical scheme, with the concurrence of the Council, and impose such terms and conditions as he or she deems necessary.”

Section 1 of the Mental Health Act, No. 18 of 1973

“mental illness means any disorder or disability of the mind, and includes any mental disease and any arrested or incomplete development of the mind, and **“mentally ill”** has a corresponding meaning:’