











## Glossary

In this guide, unless the context indicates otherwise –

- “**contributions**” mean contributions to a medical scheme;
- “**medical scheme**” means a medical scheme registered under section 24(1) of the Medical Schemes Act;
- “**MS Act**” means the Medical Schemes Act 131 of 1998;
- “**MTC**” means the medical scheme fees tax credit;
- “**section**” means a section of the Act;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any word or expression bears the meaning ascribed to it in the Act.

### 1. Background

As a 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. For this reason, the Act provides a certain degree of relief for medical and physical impairment or disability expenditure paid by the taxpayer.

In an effort to achieve greater equality in the treatment of medical expenses across income groups, the previous allowance for medical scheme contributions (which was limited to a prescribed capped amount) was, for taxpayers below the age of 65, replaced by an MTC. This became effective on 1 March 2012, which is the commencement date of the 2013 year of assessment for individuals. The taxpayer is entitled to claim an MTC if contributions are paid to a medical scheme. The taxpayer may also claim an allowance for other qualifying medical expenses.

Medical expenses may therefore be divided into two distinct categories, namely –

- (i) **contributions** paid to a medical scheme; and
- (ii) other qualifying medical expenses (including out-of-pocket expenses).

These two categories will be looked at comprehensively throughout this guide.

For ease of reference, the applicable legislation is set out in **Annexure A**.

### 2. Qualifying persons for whom contributions and expenses may be claimed

Only qualifying contributions and expenditure paid by the taxpayer for him or herself, his or her spouse, his or her child, the child of his or her spouse and his or her “dependants” as defined in the MS Act or section 18(4A) of the Act may be considered in the determination of the MTC and allowance.

## 2.1 The meaning of “spouse”

A “spouse”<sup>1</sup> in relation to any person, means a person who is the partner of that person –

- (a) in a marriage or customary union recognised in terms of the laws of the Republic;
- (b) in a union recognised as a marriage in accordance with the tenets of any religion; or
- (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent.

## 2.2 Meaning of a “dependant”

There are two definitions of the term “dependant”:

- For purposes of determining the MTC, “dependant” means a “dependant” as defined in section 1 of the MS Act –<sup>2</sup>

- (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.

- For purposes of determining all qualifying medical expenses other than contributions, the definition of “dependant” in section 18(4A) applies, and, in relation to the taxpayer, means –

- (a) his or her spouse;
- (b) his or her child and the child of his or her spouse;
- (c) any other member of his or her immediate family in respect of whom he or she is liable for family care and support; and
- (d) any other person who is recognised as a dependant of that person in terms of the rules of a medical scheme or fund contemplated in subsection (1)(a)(i) or (ii).

at the time the contributions contemplated in subsection (1)(a) were made, the amounts contemplated in subsection (1)(b) or (c) were paid or the expenditure contemplated in subsection (1)(d) was incurred and paid.

The term “immediate family”, in both definitions of “dependant”, is a particular group of relatives used in rules of law. This group is limited to a person’s spouse or life partner, parents (including adoptive and step-parents), children (including adopted and step-children) and siblings.<sup>3</sup>

<sup>1</sup> Section 1(1).

<sup>2</sup> Section 6A(4).

<sup>3</sup> Black’s Law Dictionary. Edited by Bryan A. Garner. 9<sup>th</sup> ed. Thomas Reuters, 2009.

## 2.3 The meaning of “child”

A “child”<sup>4</sup> in relation to any person includes –

any person adopted by him or her—

- (a) under the law of the Republic; or
- (b) under the law of any country other than the Republic, provided the adopted person is under such law accorded the status of a legitimate child of the adoptive parent and the adoption was made at a time when the adoptive parent was ordinarily resident in such country;

The following persons are not included in the definition of a “child”:

- A foster child (regardless of the period the child is in the taxpayer’s care).
- A child who has not yet been legally adopted.
- A child who is under the taxpayer’s custodianship.

A “child”, as defined in section 18(4), 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 the 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 a disability from maintaining himself or herself and was wholly or partially dependent for maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of such year.

In order to qualify for a deduction of medical expenses paid for a **child**, the child must be the taxpayer’s own or adopted child or the child or adopted child of the taxpayer’s spouse.

A person over the age of 21 is not regarded as a child if that child is liable for income tax.

Medical expenses can be claimed for a child, irrespective of the child’s age, if the child is –

- disabled and, as a result, not in a position to maintain him- or herself;
- admitted as a dependant on the taxpayer’s medical scheme; and
- not liable for the payment of normal tax.

<sup>4</sup> Section 1(1).

### 3. Person paying the medical costs

#### 3.1 Contributions and expenses paid by the taxpayer

Only qualifying medical costs (contributions and expenses as discussed below) which were paid by the taxpayer personally, will be taken into account in determining the MTC and allowance that the taxpayer will be entitled to claim.

Medical costs incurred and paid by a person other than the taxpayer will **not** be taken into account when the MTC and allowance is determined for the taxpayer, except for –

- qualifying medical costs paid by the estate of a deceased taxpayer<sup>5</sup> for the period up to the date of the taxpayer's death. These costs are deemed to have been paid by the taxpayer on the day before the taxpayer's date of death; and
- qualifying medical costs paid by an employer of the taxpayer, to the extent that the amount has been included in the income of the taxpayer as a taxable benefit.<sup>6</sup>

#### **Example 1 – Contributions and expenses paid on behalf of a member of a medical scheme**

*Facts:*

AE, a friend of BC, paid monthly contributions of R1 000 to Excellent Health SA, a registered medical scheme. The amounts were paid on behalf of BC and BC's spouse and children, who are all considered to be dependants of BC under the rules of the medical scheme. AE also paid for prescribed medicine (on behalf of BC) that was not fully covered by Excellent Health SA.

