
Rebate for medical expenses

Outline of chapter

1.1 This Schedule amends the *Income Tax Assessment Act 1936* (ITAA 1936) to apply an income test to the rebate for medical expenses from 1 July 2012. The rebate for medical expenses is commonly referred to as the net medical expenses tax offset (NMETO).

1.2 For taxpayers who have an adjusted taxable income for rebates above the singles tier 1 threshold of \$84,000 (indexed) for a single taxpayer and the family tier 1 threshold for a taxpayer who has a spouse or has dependants (\$168,000 (indexed)), the threshold above which a taxpayer can claim the NMETO for out-of-pocket medical expenses will be increased to \$5,000 (indexed). In addition, the rate of NMETO will be reduced to 10 per cent for the amount of out-of-pocket expenses greater than \$5,000.

1.3 Legislative references in this chapter are to the ITAA 1936 unless otherwise stated.

Context of amendments

1.4 The NMETO provides taxpayers with a non-refundable tax offset for out-of-pocket medical expenses (that is, medical expenses less available reimbursements, such as those through the Medicare Benefits Schedule (MBS), the Pharmaceutical Benefits Scheme (PBS) and the Repatriation Pharmaceutical Benefit Scheme (RPBS) or Government aged care subsidies and private health insurance refunds) above the NMETO claim threshold.

1.5 The threshold of out-of-pocket expenses above which the NMETO can be claimed in 2012-13 is \$2,120 (indexed to changes in the consumer price index (CPI)) with the offset available at a rate of 20 per cent of out-of-pocket medical expenses.

1.6 Eligible NMETO expenses are defined in subsection 159P(4) and broadly include expenses relating to an illness or operation which has been paid to a legally qualified doctor, nurse, chemist or hospital. Therapeutic expenses such as physiotherapy are eligible for the NMETO if prescribed by, and carried out under the direction of a doctor. The cost

of medical aids and artificial limbs, artificial eye or hearing aids are also eligible expenses for the NMETO. Expenses incurred as a result of strictly cosmetic operations are ineligible for the NMETO.

1.7 There is no limit to the total amount of offset a taxpayer can receive, but the offset is limited to a taxpayer's tax liability. That is, a taxpayer cannot receive a greater amount of offset than their basic income tax liability.

1.8 Where a taxpayer has paid eligible medical costs for themselves or their dependants who are a resident, the taxpayer totals those expenses to reach the claim threshold.

1.9 In the 2012-13 Budget the Government announced it would better target expenditure on the NMETO by income testing the threshold above which a taxpayer may claim the offset and the rate at which the offset applies from 1 July 2012.

1.10 Australian Government annual health expenditure is expected to reach around \$100 billion by 2022. Better targeting support through the NMETO is one of a number of measures the Government has identified to ensure a strong and sustainable health care system.

1.11 The Government is continuing to provide substantial support for health expenses, including around \$27 billion in 2012-13 through the Medicare Benefits Schedule, the Pharmaceutical Benefits Scheme and related safety nets.

Summary of new law

1.12 This Schedule applies the Medicare levy surcharge income levels to eligibility for the NMETO and reduces the offset to 10 per cent where the taxpayer's adjusted taxable income for rebates exceeds the Medicare levy surcharge income test thresholds.

1.13 Taxpayers who have an adjusted taxable income for rebates in excess of the Medicare levy surcharge singles tier 1 threshold, that is, more than \$84,000 (indexed by average weekly ordinary time earnings (AWOTE)) for a single taxpayer, and above the family tier 1 threshold (that is double the singles tier 1 threshold and is \$168,000 in 2012-13) for a taxpayer who has a spouse or has dependants, will need to have out-of-pocket expenses greater than \$5,000 (indexed by CPI) to be able to claim the NMETO. Where the taxpayer has more than one dependent child the threshold is increased by \$1,500 for each dependent child after the first. Where the taxpayer has out-of-pocket expenses greater than

\$5,000 the NMETO is 10 per cent of the amount of their out-of-pocket expenses in excess of \$5,000.

1.14 Those taxpayers who have an adjusted taxable income for rebates below the Medicare levy surcharge thresholds will continue to receive a rebate of 20 per cent of the amount of their out-of-pocket expenses where those expenses are greater than \$2,120 in 2012-13 (indexed by CPI).

