A COMPARATIVE STUDY OF THE TAX MEASURES FOR PERSONS WITH DISABILIES IN SOUTH AFRICA WITH THOSE OF CANADA AND THE REPUBLIC OF IRELAND

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ABSTRACT

Literature indicates that tax relief measures for persons with disabilities are important as they align with the principle of equity in the allocation of the tax burden. They are a government intervention that assists in decreasing the financial burden of medical care for persons with disabilities. The right of persons with disabilities to an adequate standard of living is contained in the landmark Convention on the Rights of Persons with Disabilities and Optional Protocol, a treaty of the United Nations, which South Africa ratified in 2007.

The objective of the research was to provide a comparative study of tax relief measures for persons with disabilities in South Africa with those of Canada and the Republic of Ireland, with a view to identifying potential areas for improvement in South Africa. The requisite information was primarily collected through an extensive analysis of the tax legislation in the jurisdictions.

The research found that tax relief measures for persons with disabilities and their families in South Africa are limited when compared with those of Canada and the Republic of Ireland. The comparative study identifies a number of potential tax relief measures for implementation in South Africa.

Key words: disability, impairment, taxation, tax relief measures, South Africa, Canada, Ireland.

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My sincerest thanks to Jesus, my husband, my parents and Professor Stack.

TABLE OF CONTENTS

LIST OF TABLES

CHAPTER 1: INTRODUCTION

1.1 CONTEXT

The importance of tax relief measures for persons with disabilities and their families is investigated through an examination of the link between tax relief measures for persons with disabilities and their families and:

- the rights of persons with disabilities; and
- the principle of equity in the allocation of the tax burden.

Persons with disabilities are guaranteed the constitutional right of equality and human dignity in terms of the Constitution of the Republic of South Africa, 1996, and its Bill of Rights. The Department of Social Development (2016b) produced the White Paper on the Rights of Persons with Disabilities, which was approved by the Cabinet in 2015 (Department of Government Communication and Information System, 2015: section 2.3). The White Paper on the Rights of Persons with Disabilities provides South Africa with a policy framework in relation to the rights of persons with disabilities (Department of Social Development, 2016b: 41) and states that:

> The definition of disability, the social model, the rights-based and mainstreaming approach as described and advocated in this WPRPD [White Paper on the Rights of Persons with Disabilities] means that persons with disabilities must be considered as target groups and beneficiaries in all policies and legislation. Thus, all policies and legislation that affect the lives of persons with disabilities will have to be reviewed against this WPRPD and the UNCRPD [United Nations Convention on the Rights of Persons with Disabilities] obligations.

South Africa ratified the Convention on the Rights of Persons with Disabilities and Optional Protocol, a treaty of the United Nations, on 30 November 2007 (United Nations Office of Legal Affairs: n.d.) and therefore the South African government has an obligation to promote and protect the rights of persons with disabilities as contained in the Convention. The Convention on the Rights of Persons with Disabilities and Optional Protocol follows a social and human rights model of disability (United Nations Department of Public Information, 2008: paragraph 10).

In terms of the social and human rights model, "…it is society that 'disables' persons with disabilities from exercising their human rights as citizens" (United Nations Department of Public Information, 2008: paragraph 10). The ideas advanced by The Union of the Physically Impaired Against Segregation (1976) in the document "Fundamental Principles of Disability" formed the basis of the social model of disability (Barnes & Mercer, 2004: 2-3). In the document Fundamental Principles of Disability, The Union of the Physically Impaired Against Segregation (1976: 4) stated that: "In our view, it is society which disables physically impaired people. Disability is something imposed on top of our impairments, by the way we are unnecessarily isolated and excluded from full participation in society". Quinn and Degener (2002: 14) note that the human rights model of disability "locates the main 'problem' [of disability] outside the person and in society". Torjman (2018: 17-18) states that:

> The evolving narrative on disability, while rooted in the social model, has embraced a human rights approach, which seeks to enshrine in legislation the right of persons with disabilities to participate as full citizens …
>
> A human rights approach to disability implies a *positive obligation* in which governments are both expected and required to put in place measures to ensure full participation in society. (emphasis in the original)