*Result:*

BC may not claim an MTC or any other medical allowance for the amounts paid by AE. AE may also not claim the contributions and expenses paid on behalf of BC.

#### 3.2 Medical costs paid by the employer

Medical costs paid by the taxpayer's employer for the benefit of the taxpayer are regarded as a taxable benefit<sup>7</sup> and are therefore subject to tax. However, medical costs paid by the taxpayer's employer are deemed to have been paid by the taxpayer. These amounts, therefore, form part of the taxpayer's medical scheme contributions and expenses for tax purposes. As such, the total contributions and expenses (which will include those paid for the taxpayer's benefit by the employer) will be taken into account when determining the MTC and allowance.

Although the amounts (referred to above) paid by the employer are regarded as a taxable benefit, there are amounts that attract no value and are therefore not subject to tax.

<sup>5</sup> Sections 6A(3)(a) and 18(5)(a).

<sup>6</sup> Sections 6A(3)(b) and 18(5)(b), read with paragraphs 2(j) and 12A.

<sup>7</sup> Paragraph (j) of "gross income" as defined in section 1(1), read with paragraphs 2(j) and 12B.

**No value** will be placed on *contributions* paid by the employer to a medical scheme<sup>8</sup> registered under the MS Act when the benefit is derived by –

- the taxpayer who, by reason of superannuation, ill-health or other infirmity retired from the employ of the employer;
- the dependants of a deceased employee after his or her death if he or she was in the employ of the employer on the date of death; or
- the dependants of the taxpayer after his or her death if he or she retired from the employ of the employer by reason of superannuation, ill-health or other infirmity.

**No value** is placed on *medical services and expenses*<sup>9</sup> paid by an employer if –

- the employee is over the age of 65;
- the employee retired from the employ of an employer due to superannuation, ill-health or other infirmity;
- the person was in the employ of that employer on the date of his or her death, and the benefits were received by the dependants of that person after death;
- the recipient of the benefit was a dependant of a deceased ex-employee who had retired due to superannuation, ill-health or other infirmity;
- the medical services are rendered by the employer to its employees in general at their place of work for the better performance of their duties;
- the services are rendered or medicine supplied to comply with any law of the Republic; or
- the medical treatment provided by the employer consists of one of the prescribed minimum benefits determined by the Minister of Health under the provisions of the MS Act, provided by the employer to the employee (or his or her spouse or child) under a scheme or programme of the employer that is either –
  - carrying on the business of a medical scheme and has been exempted by the Registrar of Medical Schemes from complying with the provisions of the MS Act; or
  - not carrying on the business of a medical scheme, and the employee, his or her spouse and children are not beneficiaries of a medical scheme registered under the MS Act, or if they are such beneficiaries, the cost of the medical treatment is recovered from that medical scheme.

The taxpayer may only claim an MTC and an allowance on amounts paid by an employer that has been included in that taxpayer's income as a taxable benefit.<sup>10</sup>

#### 4. Timing of deduction

Medical scheme contributions and other qualifying medical expenses can only be claimed in the year of assessment during which the contributions and the expenses are **paid**. Expenses can be incurred during a year of assessment but may not necessarily be paid in that same year of assessment. This will, for example, be the case when expenses have

<sup>8</sup> Paragraph 12A(5).

<sup>9</sup> Paragraph 12B(3).

<sup>10</sup> Section 6A(3)(b), read with section 18(5)(b).

been incurred towards the end of a year of assessment, but have only been paid in a subsequent year of assessment.

**Example 2 – Medical expenses incurred in one year of assessment and paid in the next year of assessment**

*Facts:*

AA went in for an operation in February 2014. AA received an account from the hospital and the doctor on 20 February 2014, but only paid the account on 15 March 2014.

*Result:*

AA incurred this expense during the 2014 year of assessment but only paid this expense during the 2015 year of assessment. AA may, therefore, only claim the expense in the 2015 year of assessment.

## **5. Contributions to a medical scheme**

### **5.1 Qualifying contributions**

Contributions paid by the taxpayer for him- or herself, his or her spouse, his or her children, the children of his or her spouse and any of his or her “dependants” (as defined in the MS Act – see **2.2**), to a medical scheme registered under the MS Act, may be taken into account when the MTC and allowances are determined. Contributions paid by the taxpayer to any other fund registered under similar provisions in the laws of any other country, may also be taken into account.<sup>11</sup>

**Example 3 – Contributions to an unregistered medical scheme**

*Facts:*

AA paid monthly contributions of R2 000 to XYZ Health SA, which is not a registered medical scheme. The contributions are for AA, AA’s mother, AA’s spouse and their two children. They are all considered dependants under the rules of the medical scheme.

*Result:*

The amounts paid by AA were not paid to a registered medical scheme and, as a result, are not qualifying contributions.

**Example 4 – Contributions to a registered medical scheme**

*Facts:*

AB paid monthly contributions of R2 000 to ABC Health SA, a registered medical scheme. The contributions are for AB, AB’s mother, AB’s spouse and their two children. They are all considered dependants under the rules of the medical scheme.

*Result:*

The monthly contributions of R24 000 for the year of assessment are qualifying contributions.

<sup>11</sup> Section 6A(2)(a)(ii), read with section 18(1)(a)(ii).

### Example 5 – Contributions to a foreign medical scheme

*Facts:*

AC lives in South Africa and is liable for tax in South Africa. AC paid monthly contributions of R2 000 to British Health. The contributions are for AC, AC's spouse and their children. They are all considered dependants under the rules of the medical scheme. British Health is not registered as a medical scheme under section 24(1) of the MS Act, but is registered under the laws of the United Kingdom.

*Result:*

The monthly contributions of R24 000 for the year of assessment are qualifying contributions.

