SOUTH EAST ACCESS
ACCOUNTANTS & BUSINESS ADVISORS

Client Information Newsletter
- Tax & Super

July 2012

Medical expenses: What can you claim?

Changes announced in the latest Federal Budget mean that from July 1, 2012, the Net Medical Expenses Tax Offset will have two income-based thresholds, both indexed annually. A lower threshold ($2,060 for 2011-12) applies to individuals with an annual taxable income of less than $84,000 and less than $168,000 for couples and families, and a higher threshold ($5,000) applies to those earning more.

Net medical expenses are the total amount spent on medical expenses minus any reimbursements paid by private health insurance or Medicare. You and your dependants must be Australian residents for tax purposes, but you can claim medical expenses paid while travelling overseas.

Once net medical expenses are more than the thresholds above, a taxpayer is eligible to claim the offset. Those with a threshold based on the lower income amount are able to claim 20% of expenses over the threshold, but those required to pass the higher threshold can only claim 10% of the excess.

In fact when you combine some other health-related financial factors, it will certainly pay to stay healthy going forward. Apart from already increased private health insurance premiums, anyone with a situation that sees them incurring higher medical costs plus exceeding certain income levels has the potential to be hit three ways:

1. a reduced and means-tested private health insurance rebate
2. a higher threshold to pass before being able to claim medical expenses
3. a halving of the amount that can be claimed once that threshold is reached.

Who is covered for claims

The tax offset can only be claimed for:

- you, your spouse or de facto
- children up to age 21, including adopted and stepchildren, regardless of their income; also other under-21-year-olds under some circumstances (check this with our office)
- child-housekeeper, invalid relative, parent or spouse's parent, but only if you can claim a tax offset for them.

Expenses that are eligible for the offset

The medical expenses that are covered include those made:

- to a medical practitioner, nurse or chemist, or a public or private hospital, in respect of an illness or operation
- for dental services or treatment, supply, alteration or repair of artificial teeth

Continued – page 2

About this newsletter

Welcome to South East Access' client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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Also in this issue:

- for therapeutic treatment by referral from a medical practitioner (such as physiotherapist, speech therapist)
- for the purchase or repair of an artificial limb, artificial eye, or hearing aid
- for purchase or repair of prescribed medical aids
- for the testing of eyes, the prescribing of lenses, or for the supply or repair of spectacles
- to a person who looks after someone who is blind, or confined to bed or a wheelchair
- to keep a trained guide dog to assist a blind person, the hearing impaired or other disabled individuals.

Expenses that are not eligible for the offset

Some popular treatments, procedures or situations do not fall within the offset's ambit, including:

- **Healing and curing therapy.** There are however occasions where your doctor might recommend you receive therapeutic treatment for what ails you. In this circumstance, your doctor should provide you with a referral to a specific practitioner. Without a referral, the cost of the treatment will not be an eligible expense.
- **Sorry, no nips or tucks.** Procedures that are solely for cosmetic or beauty purposes that alter a person superficially are not eligible for the rebate. Of course, there are some legitimate cosmetic procedures that do qualify – reconstructive surgery following an accident or operation, for example. The first step to find out what is, and is not, claimable is to see if a procedure is covered by a Medicare benefit.
- **Travelling.** If you're travelling to a country that requires some vaccinations beforehand, you will not be able to claim this expense.

Some other treatments that are not covered include:

- medical examinations for life insurance
- chemist-type items, such as tablets for pain relief
- non-prescribed vitamins or health foods
- accommodation or transit expenses associated with medical treatment
- contributions to a private health fund
- ambulance charges and subscriptions, and
- funeral expenses.

Nursing homes or hostels

Aged care facilities provide specialised medical care for the elderly, and some costs are covered by the Net Medical Expenses Tax Offset. You can claim payments made to nursing homes or hostels for permanent or respite care if the payments were for personal or nursing care, not just for accommodation.

An approved care recipient's residential aged care payments usually include an amount for personal or nursing care if the recipient has been assessed by an 'aged care assessment team' (ACAT). Payments for respite care qualify for the tax offset on the same basis as residential care. To be approved, the recipient needs to be assessed by an ACAT to determine which services they may be eligible for.

Where eligible, the tax offset can be claimed for:

- basic daily fees
- income-tested daily fees
- extra service fees
- some accommodation charges
- amounts drawn from accommodation bonds that were paid as a lump sum
- periodic payments of accommodation bonds.

Note that retirement home payments are **not included** in the offset, only payments to nursing hostels or homes for respite or permanent care. It also does not apply to:

- payments for people who have either been assessed as requiring the lowest level care, or who have not been ACAT assessed
- lump sum payments of accommodation bonds
- interest derived by care providers from the investment of accommodation bonds (as these are not payments for residential aged care).