It is clear that persons with disabilities are rights holders and the South African government has a positive obligation to ensure that the rights of persons with disabilities in South Africa are enforced. One of the rights of persons with disabilities is the right to an adequate standard of living and social protection, in terms of article 28 of the Convention on the Rights of Persons with Disabilities and Optional Protocol (United Nations: 2006). To promote the realisation of the right to an adequate standard of living and social protection, the White Paper on the Rights of Persons with Disabilities identifies the reduction of the economic vulnerability of persons with disabilities as a strategic pillar (Department of Social Development, 2016b: 61 & 103-105). A review of literature demonstrates that there is an association between disability and poverty (Banks & Polack, 2013: 23; Mitra, Posarac & Vick, 2013: 11; Elwan, 1999: 33-34) signifying that persons with disabilities are economically vulnerable. Banks and Polack (2013: 1-2) state that:

> Poverty and disability are believed to be cyclically related, each re-enforcing the other... This cyclical relationship has a strong theoretical basis. Conditions associated with poverty such as lack of access to health care, water and sanitation and education, poor nutritional status and poor living conditions, increase the risk of disability. In turn, people with disabilities are more likely to be excluded from education and work and may incur additional health care costs, which further exacerbates poverty.

Graham, Moodley, Ismail, Munsaka, Ross and Schneider (2014: 9) studied the link between poverty and disability in South Africa and the key finding of the research was that:

> … disability intersects with a range of socio-economic variables, most importantly age, race and gender, to result in particular negative outcomes including reduced levels of income, lack of labour market participation, and lower levels of health care. This suggests that integrated approaches for addressing the needs of those living in poverty are essential in addressing the needs of people with disabilities too, as the case of access to basic services demonstrated. However, it is also necessary to ensure that people with disabilities are recognised as a particularly vulnerable group in the population and that, in some cases, particular interventions are required.

The South African Department of Social Development (2016a: 2 & 59) carried out a pilot study on the "Elements of the Financial and Economic Costs of Disability to Households in South Africa" and included in the results of the pilot study was the conclusion that "… some households such as those with women with disabilities, with persons with severe disabilities and with children with disabilities are still disproportionately economically disadvantaged and vulnerable". The economic vulnerability of persons with disabilities can be reduced through reducing the cost of disability for persons with disabilities and their families (Department of Social Development 2016b: 105). Tax relief is a measure that can be used in providing this reduction in cost (Philipps, 2001: 94). Tax relief for persons with disabilities and their families is, therefore, an intervention that can be used to assist in realising the right of persons with disabilities to an adequate standard of living and social protection.

One of the principles of a good tax system is equity (Adam Smith: 1776; as cited in Clegg & Stretch, 2020: section 1.1). Two requirements for tax to be allocated equitably is the achievement of both vertical and horizontal equity (Musgrave, 1967: 45).

“Vertical equity calls for a meaningful pattern of differentiation between people in unequal positions, related to society’s evaluation of various states of well-being”, as stated by Musgrave (1976: 4). In relation to the meaning of horizontal equity, Musgrave (1967: 45) stated: “…people in equal positions should pay equal amounts of tax…”. Henry Simons (1950; as cited in Musgrave, 1990: 113) stated that “it is generally agreed that taxes should bear similarly upon all people in similar circumstances.” Musgrave (1967: 56) notes that the equity goal is achieved more fully when the strikingly different needs of taxpayers are taken into account, despite taxpayers having equal incomes and family size, through for example, a personal deduction from income for disaster expenses like medical costs. Duff (2000: 805 - 806) states that:

> … to the extent that a taxpayer's ability to pay is … diminished by various involuntary expenses (e.g., various disability-related expenses), it is arguable that horizontal equity … requires that taxpayers be permitted to deduct these expenses in computing the income that is properly subject to tax.

In a report produced on the topic of disability tax fairness for Canadians by the Technical Advisory Committee on Tax Measures for Persons with Disabilities (2004: 19), it was noted that, in practice, the principle of horizontal equity:

> … involves providing tax credits or deductions to help recognize non-discretionary costs that reduce individuals’ ability to pay tax relative to other taxpayers with the same total income. This recognition is …to achieve equity and greater fairness in the allocation of the tax burden.

It is clear that tax relief for persons with disabilities and their families aligns with the principle of horizontal equity in the allocation of the tax burden.

Tax relief for persons with disabilities and their families may take the following forms:

- non-refundable income tax credits which provide relief by reducing an individual’s income tax liability, however where the non-refundable tax credits exceed the income tax payable the excess amount is not refundable;

- refundable income tax credits which provide relief by reducing an individual's income tax liability and where the refundable tax credits exceed the income tax payable the excess amount is refundable;
- deductions from income which provide relief by reducing the amount of income that is subject to income tax;
- the exemption or exclusion of certain income from the amount of income that is subject to income tax;
- the deferral of income tax to a subsequent tax year;
- the exemption or exclusion of certain capital gains from the amount of taxable capital gains that are subject to capital gains tax; and
- the exemption of certain donations from donations tax.