Contributions paid by the taxpayer to a different medical scheme than the scheme that the taxpayer is a member of, for a person who is dependent on that taxpayer for family care and support, will also be a qualifying contribution. The dependant does not have to be registered as a dependant on the taxpayer's medical scheme for the contribution to qualify for the MTC and allowance.

### Example 6 – Contributions to different medical schemes

*Facts:*

GE paid monthly contributions of R2 500 to ABC Health SA, a registered medical scheme. The contributions are for GE, GE's spouse and their two children. They are all considered dependants under the rules of the medical scheme. GE also paid monthly contributions of R1 500 to Tip Top Health (a registered medical scheme) for GE's mother who is dependent on GE for family care and support, and is a "dependant" as defined in section 1 of the MS Act.

*Result:*

The monthly contributions of R48 000 [R30 000 (R2 500 × 12) + R18 000 (R1 500 × 12)] are qualifying contributions.

## 5.2 MTC

An adjustment was made to the manner in which medical expenses may be claimed with effect from 1 March 2012. An MTC (in the form of a tax rebate) was introduced to replace the tax deduction for contributions paid by a person who has not yet attained 65 years of age by the end of the year of assessment.

The MTC is not applicable to the taxpayer who is 65 years of age or older, since these taxpayers are already entitled to a full medical allowance on contributions and qualifying medical expenses paid.<sup>12</sup> (See 8.)

The credit itself is set at a fixed amount **per month**. Since the MTC is a "rebate" and not a "deduction", it is not refundable and cannot exceed the amount of normal tax to be deducted.

<sup>12</sup> With effect from 1 March 2014, the MTC system in its entirety (that is, for both contributions and out of pocket expenses) was extended to apply to taxpayers over 65 of age and taxpayers with a disability. Thus the MTC applies to all taxpayers with effect from 1 March 2014.

The employer is obliged to take into account the MTC when calculating the employees' tax to be deducted or withheld from employees when the employer pays the contributions.<sup>13</sup> This is usually carried out by using the various payroll systems. Taxpayers who have not had their MTC taken into account may submit a tax return to take advantage of the credit, if applicable.

### 5.2.1 Amount of MTC to be deducted

The MTC for the year of assessment commencing on or after 1 March 2013, is as follows:<sup>14</sup>

- R242 for benefits to the taxpayer;
- R484 for benefits to the taxpayer and one dependant; or
- R484 for benefits to the taxpayer and one dependant, plus R162 for every additional dependant,<sup>15</sup>

for each **month** in that year of assessment for which contributions are paid.

#### Example 7 – Determination of admissible contributions

*Facts:*

AG (aged 45) paid monthly contributions of R5 000 to ABC Health SA, a registered medical scheme, during the 2014 year of assessment. The contributions are for AG, AG's spouse and their two children. They are all considered dependants under the rules of the medical scheme.

*Result:*

	R
Contributions paid by AG to ABC Health SA (R5 000 × 12)	60 000

**MTC calculation**

Taxpayer and one dependant	484
Plus: R162 for every additional dependant (R162 × two children)	<u>324</u>
Total monthly credit	<u>808</u>

The MTC to be deducted from normal tax payable by AG is R808 × 12 9 696

The excess can be taken into account in determining the medical allowance if the contributions exceed four times the amount of the MTC as indicated above. (See 7.1.)

#### Example 8 – Excess tax credit to be added to qualifying medical expenses for purpose of calculating the allowance

*Facts:*

JK (aged 32) paid monthly contributions of R3 000 to a registered medical scheme during the 2014 year of assessment. The contributions are for JK, JK's spouse, and one child. Both are registered as JK's dependants under the rules of the medical scheme.

<sup>13</sup> Paragraph 9(6) of the Fourth Schedule to the Act.

<sup>14</sup> Section 6A(2)(b), read with the Rates and Monetary Amounts and Amendment of Revenue Laws Act 23 of 2013.

<sup>15</sup> Section 6A(2)(b).



### Example 10 – Determination of MTC for the 2014 year of assessment

#### Facts:

HD (aged 55) paid R2 500 per month to a registered medical scheme for the 2014 year of assessment and did not incur any other medical expenses during the year. HD's taxable income, after including all taxable benefits and accounting for all allowable deductions, is R75 000 for the 2014 year of assessment. HD is the main member of the medical scheme, and has two dependants registered on that scheme.

#### Result:

	R
Contributions paid to the medical scheme (R2 500 × 12)	30 000

#### MTC calculation

HD and one dependant	484
Additional dependant	<u>162</u>
Total monthly credit	646
The MTC to be deducted from normal tax payable by HD is R646 × 12	7 752

#### Tax due

Normal tax on R75 000 (at 18%)	13 500
Less: Primary rebate	<u>(12 080)</u>
	1 420
Less: MTC (R7 752 limited to R1 420)	<u>(1 420)</u>
Net normal tax due	<u><u>0</u></u>

## 6. Qualifying medical expenses

### 6.1 Medical expenses relating to services and prescribed supplies

Expenses 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; or
- ii. nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency for the services of such nurse, midwife or nursing assistant), for illness or confinement; or
- iii. pharmacist for medicines as prescribed by any person referred to in (i),

will be taken into account in determining the medical allowance, provided these expenses have been paid for the benefit of the taxpayer, his or her spouse, his or her children or the children of his or her spouse or any of his or her “dependants” as defined in section 18(4A).

In order for the expenses to be considered deductible, the expense must not have been recoverable from the taxpayer's medical scheme.