LAFHA — the new regime

Every so often, a person's career will take them places — but not necessarily in an 'upwardly mobile' way. If earning a living means an employee needs to be away from their usual place of residence for an extended period, the government has made available tax concessions generally known as the Living Away From Home Allowance (LAFHA).

LAFHA is intended to compensate for the additional expenses incurred when an employee is required to live somewhere other than their usual home in order to carry out their employment duties (although the term 'additional expenses' does not include expenses that they would be able to claim as tax deductions anyway).

The Tax Office considers that an employee is living 'away from home' when they have a usual place of residence at which they would otherwise continue to live but for the fact that work commitments require them to temporarily live in a different locality.

What is a 'usual place of residence'?

While it may seem straightforward to determine if a worker is living at their usual place of residence or not, the current interpretations have been developed over years of case law decisions, and ultimately depend on the facts of each case.

Factors such as the lifestyle of the employee, residency status, type of profession, location of family members and the type of industry can often be part of Tax Office considerations, should they investigate claims. Other relevant details may include, for example, whether electoral enrolment has changed, or driver's licence details, or whether the former residence is under a 'house-sitting' arrangement or is being rented out while the employee is working at the other locality.

LAFHA concessions may not be available, for example, where it can be shown that an employee has a more transitory lifestyle, such as following shearing work from wool shed to wool shed, and so strictly does not have a 'usual' place of residence. Also certain kinds of occupations bring with them locational transfers as part and parcel of the job, such as members of the defence forces, certain law enforcement officers or project managers.

Although 'usual place of residence' is not defined, and so takes on its ordinary meaning, it is stipulated that the residence must be one that the taxpayer (or their spouse) has an 'ownership interest' in and that continues to be available for their use while living away from it.

The interpretation of 'ownership interest' means that, for example, adult children living in the family home who move away from that home for work are not entitled to LAFHA. And the stipulation that the residence must be 'available for use' means a taxpayer cannot rent out the premises, for example, while they are away from it and still claim the allowance.

But there are straightforward LAFHA situations, such as where an employee is appointed for a specified time to a branch office in another state, and in some situations employees who are construction workers living in camps, barracks or huts, and oil industry employees living on offshore oil rigs.

Reforms, and the new regime

In November 2011, the government's Mid-year Economic and Fiscal Update contained announcements regarding LAFHA. Under the reforms announced at the time:

- access to the tax exemption for temporary residents will be limited to those who maintain a 'usual place of residence' for their own use in Australia, which they are living away from for work purposes, such as under 'fly-in/fly-out' arrangements (a separate reform extends the fly-in/fly-out exemption to 'resident' employees working overseas)
- individuals will be required to substantiate their actual expenditure on accommodation and food beyond a statutory amount.

A new 12-month limit

A further set of reforms was announced following the release of the Federal Budget in May 2012, which included clarification about how employment arrangements will be affected by the previously announced LAFHA changes. Another limitation was added in that the government will provide the tax concession for a maximum period of 12 months in respect of an individual employee for any particular work location.

This 12 month period:

- commences the first day the employee begins living away from home
- pauses if the employee temporarily relocates to their usual place of residence
- restarts if the work location changes, and it would be unreasonable for the employer to expect the employee to commute to the new location from the earlier location
- does not apply to fly-in/fly-out workers

- does not recommence if the employee takes up employment with a connected entity.

Reforms that affect everyone

LAHFA is primarily designed to cover food and accommodation expenses. In its previous incarnation food costs up to a 'statutory' amount, which was for example $250 per week for one adult or $400 for two adults, and accommodation costs which were 'reasonable', incurred no fringe benefits tax.

This has now been changed, and allowances for food and accommodation are part of further reforms relating to the concession which will affect anyone already receiving the allowance.

- the requirement to substantiate expenditure against the allowance came into effect on July 1, 2012 for all employees
- LAFH allowances will transfer from the fringe benefits tax regime to the income tax system.

The last point will bring with it further consequences:

1. the allowance will be assessable income to the employee and reported on their year-end payment summary
2. provided the eligibility criteria is met, the employee will be able to deduct expenditure for accommodation and food on their income tax return
3. food expenses that exceed $110 per adult and $55 per child under 12 (per seven day period) will be deductible up to a reasonable amount
4. substantiation of food expenses which exceed an amount specified by the Commissioner of Taxation will be required (the threshold amount is yet to be announced)
5. accommodation expenses can be substantiated by lease agreements, mortgage documents or other accommodation receipts.