The South African government's main vehicle to provide tax relief for persons with disabilities and their families is through medically linked tax credits, in terms of section 6A and section 6B of the Income Tax Act, 58 of 1962 (referred to as the "Income Tax Act"). There is no certainty that these sections will not be repealed, however, once public health insurance is introduced in South Africa (Department of Health, 2017: 61), currently in the form of the National Health Insurance Bill, B11 of 2019.

In light of the importance of tax relief measures for persons with disabilities and their families, the present research aims to compare the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland, with a view to identifying potential areas for improvement. Canada was selected for comparison purposes because "Canada has a particularly well-developed disability-related tax legislation…" as stated by Steenkamp (2011: 216) and Canada has public health insurance, in terms of the Canada Health Act, Revised Statutes of Canada 1985, c. C-6, which co-exists with tax relief measures for persons with disabilities and their families (Canada Revenue Agency: 2014). This is of particular relevance considering the expected introduction of public health insurance in South Africa. The role of the federal income tax in legislating Canadian disability-related government policies is a further reason that Canada was selected for comparison purposes. Duff states (2000: 801):

> In recent years, federal, provincial, and territorial governments have devoted increasing attention to the status of disabled Canadians, emphasizing the integration of disabled persons as equal citizens within the broader community through policies designed to promote equal access to generic programs and services, while simultaneously recognizing the need for specific measures to address the costs of disabilities, to facilitate participation by disabled persons in the paid labour force, and to provide income support for disabled persons who have difficulty supporting themselves. Likewise, Canadian governments have demonstrated increasing concern about the welfare of families with dependent children, employing differing measures to alleviate the financial burden associated with the care of children to enable parents to participate in the paid labour force, and agreeing on a combined strategy to combat child poverty through the National Child Benefit involving federal refundable tax credits and social assistance delivered by provincial and territorial governments. In each of these areas, the federal income tax has played a significant role in the pursuit of government policies.

Ireland was selected for comparison purposes because initial research revealed that Ireland has a wide range of tax relief measures for persons with disabilities and their families (Office of the Revenue Commissioners: 2020a).

1.2 GOALS OF THE RESEARCH

The main goal of the research is to compare the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland, with a view to identifying potential areas for improvement. To achieve the main goal of the research, the following sub-goals are addressed:

- provide a brief overview of the types of taxes in South Africa, Canada and Ireland from which persons with disabilities and their families may claim relief;
- explain the tax relief measures in South Africa, Canada and Ireland for persons with disabilities and their families, together with the eligibility criteria to gain access to these tax relief measures;
- compare the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland; and
- identify potential tax relief measures available in Canada and Ireland that could be implemented in South Africa.

1.3 METHODS, PROCEDURES AND TECHNIQUES

The research is situated in a post-positivist paradigm. Stack (2019a: 18) notes: "Post-positivist research… is very similar to positivist research. Researchers also accept a reality, but one which cannot be divorced from its social context and therefore can only be imperfectly observed". The approach in the present research can be characterised as legal interpretive research (Stack, 2019b: 15). The methodology to be adopted is a doctrinal methodology. Hutchinson and Duncan (2012: 85) state that "doctrinal research is research into the law and legal concepts." McKerchar (2008: 18-19) notes that: "Doctrinal research … is typified by the systematic process of identifying, analysing, organising and synthesising statutes, judicial decisions and commentary".

The following documents were consulted:

- tax legislation in South Africa, Canada and Ireland;
- interpretation notes and guidance notes issued by the revenue authorities in South Africa, Canada and Ireland; and
- textbooks, journal articles, reports and other authoritative writings.

Journal articles, reports and other authoritative writings were obtained from the research databases available through Rhodes University and from the Google Scholar search engine. Keywords relating to the research study were used to search these databases and these keywords included, amongst others: "tax", "disability", "impairment" and "tax relief measures". Reference lists from the collated literature were used to obtain further literature.

The credibility of the research is based on the fact that the primary data sources used for the study were South African, Irish and Canadian tax legislation. Furthermore, the interpretation notes, guidance notes, textbooks, journal articles, reports and other writings used in the research study were from reputable sources.

The data were analysed to provide a credible argument in support of the goals of the research.

As all the data used in the research are publicly available, limited ethical risk arises. Ethical standards were adhered to as sources were appropriately cited in the research study and an accurate account of evidence found was given.