Medical expenses (apart from contributions) that are paid by an employer on an employee's behalf may be taken into account for the employee, provided the amount paid by the employer was included in the taxpayer's income as a taxable benefit.<sup>16</sup>

#### **Example 11 – Expenditure not recoverable from medical scheme**

*Facts:*

BA paid R1 000 to Dr F (who is a duly registered medical practitioner) for consultation fees. BA belongs to a registered medical scheme, to which a claim of R1 000 was submitted. The medical scheme paid only R600 of this expense, resulting in BA having to pay the remaining R400.

*Result:*

The difference of R400 (R1 000 less R600) that was not paid by the medical scheme is regarded as a qualifying medical expense and will be taken into account when the medical allowance is determined.

#### **Example 12 – Payment to an unregistered medical practitioner**

*Facts:*

BB paid R1 000 to C for a medical consultation. C is a second-year medical student.

*Result:*

The payment of R1 000 is not a qualifying medical expense and will not be taken into account when the medical allowance is determined, as the amount which BB paid was not to a duly registered medical practitioner.

#### **Example 13 – Non-prescription medicine**

*Facts:*

BC purchased headache tablets off-the-shelf at the local pharmacy for R50.

*Result:*

As the headache tablets were not prescribed by a duly registered medical practitioner, nor did the expense incurred relate to a physical impairment which is prescribed by the Commissioner, the R50 is not regarded as a qualifying medical expense and will not be taken into account when the medical allowance is determined.

## **6.2 Expenditure incurred outside the Republic**

Expenses for medical services and supplies as reflected in 6.1 that have been incurred outside South Africa<sup>17</sup> may be taken into account in the determination of the medical allowance during a year of assessment if they –

- have been paid during the year of assessment, and
- are substantially similar to qualifying medical services rendered or medicines supplied in South Africa.

<sup>16</sup> Section 18(5)(b).

<sup>17</sup> Section 18(1)(c).

### 6.3 Qualifying disability expenditure

Only expenditure [relating to a “disability” as defined in section 18(3)] **prescribed by the Commissioner** may be claimed as a deduction. These expenses are provided in the *List of Qualifying Physical Impairment or Disability Expenditure, 1 March 2012* (see **Annexure B**).

See **9** for a detailed discussion of how the MTC and medical expense allowance are determined for persons with a disability.

### 6.4 Expenses relating to a physical impairment

Taxpayers are also permitted to take into account qualifying physical impairment expenditure in calculating the medical allowance. This is over and above any qualifying contributions paid to a registered medical schemes and qualifying medical expenses paid.

Qualifying expenditure is described in section 18(1)(d) as –

any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical impairment or disability suffered by the taxpayer, his or her spouse or child, or any dependant of the taxpayer.

The expense must be ***in consequence of*** a physical impairment suffered by the taxpayer, his or her spouse, his or her child, the child of his or her spouse or any of his or her dependants. The expense will only qualify if it was ***necessarily incurred*** and paid by the taxpayer.

The terms “***necessarily incurred***” and “***in consequence of***” are not defined in the Act; therefore, they retain their ordinary dictionary meaning. “Necessary” is defined as “required to be done...needed”.<sup>18</sup> “Consequence” is defined in the same dictionary as “a result or effect ...as a result”. This means that a prescribed expense does not automatically qualify as a deduction by mere reason of its listing. The expense must be necessary and incurred as a result of a physical impairment.

#### Example 14 – Necessarily incurred, in consequence of

*Facts:*

JC purchased a wig for R2 500. It is not known why the wig was purchased, as JC has not suffered any abnormal hair loss as a result of disease, accident or medical treatment. It appears JC suffers solely from male pattern baldness.

*Result:*

Although the expense of a wig is prescribed by the Commissioner, the expenditure of R2 500 is not a qualifying expense, as the expense is not necessarily incurred in consequence of a physical impairment or disability (male pattern baldness cannot be regarded as a physical impairment or disability).

<sup>18</sup> Concise Oxford English Dictionary. Edited by Catherine Soanes and Angus Stevenson. 11<sup>th</sup> ed. Oxford University Press.

The term “physical impairment” is also not defined in the Act. However, in the context of section 18(1)(d) it is regarded as a disability that is less restraining than a “disability” as defined. This means the restriction or limitation on the person’s ability to function or perform daily activities **after maximum correction** is less than a “moderate to severe limitation”. Maximum correction in this context means appropriate therapy, medication and use of devices.

Physical impairments will, for example, include –

- bad eyesight;
- hearing problems;
- paralysis of a portion of the body; and
- brain dysfunctions such as dyslexia, hyperactivity or lack of concentration.

Diabetes and asthma are recognised as medical conditions and not as physical impairments.

The taxpayer will be able to claim qualifying expenses as a deduction from income (inclusive of VAT) if he or she, his or her spouse, his or her children, the children of his or her spouse or any of his or her dependants has a physical impairment that is not a “disability” as defined. These qualifying expenses will, however, only be deductible to the extent that the amount exceeds 7,5% of the taxpayer’s taxable income provided the taxpayer is under the age of 65 years and the taxpayer, his or her spouse or his or her child is not a person with a disability.

## **7. Limitation on the medical allowance for taxpayers under the age of 65 and with no disability**

### **7.1 Contributions and expenses that are subject to the 7,5% limitation**

In addition to the MTC, the taxpayer will be entitled to a deduction that is limited to the amount by which the sum of the amounts listed below exceeds 7,5% of the taxable income (excluding retirement fund lump sum benefits, retirement fund lump sum withdrawal benefits, and severance benefits)<sup>19</sup> before taking into account this deduction:

- (i) All contributions paid by the taxpayer to a registered medical scheme for the taxpayer, his or her spouse, his or her children, the children of his or her spouse and any of his or her “dependants” as defined in section 1 of the MS Act that exceed **four times** the MTC; and
- (ii) Actual qualifying medical expenses (including physical impairment expenses) paid by the taxpayer and not recoverable from the medical scheme for the taxpayer, his or her spouse, his or her child, the child of his or her spouse and any of his or her dependants.