The new regime: What the reforms involve

LAFHA arrangements entered into after 7.30pm AEST, May 8, 2012, come under the new regime from July 1, 2012.

There are limited transitional rules for employees with LAFH employment arrangements in place before 7.30pm on May 8, 2012:

- **permanent residents** — will not be required to maintain a home in Australia and the 12 month maximum period will not apply until the earlier of July 1, 2014, or a new employment agreement is entered into
- **temporary residents** — the 12 month maximum period will not apply until the earlier of July 1, 2014 or a new employment agreement is entered into, however the employee must be maintaining a home in Australia that they are living away from.

Maximise your rental property claims

Come tax time, every penny counts – particularly in the case of investors. Owners of rental properties are entitled to tax deductions in connection with their investments but do you know what these deductions are and how you can save yourself from paying more? Read our guide below for a rundown of claimable rental property expenses.

What you can claim

There are two broad categories of claimable rental property expenses:

1. those you can claim in the same income year that you incurred them provided your tenant did not pay them, and
2. those you need to deduct over a number of years.

1. Expenses you can claim in the income year they are incurred

Repairs and maintenance

A non-capital repair to correct a defective or worn-out part, or to return a deteriorated part to its former condition is deductible.

However, the renewal or replacement of a complete structure – such as a fence – is usually considered to be a capital expense and is not deductible. Similarly, repairs to a rental property shortly after purchase is typically a capital expense if the repair is to rectify a defect which existed at the time of purchase.

Be careful if the materials used in conducting a repair are superior to the original product as it may be a capital expense on the basis that the asset has been 'improved'.

Repairs may still be allowed as a deduction even though the property is no longer available for rent, provided the repairs are in respect of defects arising during the period when the property was used to produce assessable income.

Examples of deductible and non-deductible repairs

Deductible repairs	Non-deductible improvements
Replacing broken windows	Landscaping
Maintaining plumbing	Insulating a property
Repairing electrical appliances	Replacing an entire roof

Interest

Interest on a loan is deductible provided the loan is to purchase a rental property and meet improvement costs or running expenses while the property is rented, or is available for rental. It is often the case that interest is deductible whilst a property, which is to become income producing, is under construction. If you start to use the property for private purposes, you cannot claim any interest expenses you incur after the time you commence using it in that manner.

Deductible interest is also available on a loan taken out:

- for renovations
- to purchase depreciating assets (e.g. furniture), and
- for repairs.

Costs of obtaining finance

Examples of deductible costs of obtaining finance are

- legal expenses associated with mortgage documents, stamp duty valuation and survey overdraft guarantee fees, and
- procurement and search fees.

Body corporate fees

Body corporate fees that are incurred to cover administration costs, day-to-day maintenance or put into a special purpose fund are deductible. However, payments to a special-purpose sinking fund to cover the cost of capital expenses are not immediately deductible. You cannot claim a separate deduction for a particular expense – such as the maintenance of gardens – if that expense is already included in your body corporate fees.

Sundry costs

Below are further sundry costs which would typically be deductible:

- cost of calls or letters to tenants, real estate agents and tradesmen
- fees and commissions paid to real estate agents to let properties and collect rent
- secretary, bookkeeping and safekeeping fees associated with the collection of rent, payment of expenses and title documents respectively
- rent paid if subletting
- cost of preparing, registering or stamping a lease of a property
- legal expenses to eject a tenant for non-payment of rent
- advertising for tenants
- mortgage discharge fees
- council rates and land tax
- insurance premiums paid for building, contents or public liability
- bank charges on the rental account
- pest control
- cutting new keys
- cleaning expenses (rubbish removal etc.)
- gardening expenses (tree trimming etc.)
- advice about taxation matters relevant to the property
- services of tradesmen when not associated with a capital expense
- servicing costs
- security system monitoring, maintenance, patrol fees, and
- losses and outgoing when letting residence while on transfer of employment.

Travelling expenses

While you cannot claim travelling costs in search of a property to purchase, travel expenses once the property has been purchased and is income-producing are typically deductible if incurred in:

- inspecting the property
- collecting rent
- showing prospective tenants through the property

- carrying out repairs, including travel to acquire material for those repairs, and
- visiting the real estate agents for purposes such as leaving keys, signing lease agreements or discussing relevant matters.

A full deduction is allowed when the sole purpose of the trip relates to rental property. If the trip also includes a private purpose, only a partial deduction is allowed.