The scope of the thesis has been limited to tax relief measures provided for in South Africa, Canada and Ireland in income tax, donations or gift tax and capital gains tax legislation. Other legislation in these jurisdictions has not been included. Tax relief for persons with disabilities from Irish inheritance tax, Irish Universal Social Charge and Canadian provincial taxes are also excluded from the scope of the research, together with tax relief measures relating to non-residents, trusts and distributions from trusts.

1.4 OVERVIEW OF THE CHAPTERS

Chapters 2, 3 and 4 discuss the tax categories for which persons with disabilities may claim tax relief and the tax relief measures available to persons with disabilities as it relates to South Africa, Canada and Ireland, respectively, together with the eligibility criteria to gain to access to these tax measures. Chapter 5 provides a comparison of the tax relief measures for persons with disabilities in South Africa with those of Canada and Ireland and identifies potential tax relief measures available in those jurisdictions for implementation in South Africa. Chapter 6 concludes by summarising the research findings of the study.

CHAPTER 2: TAX RELIEF MEASURES IN SOUTH AFRICA

2.1 INTRODUCTION

To achieve the main goal of comparing the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland with a view to identifying potential areas for improvement, the first two sub-goals of the research in relation to South Africa are addressed in this chapter. In addressing the first two sub-goals of the research, the following is provided:

- a brief overview of the types of taxes in South Africa from which persons with disabilities and their families may claim relief; and
- an explanation of the tax relief measures in South Africa for persons with disabilities and their families, together with the eligibility criteria to gain to access to these tax relief measures.

2.2 TYPES OF TAXES

The types of taxes with potential tax relief measures for persons with disabilities and their families are personal income tax, donations tax and capital gains tax.

2.2.1 Personal Income Tax

In terms of section 5(1)(c) of the Income Tax Act, normal tax is levied on the taxable income received by or accrued to or in favour of an individual during a year of assessment, and the year of assessment for individuals ends on the last day of February each year. Taxable income is determined with reference to the definitions of "gross income", "income" and "taxable income" in section 1 of the Income Tax Act. In terms of the definition of "gross income" in section 1 and in relation to a South African tax resident, gross income is the "total amount, in cash or otherwise, received by or accrued to or in favour of such resident during such year or period of assessment, excluding receipts or accruals of a capital nature . . .". Paragraphs (a) to (n) of the definition of gross income in section 1 specifically include certain amounts in gross income irrespective of the fact that the amount may be capital in nature. In terms of the definition of "income" in section 1, income is the amount that remains after deducting from gross income the amounts that the Income Tax Act exempts from normal tax. In terms of the definition of "taxable income" in section 1, read with section 26A, taxable income is the amount that remains after deducting from income the amounts that the Income Tax Act allows to be deducted or offset therefrom and includes any taxable capital gains as determined in terms of the Eighth Schedule to the Income Tax Act. The rates of normal tax for individuals are progressive, with the marginal tax rates ranging from eighteen percent to forty-five percent for the 2020 year of assessment (De Koker & Williams, 2020: section 10.6). In terms of section 6, personal rebates are available to reduce an individual's liability for normal tax. In terms of sections 6A and 6B, medically linked tax credits are available to reduce an individual's liability for normal tax.

2.2.2 Donations Tax

In terms of section 54 of the Income Tax Act, donations tax is levied "on the value of any property disposed of… under any donation by any resident". In terms of section 64 and in relation to the 2020 year of assessment, the first R30 million of donations are taxed at a rate of 20 per cent and the balance of donations are taxed at a rate of 25 percent. In terms of section 59, liability for the payment of donations tax rests with the donor, provided that where the donor fails to discharge the liability the donor and the donee become "jointly and severally liable for the tax". Section 56 exempts certain donations from donations tax, some of which are relevant for persons with disabilities.

2.2.3 Capital Gains Tax

South Africa does not operate a separate capital gains tax system, rather capital gains tax forms part of normal tax. In terms of section 26A of the Income Tax Act, read with paragraph 10(1)(a) of the Eighth Schedule to the Income Tax Act, net capital gains from the disposal of assets are included in an individual's taxable income at an inclusion rate of 40% for the 2020 year of assessment and are subject to normal tax. The principal provisions relating to the taxation of capital gains and losses are contained in the Eighth Schedule to the Income Tax Act which includes certain exemptions from capital gains tax, some of which also apply to persons with disabilities.

2.3 TAX RELIEF MEASURES

Personal income tax, donations tax and capital gains tax outlined briefly in the previous section include tax relief measures for persons with disabilities and their families. This section discusses the definition of "disability" and tax relief measures for persons with disabilities and their families. All the tax relief measures discussed relate to the 2020 year of assessment.