In (ii) above, the following expenses must be taken into account in the determination of the medical allowance, subject to the 7,5% limitation (see **7.2**):

- All qualifying out-of-pocket medical expenses relating to services and prescribed supplies;
- Expenses relating to a physical impairment (if applicable); and

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<sup>19</sup> Section 18(2)(c).

- Disability expenses of a person other than the taxpayer, his or her spouse or his or her child or the child of his or her spouse.

## 7.2 Calculation of the 7,5% limitation of the allowable contributions and medical expenses

An allowance for all contributions as exceeds four times the MTC plus the out-of-pocket medical expenses and disability expenses as well as physical impairment expenses, as set out in 6.3 and 6.4 respectively, the total of which exceeds 7,5% of taxable income before the medical allowance will be allowed as a deduction against income. Any lump sum benefit,<sup>20</sup> or severance benefit<sup>21</sup> received by the taxpayer, must also be excluded from taxable income for purposes of the 7,5% calculation.

### Example 15 – Claim for physical impairment expenditure limited to 7,5% of taxable income

#### Facts:

During the 2014 year of assessment, Y (aged 34) earned a salary of R186 200. Y contributed R46 900 to ABC, a registered medical scheme. Y's employer paid R24 000 of the R46 900, which was included in Y's income as a taxable benefit. Y's employer withheld employees' tax of R21 126 from the remuneration of R210 200. All amounts are correctly reflected on Y's IRP5 certificate.

Y is claiming allowable out-of-pocket medical expenses of R19 232 as well as R2 691 incurred and paid for over-the-counter medication for a physical impairment (the expenses appear on the prescribed list). Y has kept proof of all expenses. Y is the main member on ABC medical scheme and has two dependants.

#### Result:

	R
Total contributions paid	46 900
<b>MTC calculation</b>	
MTC: (R484 + R162) × 12	<u>7 752</u>
<b>Tax liability</b>	
Taxable income (R186 200 + R24 000)	210 200
Less: Allowance: Medical (note 1)	<u>(22 050)</u>
Taxable income	188 150
Normal tax on R188 150	35 445,50
Less: Primary rebate	<u>(12 080,00)</u>
	23 365,50
Less: MTC	<u>(7 752,00)</u>
Net normal tax	15 613,50
Less: Employees' tax	<u>(21 126,00)</u>
Net normal tax due	<u>(5 512,50)</u>

<sup>20</sup> A "retirement fund lump sum benefit" or a "retirement fund lump sum withdrawal benefit" as defined in section 1(1).

<sup>21</sup> As defined in section 1(1).

**Note 1: Medical allowance**

The aggregate of:

- (i) All contributions [section 18(2)(c), read with section 18(1)(a) and section 18(5)(b)] as exceed four times the MTC calculated under section 6A:

	R	R
Contributions paid	46 900	
Less: 4 × R7 752	<u>(31 008)</u>	15 892

Plus

- (ii) All allowable amounts excluding contributions [section 18(2)(c)(ii), read with section 18(1)(b), (c) and (d)]

R19 232 + R2 691		<u>21 923</u>
		37 815

as exceeds 7,5% of the taxable income before the medical allowance:

Less: 7,5% of R210 200		(15 765)
Total claim		<u>22 050</u>

**Example 16 – Claim for physical impairment expenditure limited to 7,5% of taxable income**

*Facts:*

During the 2014 year of assessment, X (aged 38) earned a salary of R280 000. X contributed R42 000 towards ABC, a registered medical scheme. X's employer paid R18 000 of the R42 000. The R18 000 paid by X's employer was included in X's income as a taxable benefit. X's employer withheld employees' tax of R41 151 from X's remuneration of R298 000 (R280 000 + R18 000). All amounts were correctly reflected on X's IRP5 certificate.

X is claiming allowable out-of-pocket medical expenses of R14 866 as well as R9 450 incurred and paid for over-the-counter medication because of a physical impairment (the expenses appear on the prescribed list). X has kept proof of all expenses. X is the main member on ABC medical scheme and has four dependants – a spouse and three children.

*Result:*

	R
Total contributions	42 000

**MTC calculation**

MTC: (R484 + R162 + R162 + R162) × 12	11 640
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**Calculation of tax liability**

Taxable income (R280 000 + R18 000)	298 000
Less: Allowance: Medical (note 1)	<u>1 966</u>
Taxable income	296 034







- (ii) A deduction of an allowance for medical scheme contributions paid by the taxpayer to a registered medical scheme to the extent that they exceed four times the MTC that the taxpayer is entitled to.

## 9.2 Disability expenditure

Expenditure prescribed by the Commissioner and which is necessarily incurred and paid for by the taxpayer in consequence of a disability, is deductible in accordance with section 18(1)(d), but is subject to certain limitations. As discussed in 6.3, it is a requirement that a prescribed expense must be necessary and in consequence of a person's specific disability, and does not automatically qualify as a deduction by mere reason of its listing. For example, if a person in a wheelchair buys a hand-held GPS, the cost of the hand-held GPS will not qualify as disability expenditure<sup>24</sup> even though the expense has been prescribed (listed) by the Commissioner. This is because the hand-held GPS is not directly connected to this person's disability and is neither necessarily incurred nor incurred in consequence of the disability. In the case of a person who is, for example, visually impaired, the cost of the hand-held GPS may qualify as disability expenditure.

A "disability"<sup>25</sup> means –

a moderate to severe limitation of a person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation—

- (a) has lasted or has a prognosis of lasting more than a year; and
- (b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.