2. Expenses you need to deduct over a number of years

- borrowing expenses – includes loan establishment fees, title search fees, costs for preparing and filling mortgage documents, mortgage broker fees and stamp duty charged on the mortgage. If you take out an insurance policy to cover the loan in case you cannot meet repayments, these premiums are not deductible
- amounts for decline in the value of depreciating assets such as air conditioners, heaters, hot water systems and so forth
- capital works deductions such as the reconstruction of a garage destroyed by a fire where the work constitutes a structural improvement to the rental property.

The amount of time these expenses are spread across depends on the type of expense. A loan expense is spread over the lesser of five years or the life of the loan, assets that depreciate in value do so over their 'useful' lifetime and certain construction work deductions may be spread across 40 years.

What you cannot claim

Expenses that are not deductible are:

- acquisition and disposal costs – such as purchase cost of the property, advertising expenses, stamp duty on the transfer of the property and legal costs (although they may be included in the calculation of a capital gain or loss on disposal)
- expenses that your tenants pay such as electricity or water charges, and
- expenses not related to the rental of a property such as during personal use of a holiday home that is rented out for part of the year.

This guide is not an exhaustive list of all claimable rental property expenses. Contact this office for more examples of what can and cannot be claimed and a full list of depreciation tables. ■

SMSFs and geared property investment

In general terms, there is a prohibition on superannuation funds borrowing money, however an exception to this rule enables self managed superannuation funds (SMSFs) to borrow in order to acquire certain assets. These borrowing arrangements are strictly regulated.

When borrowing to acquire an asset, the fund takes out a loan on a 'limited recourse' basis, which is a term that indicates the security of the lender is only in respect of the encumbered asset that has been acquired. In other words, the lender cannot make claims (in the event of, for example, default) on other assets that the SMSF may own.

With a 'limited recourse borrowing arrangement' (LRBA), the SMSF has beneficial ownership of the asset (keeps the earnings the asset makes), but not 'legal' ownership. Upon discharge of the loan, legal title vests with the SMSF.

Some welcome clarification

The ruling issued by the Tax Office recently (SMSFR 2012/1) has come as a welcome clarification for many SMSF trustees, as the Commissioner has explained his interpretation of key concepts, including:

- what is a 'single acquirable asset'
- 'maintaining' or 'repairing' the acquirable asset as distinguished from 'improving it'
- when a single acquirable asset is changed to such an extent that it is a different (and therefore a replacement) asset.

The Tax Office's pronouncements clarify situations where there may be two separate assets at law, but because they are inseparable for all practical purposes (such as a building and the land it stands on) they will be treated as a single asset when it comes to an SMSF borrowing. The Tax Office has also distinguished between repairs that are carried out to 'reinstate the function of an asset' compared with an improvement that enhances that asset.

The definition of a single acquirable asset also considers both proprietary rights (ownership) and the object of ownership — thus allowing for an asset to meet the definition of a single asset even though it may consist of separate items of proprietary rights (such as two or more blocks of land). In this instance, relevant factors have been added to the 'single asset' decision equation, such as 'the existence of a unifying physical object, such as a permanent fixture attached to land, which is significant in value relative to the overall asset value'.

The definition also takes into account whether a state or territory law requires that two assets be dealt with as one. A relevant example here would be an apartment with a car park on a separate title. If according to state law the apartment and car park must be transferred together to meet state property title transfer rules, then these will be considered a single asset rather than requiring a separate LRBA for each title.

Maintenance, improvement, replacement?

An important distinction to remember is that in some situations repairs can be paid for from LRBA funds but, if permitted, improvements must be paid for from other sources, such as the fund members' own resources. What has also been clarified is that if, for example, a residential property is destroyed by fire and subsequently rebuilt as a residential property, even though the value of the property may increase (due to use of better materials etc), this is still viewed as simply restoring the asset. As long as its state or function remains unchanged, this will not be considered an improvement.

However even where improvements are made (using funds other than those sourced via an LRBA), many popular improvements are permitted that will still not create a different (replacement) asset. Examples include adding a driveway, granny flat or swimming pool, also extending to add a bedroom or entertainment area in residential premises.

Alterations that change the characteristic of the property however, such as from residential to a commercial use, will not be permissible.

Investment options open up

SMSF trustees may have better reason to look to investing in either their own business premises or other investment properties now the rules on SMSFs borrowing funds to invest are on a surer footing.

Until now, the definition of what constitutes a single acquirable asset, as well as what constitutes the maintenance or repair of these assets, as distinguished from 'improving' them, has caused confusion and anxiety among many SMSF trustees and their advisers.