2.3.1 Personal Income Tax Relief Measures

Personal income tax relief measures include non-refundable tax credits and income tax exemptions to provide support for persons with disabilities. These tax relief measures are explained in detail below.

2.3.1.1 <u>Non-refundable tax credits</u>

There are two non-refundable tax credits – the medical scheme fees tax credit and the additional medical expense tax credit.

(a) Medical scheme fees tax credit

Section 6A(1) of the Income Tax Act, read with section 6A(2)(a), provides tax relief in the form of a non-refundable medical scheme fees tax credit to individuals who contributed to:

- a medical scheme registered in accordance with the Medical Schemes Act, 131 of 1998; or
- a foreign medical aid scheme or fund that is registered in accordance with any similar provision contained in the laws of any other country where the fund is registered (referred to as "foreign fund").

The medical scheme fees tax credit, in terms of section 6A(2)(b), is a fixed amount for each month that the individual contributed to a medical scheme or foreign fund and the tax credit increases as the number of dependants registered on the medical scheme or foreign fund increases. In terms of section 6A(2)(b), the medical scheme fees tax credits are:

- R310 per month for the main member of the medical scheme or foreign fund;
- R620 per month for the main member of the medical scheme or foreign fund and the first registered dependant of the member; or
- R620 per month for the main member of the medical scheme or foreign fund and the first dependant and R209 per month for each additional registered dependant of the member.

(b) Additional medical expenses tax credit

In terms of section 6B(2) of the Income Tax Act, read with paragraph (a) of the definition of "qualifying medical expenses" in section 6B(1) and sections 6(2)(b) and 6B(3), a non-refundable additional medical expenses tax credit is available to an individual who paid for non-recoverable qualifying medical expenses during the year of assessment or who paid medical scheme fees in excess of the threshold indicated in section 2.3.1.1(a) of the present research study, which varies depending on the personal circumstances of an individual. In terms of section 6B(3), read with section 6(2)(b), the value of the tax credit varies depending on whether the individual is over sixty-five years old, under sixty-five years old or is a person with a disability or is a person with a spouse or child with a disability. "Child" is defined in section 6B(1) as meaning:

> a person'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 or she lived, have been—
>
> (i) over the age of 18 years;
>
> (ii) over the age of 21 years and was wholly or partially dependent for maintenance upon the person 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 maintenance upon the person and has not become liable for the payment of normal tax in respect of such year and was a fulltime 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 person and has not become liable for the payment of normal tax in respect of that year;

"Disability" is defined in section 6B(1) as meaning:

> a moderate to severe limitation of any 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;

SARS (2019a: 3) notes:

- **"Moderate to severe limitation",** in the context of disability means a significant restriction on a person's ability to function or perform one or more basic daily activities after maximum correction, except where indicated. Maximum correction in this context means appropriate therapy, medication and use of devices.
- The diagnostic criteria seek to assess the functional impact of the impairment on a person's ability to perform daily activities and not to diagnose a medical condition. (emphasis in the original)

In terms of 6B(3)(b) of the Income Tax Act, a person with a disability or a person with a spouse or child with a disability may claim the additional medical expenses tax credit based on:

> …the aggregate of—
>
> (i) 33,3 per cent of so much of the amount of the fees paid by the person to a medical scheme or fund [foreign fund] … as exceeds three times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and
>
> (ii) 33,3 per cent of the amount of qualifying medical expenses paid by the person;

"Qualifying medical expenses" is defined in section 6B(1) as meaning:

> (a) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person 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 person or any dependant of the person;
>
> (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 person or any dependant of the person; or
>
> (iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the person or any dependant of the person;
>
> (b) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person during the year of assessment in respect of

expenditure incurred outside the Republic on services rendered or medicines supplied to the person or any dependant of the person, and which are substantially similar to the services and medicines contemplated in paragraph (a); and

(c) any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by a person or his or her spouse) necessarily incurred and paid by the person during the year of assessment in consequence of any physical impairment or disability suffered by the person or any dependant of the person.

The following broad categories of expenses fall within the ambit of the prescribed list of expenses noted in paragraph (c) of the definition of qualifying medical expenses in section 6B(1) of the Income Tax Act (SARS, 2019b: 37-44):

- personal attendant care expenses;
- travel and other related expenses;
- insurance, maintenance, repairs and supplies;
- prosthetics;
- aids and other devices (excluding motor vehicles, security systems, swimming pools and other similar assets);
- services;
- continence products;
- service animals; and
- alterations or modifications to assets acquired or to be acquired.