The 7,5% limitation (as explained in 7.2) does not apply if the taxpayer, his or her spouse, his or her child or the child of his or her spouse is a person with a disability in accordance with the published criteria. In addition to the MTC (which is claimable against normal tax payable), a medical allowance is also permitted and is equal to the total amount of –

- all the permissible out-of-pocket and **prescribed** disability or physical impairment expenses; and
- the medical contributions paid that exceed four times the MTC as determined in 5.2.

### Example 20 – Person with disability

*Facts:*

During the 2014 year of assessment, Y (aged 34) earned a salary of R186 200. Y contributed R46 900 towards ABC, a registered medical scheme and the employer paid R24 000 of the R46 900. The R24 000 paid by Y's employer was included in Y's income as a taxable benefit. Y's employer withheld employees' tax of R21 126 from Y's remuneration of R210 200. All amounts were correctly reflected on Y's IRP5 certificate.

Y is claiming allowable out-of-pocket medical expenses of R9 232 as well as R32 691 for two hearing aids. Y's four year old daughter is regarded as disabled as she is predominantly deaf in both ears. Y has kept proof of all expenses. Y is the main member on ABC medical scheme and has two dependants – a spouse and daughter.

<sup>24</sup> Section 18(1)(d).

<sup>25</sup> Section 18(3).

<i>Result:</i>		
Total contributions		R 46 900
<b>MTC</b>		
(R484 + R162) × 12		7 752
<b>Tax liability</b>		
Income (R186 200 + R24 000)		210 200
Less: Deductions – medical (note 1) [section 18(2)(b)]		<u>(57 815)</u>
Taxable income		<u>152 385</u>
Normal tax on R152 385 (at 18%)		27 429,30
Less: Primary rebate [section 6(2)(a)]		<u>(12 080,00)</u>
		15 349,30
Less: MTC [section 6A(2)]		<u>(7 752,00)</u>
Net normal tax		7 597,30
Less: Employees' tax		<u>(21 126,00)</u>
Net normal tax due		<u>(13 528,70)</u>
<b>Note 1: Medical allowance</b>		
<i>The aggregate of:</i>		
<ul style="list-style-type: none"> <li>All allowable amounts, excluding contributions [section 18(2)(b)(i), read with section 18(1)(b), (c) and (d)]: R9 232 + R32 691</li> </ul>		41 923
<i>and</i>		
<ul style="list-style-type: none"> <li>All contributions [section 18(2)(b)(ii), read with section 18(1)(a) and section 18(5)(b)] as exceeds <i>four times</i> the MTC as calculated under section 6A:</li> </ul>		
Allowable contributions	46 900	
Less: 4 × R7 752	<u>(31 008)</u>	<u>15 892</u>
Total claim		<u>57 815</u>

The full allowance may only be claimed if the taxpayer, his or her spouse, his or her child, the child of his or her spouse is a person with a disability.<sup>26</sup> The full allowance is not available if other dependants, for example a foster child, which is not a “child” as defined have a disability. The expenses will be considered, but will be subject to the 7,5% limitation as discussed in 7.2.

### 9.3 Prescribed diagnostic criteria for a disability

For each of the impairments in the definition of a “disability” in section 18, the Commissioner has prescribed diagnostic criteria. These criteria seek to assess the functional impact of the impairment on a person’s ability to perform daily activities and not the diagnosis of a medical condition. These criteria are discussed below.

<sup>26</sup> Section 18(2)(b).

### 9.3.1 Vision

The minimum requirement for a person to be classified as a blind person is –

- visual acuity in the better eye with best possible correction\*, less than 6/18 (0.3)\*\*; and
- visual field, 10 degrees or less around central fixation.

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

\*\* “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.

### 9.3.2 Communication

A person is regarded as having a moderate to severe communication disability if, despite appropriate therapy, medication or suitable devices, one or more life activities (as listed below, pending age appropriateness), is substantially limited, that is, more than merely inconvenient or bothersome. In other words, if one or more of the following apply, the individual will be regarded as suffering from a moderate to severe communication disability:

- Inability to make self-understood to familiar communication partners using speech in a quiet setting.
- Inability to make self-understood to both familiar or non-familiar communication partners and incapability of meeting appropriate communication needs for his or her age by using speech, in less than 30 intelligible words.
- Problems in understanding meaningful language by familiar communication partners that lead to substantial difficulty in communicating.
- The need to rely on augmentative or alternative communication (AAC), including unaided (for example, sign language or other manual signs) or aided means of communication (ranging from communication boards to speech generating devices).

### 9.3.3 Physical

A person is regarded as a person with a disability if the impairment is such that the person is –

- unable to walk, for example, a wheelchair user;
- only able to walk with the use of assistive devices, for example, callipers, crutches, walking frames and other similar devices;
- able to walk without the use of assistive devices, but with a degree of difficulty, for example, persons with Cerebral Palsy, Polio (that is, persons who require an inordinate amount of time to walk); and
- functionally limited in the use of the upper limbs.

### 9.3.4 Mental

With the exclusion of intellectual disability, a person is regarded as having a mental disability if that person has been diagnosed (in accordance with accepted diagnostic criteria as prescribed in the *Diagnostic and Statistical Manual IV-TR (DSM-IV-TR)*) by a mental health care practitioner who is authorised to make such diagnosis, and such diagnosis indicates a mental impairment that disrupts daily functioning and which moderately\* or severely\*\* interferes or limits the performance of major life activities, such as learning, thinking, communicating and sleeping, amongst others.

\* A moderate impairment means a Global Assessment Functioning Score (GAF-Score) of 31 to 60.

\*\* A severe impairment means a GAF-Score of 30 and below.

### 9.3.5 Hearing

The term “hearing disability” refers to the functional limitations resulting from a hearing impairment. Hearing impairment is a sensory impairment that will influence verbal communication between speaker and listener.