The issues involved were thrown into sharp relief by the 2011 natural disaster events Cyclone Yasi and floods in Queensland as well as devastating bushfires in Western Australia. Many of the damaged properties were owned by SMSFs, the trustees of which found that the rules governing building reconstruction works severely lacked clarity — as evidenced, for example, in a huge jump in applications to the Tax Office for private rulings on what constituted a repair (allowed), and an improvement (disallowed).

As an avenue to use borrowed funds for investment purposes, LRBAs are very important to many SMSFs, but failing to meet the strict requirements risks contravening the general prohibition on borrowing funds, and places at risk an SMSF's status as a complying superannuation fund — so operating within the rules is imperative. ■

Construction contractors report form released

The Tax Office has now made available a sample form for the new Taxable Payments Report for building and construction businesses who engage contractors, which starts from July 1, 2012. The sample form outlines the information required when the reporting changes come into force. The actual forms will be available from the Tax Office website after July 1 (go to www.ato.gov.au and search for 'NAT 74109' to get to the right web page). The Tax Office has also provided an accompanying guide (there's a link at the bottom of the above web page).

The first annual reports are required for the year ending June 30, 2013, so affected builders (and contractors hiring sub-contractors) will need to start keeping appropriate records from the commencement of the 2012-13 income year. ■

Changes from July 1, 2012

Business

- Company tax loss carry-back scheme which allows companies to carry-back tax losses of up to $1 million to offset previous profits and provide a refund of tax previously paid.
- Immediate write-off of the first $5,000 of a new or used motor vehicle and each eligible business asset that costs less than $6,500 for small business entities with a turnover of less than $2 million a year, in place of the entrepreneur's tax offset.
- Building and construction industry shakeup which requires operators in these sectors to report annually on contractor payments.
- More GST credit claims available as the financial acquisitions threshold increases from $50,000 to $150,000.
- Fuel tax rise from 23.1c to 25.5c per litre that applies to registered heavy vehicles with a gross mass of between 4.5 tonne and 20 tonne, are designed for transporting passengers or goods and are undertaking an 'eligible trip' on a public road.

Superannuation

- 2012-13 concessional contributions cap to remain at $25,000 for applicable taxpayers. Indexation of the higher concessional cap of $50,000 for those aged 50 and over with superannuation balances of less than $500,000 has been deferred to July 1, 2014.
- Increase in tax within the super fund for high-income earners from 15% to 30% on concessional contributions which are deductible to the individual. This measure applies to individuals with an assessable income of more than $300,000 a year.
- One-off escape clause for excess contributions that gives individuals the option to have excess concessional contributions of up to $10,000 refunded and assessed at their marginal tax rate.
- Co-contribution changes where the maximum co-contribution has been reduced from $1,000 to $500 and the income threshold at which a co-contribution is not available has decreased from $61,920 to $46,920.
- Low-income superannuation contribution rebate of the 15% tax paid for $500 worth of contributions for people earning up to $37,000.
- Transitional employment termination payments rules that allow them to be paid directly into superannuation are to end.

Individuals and Families

- Tax rates change as the tax-free threshold rises from $6,000 to $18,200. The marginal rate is 19% for individuals earning up to $37,000, then 32.5% up to $80,000, 37% for up to $180,000 and 45% beyond that. The low-income offset reduces from $1,500 to $445 for individuals earning up to $66,666.
- Private health insurance rebate will be means tested and individuals are not entitled to their existing rebate rate if their single income is $84,001 or more, or if their family income is $168,001 or more.
- The following offsets have been consolidated: the invalid spouse, carer spouse, housekeeper, housekeeper (with child), child-housekeeper, child housekeeper (with child), invalid relative and parent/parent-in-law tax offsets. The new offset is based on the highest rate of the existing offset it replaces.
- Indexation of the Baby Bonus has been paused for three years and from September 1, 2012, the bonus will be cut from $5,437 to $5,000.
- SchoolKids Bonus replaces the Education Tax Refund. Families who qualify for Family Tax Benefit A will receive a cash hand-out of $820 for every high-school child and $410 for every primary school child – with effect from January 1, 2013.
- Mature age worker tax offset will be phased out by only allowing individuals born before July 1, 1957 to access this offset.
- Employment termination payment (ETP) tax offset means tested so only the part of an ETP that takes a person's total annual taxable income to no more than $180,000 receives the tax offset.
- Non-resident taxpayer rate changes where the first two marginal tax rate thresholds for non-residents merge into a single threshold with a marginal tax rate of 32.5%, applying to all taxable income below $80,000.
- Age Pension recipients who are overseas for more than 26 weeks are paid their maximum pension entitlement only if their Australian Working Life Residence (AWLR) is 35 years or more.

Consult our office to find out more about these changes. ■