2.3.1.2 Exempt income

Income tax exemptions providing various forms of income support for persons with disabilities were identified in South Africa, including workplace injury compensation, severance benefits, certain personal injury compensation, insurance disability benefits, a social assistance payment and scholarships. The exemptions from normal tax of these incomes, other than scholarship income, are based on the nature of the incomes and certain other requirements and not on whether an individual is considered to be a person with a disability.

(a) Workplace injury compensation

The following forms of workplace injury compensation are exempt from normal tax: any -

- "compensation paid in terms of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)" (referred to as the "Compensation for Occupational Injuries and Diseases Act"), in terms of section 10(1)(*g*B)(i) of the Income Tax Act; and
- pension paid in respect of disablement caused by any occupational injury or disease resulting from employment before 1 March 1994, "where that employee would have qualified for compensation under the Compensation for Occupational Injuries and Diseases Act… had that injury or disease been sustained or contracted on or after 1 March 1994", in terms of section 10(1)(*g*B)(ii) of the Income Tax Act".

(b) Severance benefits

In terms of paragraph (b) of the definition of "severance benefit" in section 1 of the Income Tax Act, a severance benefit includes:

> any amount … received by or accrued to a person by way of a lump sum from or by arrangement with the person's employer or an associated institution in relation to that employer in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of the person's office or employment or of the person's appointment (or right or claim to be appointed) to any office or employment, if—
>
> …
>
> (*b*) such relinquishment, termination, loss, repudiation, cancellation or variation is due to the person becoming permanently incapable of holding the person's office or employment due to sickness, accident, injury or *incapacity through infirmity of mind or body*; (own emphasis)

Normal tax is levied on the taxable income from severance benefits in accordance with a separate tax table (De Koker *et al.*, 2020: paragraph 10.16). In terms of paragraph 9(c)(i) of Schedule 1 of the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 14 of 2017:

- The taxable income from severance benefits equates to the cumulative amount of all:
  - severance benefits received by or accrued to an individual on or after 1 March 2011;

  - retirement fund lump-sum withdrawal benefits received by or accrued to an individual on or after 1 March 2009; and
  - retirement lump sum benefits received by or accrued to an individual on or after 1 October 2007.
- The rates of normal tax on the taxable income from severance benefits are progressive, with the marginal tax rates ranging from zero percent to thirty-six percent. The rate of zero percent is applicable to the first R500 000 of the taxable income from severance benefits.

In terms of paragraph 9(c)(ii) of Schedule 1 of the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 14 of 2017, read with paragraph 9(c)(i), the tax leviable on the taxable income from severance benefits as determined in paragraph 9(c)(i) must be reduced by the tax that would be leviable on the taxable income of the severance benefits if it excluded the current severance benefit. Clearly, the first R500 000 of any severance benefits received by or accrued to an individual is exempt from normal tax, where the individual has not received or accrued any retirement fund lump-sum withdrawal benefits on or after 1 March 2009, any retirement lump sum benefits on or after 1 October 2007 and any severance benefit on or after 1 March 2011.

(c) Certain personal injury compensation

Any "compensation paid in terms of section 17 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996)" (referred to as the "Road Accident Fund Act") is exempt from normal tax, in terms of section 10(1)(*g*B)(iv) of the Income Tax Act.

(d) Insurance disability benefits

The following insurance disability benefits are exempt from normal tax: any -

- amount received by or accrued to an individual, or dependant or nominee of the individual, from an employer-owned insurance policy relating to disablement of the individual, if the aggregate amount of any premiums has been included in the income of the individual as a fringe benefit from the date on which the policy was entered into, in terms of section 10(1)(*g*G)(ii) of the Income Tax Act read with paragraphs (d)(ii)-(iii) of the "gross income" definition in section 1; and
- amount received by or accrued to an individual from an individually-owned insurance policy relating to disablement of the individual, other than any insurance policy of which

the benefits are paid or payable by a retirement fund, in terms of section 10(1)(*g*I) of the Income Tax Act.

(e) Social assistance payments

Any disability pension paid in terms of section 2 of the Social Assistance Act, 59 of 1992, is exempt from normal tax, in terms of section 10(1)(*g*A) of the Income Tax Act.

(f) Scholarships and bursaries

In terms of section 10(1)(*q*A) of the Income Tax Act a "*bona fide* scholarship or bursary granted to… a person with a disability as defined in section 6B(1) to study at a recognised educational or research institution" is exempt from normal tax. De Koker *et al.* (2020: paragraph 6.11) note that the scholarship exemption is, under certain circumstances, "subject to certain conditions aimed at preventing abuse". Section 10(1)(q) provides the same exemption for persons without disabilities, but subject to a lower monetary limit.