An **adult** is considered moderately to severely hearing impaired when the hearing loss, without the use of an amplification device, is described as follows:

- Bilateral hearing loss with a pure tone average equal to or greater than 25 dBHL in each ear.
- Unilateral hearing loss with pure tone average equal to or greater than 40 dBHL in the affected ear.

A **child** is considered moderately to severely hearing impaired when the hearing loss, without the use of an amplification device, is as follows:

- Bilateral hearing loss with a pure tone average greater than 15 dBHL in each ear.
- Unilateral hearing loss with a pure tone average equal to or greater than 20 dBHL in the affected ear.

#### Notes:

- Hearing impairment is an abnormal or reduced function in hearing resulting from an auditory disorder.
- A child is a person who is not over the age of 18 years.
- Amplification devices include hearing aids, implantable devices and assistive listening devices.
- Pure Tone Average (PTA): average of hearing sensitivity thresholds (in decibel hearing level) to pure tone signals at 500Hz and 1000Hz, 2000Hz and 4000Hz of each ear.
- Bilateral hearing loss is a hearing sensitivity loss in both ears.
- Unilateral hearing loss is a hearing sensitivity loss in one ear only.

### 9.3.6 Intellectual

A person is regarded as having an intellectual disability if that person has a moderate\* to severe\*\* impairment in intellectual functioning that is accompanied by a significant limitation in adaptive functioning in at least two of the following skill areas:

- Communication
- Self-care
- Home living
- Social or interpersonal skills
- Use of community resources
- Self-direction
- Functional academic skills, work, leisure, health and safety

\* A moderate impairment means an intelligence quotient (IQ) of 35 to 49.

\*\* A severe impairment means an IQ of 34 and below.

### 9.4 Confirmation of disability (ITR-DD form)

A person who wishes to claim a medical allowance as a deduction for disability expenses must complete a Confirmation of Diagnosis of Disability form (**ITR-DD**), which is available on the SARS website ([www.sars.gov.za](http://www.sars.gov.za)). The ITR-DD must not be submitted with the annual income tax return, but must be retained for compliance purposes in the event of a SARS audit.<sup>27</sup> The ITR-DD needs to be completed and endorsed by a duly registered medical practitioner<sup>28</sup> every five years, if the disability is of a more permanent nature. However, if the disability is **temporary**, the ITR-DD will only be valid for one year, which effectively means that a new ITR-DD must be completed for each year of assessment during which a disability claim is made.

A disability will be regarded as being temporary in nature if that disability is expected to last for **less than** five years.

**Part A** of the ITR-DD must be completed for the person with the disability. In order to ensure that there is no breach of patient-doctor confidentiality, it is important that the authorisation in Part A is duly signed by the person with the disability. The ITR-DD must be signed by a parent, guardian or court-appointed curator, as the case may be, if the person with the disability is a minor, or is physically or mentally unable to do so.

**Part B** of the ITR-DD must be completed by a duly registered medical practitioner who is qualified to express an opinion regarding the person's disability. The practitioner needs to complete the appropriate diagnostic criteria.

In **Part C** of the ITR-DD the registered medical practitioner must –

- indicate and describe if the functional limitations with respect to performing activities of daily living are regarded as either “mild” or “moderate to severe”;

<sup>27</sup> Section 31 of the TA Act.

<sup>28</sup> A person who is registered with the Health Professions Council of South Africa and is specially trained to deal with the applicable disability.

- indicate if the disability has lasted, or is expected to last for a continuous period of more than 12 months; and
- sign the declaration.

Duly registered medical practitioners specifically trained to deal with a particular disability include the following:

Vision: Practitioner trained to use a Snellen chart (for example, an optometrist or ophthalmologist).

Hearing: Practitioner trained to perform or conduct a battery of the diagnostic audiometry tests (for example, an Ear, Nose and Throat Specialist or Audiologist).

Speech: Speech-Language Pathologist.

Physical: Orthopaedic Surgeon, Neuro Surgeon, Physiotherapist or Occupational Therapist.

Intellectual: Psychiatrist or Clinical Psychologist.

Mental: Psychiatrist or Clinical Psychologist.

## 10. How to claim the medical allowance

### 10.1 Persons registered for income tax

The following documentation must be retained for audit purposes when a medical allowance or MTC is claimed for a year of assessment:

- Proof of contributions paid to a registered medical scheme or to any other funds registered under similar provisions 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 were not refunded to the taxpayer or paid by the scheme to the service provider. The medical statements, which are generally released by each medical scheme in February or March each year, usually reflect the total amount for the year of assessment.
- A completed list of amounts not submitted to or recoverable from the taxpayer's medical scheme, together with proof of such amounts incurred and paid.
- A letter from the taxpayer's medical scheme, stating that the benefits allocated to certain medical procedures are exhausted, when applicable.
- A duly completed and signed Confirmation of Disability (ITR-DD) form, if applicable.

The aforementioned documentation as well as receipts must not be submitted with the annual income tax return, but must be stored and made available on SARS's request, if the taxpayer is required to substantiate the medical claims. The taxpayer is required to keep records such as receipts, paid cheques, bank statements, deposit slips and invoices for five years from the date on which the return for the relevant year of assessment was received by SARS.<sup>29</sup> However, in cases when objections and appeals have been lodged against assessments, the taxpayer must keep all records and data relating to the assessments under objection or appeal until such time that the objection or appeal has been finalised, even if the timeframe for finalisation exceeds five years.

## 10.2 Persons not registered for income tax

Persons who are not required to submit tax returns are generally either employees or persons whose income is below the tax threshold. These persons may have qualifying medical expenses or an MTC that was not taken into account during the year of assessment. The mere submission of a tax return will have no effect on the person's tax liability, if the employer has already taken the MTC into account. The MTC will also not create a refund if the person has no liability for normal tax.