1.15 To qualify as a family for the family tier 1 threshold, a taxpayer must have a spouse or have a dependant.

- A person has a spouse where they live together with someone of the same or different sex in a relationship as a couple on a genuine domestic basis, whether or not they are legally married to each other; or they are in a relationship that is registered for the period under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section.
- The definition of dependant uses the definition used for the Medicare levy surcharge, that is, the definition of dependant in section 5 of the *A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999*.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>A new out-of-pocket expense amount of \$5,000 (indexed by CPI) will be applied before some higher income earning taxpayers can claim the NMETO.</p> <p>Taxpayers with an adjusted taxable income for rebates above \$84,000 (indexed) for a single taxpayer and twice the singles tier 1 threshold (the family tier 1 threshold) for a taxpayer who has a spouse or has dependants will have the higher \$5,000 threshold applied.</p> <p>Where the taxpayer has more than one dependent child the threshold is increased by \$1,500 for each</p>	<p>The combined total of a taxpayer's out-of-pocket medical expenses must exceed \$2,000 (indexed by CPI from 2011-12) to be able to claim the NMETO.</p> <p>A taxpayer can claim the NMETO for the total of the out-of-pocket expenses they incurred for themselves and their dependants.</p> <p>Taxpayers at all taxable income levels can receive the NMETO at a rate of 20 per cent of their out-of-pocket medical expenses above the out-of-pocket expense threshold.</p>

<p>dependent child after the first.</p> <p>Where a taxpayer has income above the tier 1 thresholds a lower offset of 10 per cent applies for those expenses above the \$5,000 threshold.</p> <p>The adjusted taxable income for rebates threshold is indexed by AWOTE.</p>	
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Detailed explanation of new law

1.16 The definition of adjusted taxable income for rebates, family tier 1 threshold, medical expense rebate higher phase-in limit, medical expense rebate lower phase-in limit, rebatable medical expense amount and singles tier 1 threshold are inserted into subsection 6(1) which defines terms used in the ITAA 1936. These terms are being inserted to enable the income testing mechanism to operate. *[Schedule #, items 1 to 6, subsection 6(1)]*

1.17 The existing definition of indexable amount at subsection 159HA(7) is repealed and substituted with a new definition of indexable amount. The new definition provides a clearer presentation of existing indexable amounts and the inclusion of the indexable amounts relating to the NMETO income test. This is done by inserting a table into subsection 159HA(7) which sets out the indexable amounts and the first indexable year of the amount. *[Schedule # item 9, subsection 159HA(7)]*

1.18 Two new indexable amounts which relate to the new income test for the NMETO – the medical expense rebate higher phase-in limit and the medical expense rebate lower phase-in limit – are included as indexable amounts. *[Schedule #, item 9, subsection 159HA(7), items 4 and 5 in the table]*

1.19 The medical expense rebate higher phase-in limit is increased each year through CPI indexation from its first year of effect, that is the 2013-14 year of income. *[Schedule # item 9, subsection 159HA(7), item 4 in the table]*

1.20 The medical expense rebate lower phase-in limit is increased each year through CPI indexation from its first year of effect, that is the 2011-12 year of income. *[Schedule # item 9, subsection 159HA(7), item 5 in the table]*

1.21 The term “adjusted taxable income” is omitted and substituted with “adjusted taxable income for rebates” in paragraph 159J(1AB)(a), subsection 159J(1AC) including in the formula and note contained within

the subsection, and subsections 159J(4) and (5). This change has been made to provide clarity that the measure of adjusted taxable income for the purposes of sections 159J, which deals with rebates for dependants, and section 159NA is different to the term “adjusted taxable income” defined in Schedule 3 of the *A New Tax System (Family Assistance) Act 1999*. [Schedule #, items 10-13, 159J(IAB)(a), 159J(IAC) and subsections 159J(4) and (5)]

1.22 Item 14 repeals the definition of “adjusted taxable income” in the definitions subsection 159J(6) due to the term “adjusted taxable income” no longer being used in section 159J. [Schedule #, item 14, subsection 159J(6)]

1.23 New section 159NA Rebate for medical expenses sets out who is entitled to the NMETO and at what rate the NMETO applies. A taxpayer is entitled to the NMETO if the taxpayer has one or more rebatable medical expense amounts applicable to the taxpayer for the income year. [Schedule #, item 15, subsection 159NA(1)]

1.24 When the taxpayer has a spouse on the last day of the year the taxpayer’s adjusted taxable income for rebates is combined with the adjusted taxable income for rebates of the spouse. The combined adjusted taxable income for rebates is used to determine if the taxpayer is above or below the family tier 1 threshold.

1.25 Where the taxpayer and their spouse have a combined adjusted taxable income for rebates that does not exceed the family tier 1 threshold, the NMETO is 20 per cent of the taxpayer’s out-of-pocket expenses that exceed the medical expense rebate lower phase in limit. [Schedule #, item 15, subsection 159NA(2), table item 1]

- The family tier 1 threshold is double the singles tier 1 threshold which is \$84,000 in 2012-13 and is indexed annually by AWOTE.
- The medical expense rebate lower phase-in limit is \$2,120 in 2012-13 and is indexed annually by CPI.