2.3.2 Donations Tax Relief Measures

A review of the donations tax provisions in the Income Tax Act identified that "any *bona fide* contribution made by the donor towards the maintenance of any person as the Commissioner considers to be reasonable" is exempt from donations tax, in terms of section 56(2)(c) of the Income Tax Act. Reasonable maintenance for a person with a disability would therefore be exempt from tax.

2.3.3 Capital Gains Tax Relief Measures

A review of the Eighth Schedule to the Income Tax Act identified that a capital gain derived by an individual receiving compensation for a personal injury or illness is disregarded for capital gains tax purposes, in terms of paragraph 59 of the Eighth Schedule to the Income Tax Act. De Koker *et al.* (2020: paragraph 24.103) note that the receipt of personal injury or illness compensation represents an exchange of a personal right to claim compensation for a real right and this gives rise to a capital gain.

2.4 CONCLUSION

A brief overview of income tax, donations tax and capital gains tax in South Africa has been provided in this chapter in order to better understand the tax relief measures available to persons with disabilities and their families. The tax relief measures available to persons with disabilities and their families within these tax types has been explained in detail together with the eligibility requirements to gain access to these tax relief measures. A summary of the tax relief measures is provided in **Table 2.1**. Certain of these tax relief measures are linked to an individual having a "disability" as defined in section 6B(1) of the Income Tax Act.

Table 2.1: Tax relief measures in South Africa for persons with disabilities

Description	**Tax relief measure**
Personal income tax	
Non-refundable tax credits	<u>Medical scheme fees tax credit:</u> • R310 per month for the main member of the medical scheme or foreign fund; • R620 per month for the main member of the medical scheme or foreign fund and the first registered dependant of the member; or • R620 per month for the main member of the medical scheme or foreign fund and the first dependant, and R209 per month for each additional registered dependant of the member.
	<u>Additional medical expense tax credit:</u> The sum of: • 33,3% of the excess of the fees paid by the individual to a medical scheme or foreign fund over three times the amount of the medical scheme fees tax credit to which that individual is entitled; and • 33,3% of the amount of qualifying medical expenses paid by the individual.
Exemptions	Income tax exemption of: • certain workplace injury compensation; • compensation paid in terms of the Road Accident Fund Act; • certain insurance disability benefits; • certain disability pensions;

	• certain scholarships and bursaries; and • certain severance benefits, subject to a lifetime limit and under certain circumstances.
Donations tax	
Exemption	Donations tax exemption of reasonable contributions made by a donor towards the maintenance of any person.
Capital gains tax	
Exemption	The disregard for capital gains tax purposes of personal injury or illness compensation.

Source: Own design

In relation to Canada, the tax types for which persons with disabilities may claim tax relief and the tax relief measures available to persons with disabilities, together with the eligibility criteria to gain to access to these tax measures, is discussed in the chapter that follows.

CHAPTER 3: TAX RELIEF MEASURES IN CANADA

3.1 INTRODUCTION

This chapter addresses the sub-goals of providing an overview of the types of taxes in Canada from which persons with disabilities and their families may claim relief, and explaining these tax relief measures, together with the eligibility criteria to gain access to these relief measures. This discussion will contribute to achieving the main goal of comparing the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland, with a view to identifying potential areas for improvement.

3.2 TYPES OF TAXES

The types of taxes with potential tax relief measures for persons with disabilities and their families are personal income tax and capital gains tax. There is no separate gift tax in Canada (EY, 2019: 60).

3.2.1 Personal Income Tax

In terms of subsection 2(1) of the Income Tax Act, chapter 1 of the Revised Statutes of Canada, 1985 (5th Supp.) (referred to as the "Canadian Income Tax Act"): "An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year". In terms of subsection 2(2): "The taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C". Income is not defined in the Canadian Income Tax Act; however, section 3 provides rules for aggregating an individual's income from various sources (Beam, Laiken, Barnett, Johnstone, Mescall & Robson, 2016: 12). In terms of subsection 117(2), the federal rates of income tax for individuals are progressive with the marginal tax rates ranging from fifteen percent to thirty three percent for the 2020 year of assessment. Tax credits are available to reduce an individual's income tax liability (Beam *et al.*, 2016: 576).