Persons must request an income tax return at the local SARS branch office, via the SARS Contact Centre or online through the SARS eFiling website ([www.sarsefiling.co.za](http://www.sarsefiling.co.za)) if there is qualifying medical expenditure or an MTC that has not been taken into account, and if the persons wish to apply for a refund. Should the MTC or allowance result in a reduction of the tax paid, the person will be refunded accordingly.

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

- the application is made within three years from the end of the year of assessment during which the amount was deducted;
- the amount deducted is an amount of employees' tax deducted from remuneration paid to the person;
- an amount is properly refundable under a tax Act and is reflected in an assessment;
- income for that year of assessment only consisted of remuneration; and
- the submission of a tax return was not required for that year of assessment and no returns were submitted for three years since the end of that year of assessment.<sup>30</sup>

## 11. How to object to the disallowance of a medical allowance

The taxpayer who claimed an MTC credit or a deduction for a medical allowance and who is not satisfied with the assessment issued may object to it. The objection must be in the prescribed form "Notice of Objection" (NOO) which can be obtained via eFiling or at a SARS branch office. The NOO, which states the grounds on which the objection is lodged, must reach the relevant SARS branch office where the taxpayer is on register for income tax within 30 business days after the date of the assessment, or "due date".<sup>31</sup>

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<sup>29</sup> Section 29(3)(a) of the TA Act.

<sup>30</sup> Section 102, read with section 190 of the TA Act.

<sup>31</sup> Section 103 of the TA Act, read with the "rules" published under section 103.



## Annexure A – The law

### Section 18 of the Income Tax Act 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 in respect of 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 orthopedist for professional services rendered or medicines supplied to the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer; or
    - (ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the 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 any dependant of the taxpayer; 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, or any dependant of the taxpayer; 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, or any dependant of the taxpayer, 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 that is prescribed by the Commissioner (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical impairment or disability suffered by the taxpayer, his or her spouse or child, or any dependant of the taxpayer.
- (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 his or her child is a person with a disability, the aggregate of—
    - (i) the sum of the amounts referred to in subsection (1)(b), (c) and (d); and
    - (ii) so much of the contributions made by the taxpayer as contemplated in subsection (1)(a) as exceeds four times the amount of the medical scheme fees tax credit in respect of that taxpayer in terms of section 6A; 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 6A of the Income Tax Act 58 of 1962

**6A. Medical scheme fees tax credit—**(1) A rebate, to be known as the medical scheme fees tax credit must be deducted from normal tax payable by a taxpayer who is a natural person, unless the taxpayer is entitled to a rebate under section 6(2)(b).

- (2) (a) The medical scheme fees tax credit applies in respect of fees paid by the taxpayer to—
- (i) a medical scheme registered under the Medical Schemes Act, 1998 (Act 131 of 1998); or
  - (ii) a fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered.

- (b) The amount of the medical scheme fees tax credit must be—
- (i) R242, in respect of benefits to the taxpayer;
  - (ii) R484, in respect of benefits to the taxpayer and one dependant; or
  - (iii) R484, in respect of benefits to the taxpayer and one dependant, plus R162 in respect of benefits to each additional dependant

for each month in that year of assessment in respect of which those fees are paid.

(3) For the purposes of this section, any amount contemplated in subsection (2) that 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) any employer of the taxpayer is, 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, deemed to have been paid by that taxpayer.

(4) For the purposes of this section a “**dependant**” in relation to a taxpayer means a ‘dependant’ as defined in section 1 of the Medical Schemes Act, 1998 (Act 131 of 1998).

### Section 24 of the Medical Schemes Act 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 Care Act 17 of 2002

“**mental illness**” means a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria made by a mental health care practitioner authorized to make such diagnosis;

## Annexure B – The prescribed list of expenditure

The prescribed list of expenditure for purposes of section 18(1)(d) of the Act is set out below:

### NATURE OF EXPENSE

#### PERSONAL ATTENDANT CARE EXPENSES

- 1 Expenditure that is incurred and paid for purposes of special care, for special services to assist, guide, care for a person with a physical impairment or disability, regardless of the place the services are rendered (for example home, nursing home, retirement home etc.).

Examples of expenditure in this category include nursing services, special care for a person with a disability etc.

This will include salaries paid to care attendants, agency fees if the care attendant is provided by an agency as well as fees for professional services performed by, for example, nursing homes.

#### Examples:

- The parents of a child with a disability employ someone **primarily** to care for and look after the needs of the child who incidentally assists with general housekeeping activities. The salary paid to such person will qualify. However, if the parents employ the person **primarily** to perform housekeeping activities who incidentally assists with the child, the salary paid to such person will not qualify.
- Actual living-in expenses: Electricity, food and water incurred and paid by the taxpayer for the care attendant. SARS would generally allow the living-in expenses incurred and paid by the taxpayer, if the aggregate amount of such expenses does not exceed 10% of the annual salary payable to a care attendant up to a limit of 50% of the annual domestic worker minimum wage under Area A of the Sectoral Determination 7 for Domestic Workers (currently R18 076.08).

#### Exclusions:

- The spouse, parent or child is excluded as a care attendant. For example, if the wife is a person with a disability and the husband looks after her, the amount paid to the husband by the wife will not qualify for a deduction.
- Any living-in expenses for a person with a disability and any other living-in expenses other than food, electricity and water for a care attendant. For example, the taxpayer cannot claim for the space (for example room) used by the person with a disability in the house.

2. Training for workers and or parents and related expenditure.

Examples of expenditure in this category include special courses, training undergone by the parents or care attendant who will care for a person with a disability.