1.26 Where the taxpayer and their spouse have a combined adjusted taxable income for rebates that exceeds the family tier 1 threshold the NMETO is 10 per cent of the taxpayer’s out-of-pocket expenses that exceed the medical expense rebate higher phase in limit. [Schedule #, item 15, subsection 159NA(2), table item 2]

- The medical expense rebate higher phase-in limit is \$5,000 in 2012-13 and indexed annually by CPI.

1.27 Where the taxpayer does not have a spouse on the last day of the year and has dependants, the family tier 1 threshold applies. Where the taxpayer's adjusted taxable income for rebates does not exceed the family tier 1 threshold the NMETO is 20 per cent of their out-of-pocket medical expenses for those out-of-pocket medical expenses that are greater than the medical expense rebate lower phase-in limit. [*Schedule #, item 15, subsection 159NA(2), table item 3*]

1.28 Where the taxpayer does not have a spouse on the last day of the year and has dependants, and where the taxpayer's adjusted taxable income for rebates exceeds the family tier 1 threshold, the NMETO is 10 per cent of their out-of-pocket medical expenses for those out-of-pocket medical expenses that are greater than the medical expense rebate higher phase-in limit. [*Schedule #, item 15, subsection 159NA(2), table item 4*]

1.29 Where the taxpayer does not have a spouse on the last day of the year and does not have dependants, and has an adjusted taxable income for rebates that does not exceed the singles tier 1 threshold, the NMETO is 20 per cent of their out-of-pocket medical expenses for those out-of-pocket medical expenses that are greater than the medical expense rebate lower phase-in limit. [*Schedule #, item 15, subsection 159NA(2), table item 5*]

1.30 Where the taxpayer does not have a spouse on the last day of the year and does not have dependants, and has an adjusted taxable income for rebates that exceeds the singles tier 1 threshold the NMETO is 10 per cent of their out-of-pocket medical expenses for those out-of-pocket medical expenses that are greater than the medical expense rebate higher phase-in limit. [*Schedule #, item 15, subsection 159NA(2), table item 6*]

1.31 The definition of spouse in subsection 995-1 of the *Income Tax Assessment Act 1997* is included in defining a spouse for family tier 1 threshold purposes. If a person has a spouse and they are also legally married or in a registered relationship under a State or Territory law with another person, they are considered to be in a relationship with the person who is defined as a spouse in subsection 995-1. [*Schedule #, item 15, subsection 159NA(3)*]

1.32 The inclusion of the condition that a spouse only be in a relationship with their spouse and not another person provides the same treatment of a spouse as a person who is married according to section 7 of *A New Tax System (Medicare Levy Surcharge –Fringe Benefits) Act 1999*. This approach ensures that the definition of spouse used for eligibility for the family tier 1 threshold is effectively the same as the same definition of spouse used in relation to the Medicare levy surcharge income thresholds.

1.33 As person is not the spouse of another person where they are living separately and apart; or although they are legally married they are in a relationship with another person. [*Schedule #, item 15, subsection 159NA(4)*]

1.34 A person remains the spouse of another person for the full income year even when the partner of the spouse dies part way through the year. [*Schedule #, item 15, subsection 159NA(5)*]

1.35 The definition of dependant to be used in subsection 159NA(2) (that is for the purposes of determining who is a dependant to consider eligibility for the family tier 1 threshold), is the definition of dependant in section 5 of the *A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999*. This means that the definition of dependant used to determine the family tier 1 threshold is different to the definition of dependant used to determine who is out-of-pocket medical expenses can be claimed which is defined in subsection 159P(4). This approach is consistent with the definition of dependant used in determining the Medicare Levy surcharge thresholds which are the threshold amounts used for the singles and family tier 1 thresholds. [*Schedule #, item 15, subsection 159NA(6)*]

1.36 The amount of the medical expense rebate higher phase-in limit is \$5,000 and is indexed annually according to section 159HA. The amount of the medical expense rebate lower phase-in limit is \$2,000 and is indexed annually according to section 159HA. [*Schedule #, item 15, subsections 159NA(7) and 159NA(8)*]

- Section 159HA indexes amounts by movements in CPI.

1.37 Where a trustee of an estate of a deceased person pays on behalf of the deceased person the NMETO eligible costs they incurred when they were alive, those costs are included in the assessment of the trustee. The amount of NMETO rebatable due to those costs does not differ due to the person being deceased. [*Schedule #, item 15, subsections 159NA(9) and (10)*]

Application and transitional provisions

1.38 These amendments apply on or after 1 July 2012 for the 2012-13 and later income years. [*Schedule #, item 20*]

Consequential amendments

1.39 A number of consequential amendments are required to ensure consistent wording in sections 159NA and 159P due to the new definitions inserted in subsection 6(1). Other amendments have been made to update headings or references to take account of new terminology. [*Schedule #, items 7-8, 16-19, Income Tax Assessment Act 1997, section 13-1, section 159P*]