3.2.2 Capital Gains Tax

Capital gains tax forms part of income tax in Canada. In terms of paragraph 3(b) of the Canadian Income Tax Act, read with section 38 and subsection 41(1), the excess of:

- fifty percent of:
  - capital gains for the year from the disposition of property, excluding listed personal property; and
  - net gains for the year from the disposition of listed personal property, over

- fifty percent of capital losses for the year from the disposition of property, excluding listed personal property,

subject to certain exceptions, is included in an individual’s income for income tax purposes for the 2020 year of assessment.

3.3 TAX RELIEF MEASURES

A wide range of relief measures for persons with disabilities and their families are included in the taxes outlined briefly in the previous section. This section discusses these tax relief measures together with the eligibility criteria to gain access to the measures. All the tax relief measures discussed relate to the 2020 year of assessment.

3.3.1 Personal Income Tax Relief Measures

A review of the Canadian Income Tax Act identified various federal income tax relief measures for persons with disabilities and their families and these are reviewed below. In terms of subsection 117.1(1) of the Canadian Income Tax Act, dollar amounts referenced in certain provisions are indexed to inflation using the Consumer Price Index.

3.3.1.1 <u>Non-refundable tax credits</u>

Included in non-refundable tax credits are the disability tax credit, personal tax credits, the home buyers’ tax credit, the home accessibility tax credit, and the medical expense tax credit.

(a) Disability tax credit and supplement for children with disabilities

Duff (2000: 836) notes that “the disability tax credit can be likened to an additional personal exemption to recognize non-discretionary but difficult-to-itemize costs associated with a mental or physical disability”. Subsection 118.3(1) of the Canadian Income Tax Act, read with the definition of "appropriate percentage" in subsection 248(1) and subsections 117.1(1), 117.1(3) and 117(2), provides for:

- A non-refundable tax credit for mental or physical impairment of $1 286, which is calculated by multiplying an indexed dollar amount of $8 576 (CRA: 2016) by 15%, for eligible individuals. The Canada Revenue Agency (CRA) (2013a: section 2.25) refer to this tax credit as the "disability tax credit".
- A supplement to the disability tax credit of up to $750, which is calculated by multiplying an indexed dollar amount of $5 003 (CRA: 2016) by 15%, for individuals who are eligible for the disability tax credit and are under the age of 18 years at the end of the tax year. In terms of paragraph 118.3(1)C(a), read with subsections 117.1(1) and 117.1(3), when calculating the value of the tax credit the dollar amount of $5 003 (CRA: 2016) must be reduced by the excess over $2 930 (CRA: 2016) of the amount paid in the year for the care or supervision of the child that is included in determining the tax relief provided by sections 63, 64 or 118.2 for a taxation year.

An individual is eligible for the disability tax credit where the following requirements are met:

- in terms of paragraph 118.3(1)(a), the individual "has one or more severe and prolonged impairments in physical or mental functions";
- the effects of the individual's impairment or impairments, in terms of paragraph 118.3(1)(a.1) are:

> … such that the individual's ability to perform more than one basic activity of daily living is significantly restricted where the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a basic activity of daily living or are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy that
>
> (i) is essential to sustain a vital function of the individual,
>
> (ii) is required to be administered at least three times each week for a total duration averaging not less than 14 hours a week, and
>
> (iii) cannot reasonably be expected to be of significant benefit to persons who are not so impaired;

- the appropriate medical practitioner, as noted in paragraphs 118.3(1)(a.2)-(a.3), has certified in prescribed form that the individual meets the requisite disability-related criteria as described above, in terms of paragraphs 118.3(1)(a.2)-(a.3); and
- the individual has filed the prescribed form from the medical practitioner with the Minister of National Revenue in terms of paragraph 118.3(1)(b), read with the definition of "Minister" in subsection 248(1) and paragraphs 118.3(1)(a.2)-(a.3).

In terms of paragraph 118.4(1)(a): "…an impairment is prolonged where it has lasted, or can reasonably be expected to last, for a continuous period of at least 12 months". In terms of paragraph 118.3(1)(c), read with section 118.2, the disability tax credit may not be claimed where any person has claimed an amount in respect of remuneration for attendant care or care in a nursing home, in respect of the individual who is eligible for the disability tax credit, in the determination of the medical expense tax credit, with the exception that the disability tax credit may still be claimed if the remuneration for attendant care is claimed in the determination of the medical expense tax credit in terms of paragraph 118.2(2)(b.1). Paragraph 118.2(2)(b.1) allows an individual to claim an amount for remuneration for attendant care in determining the medical expense tax credit, provided that certain conditions are met and subject to a limit. Any unused portion of the disability tax credit may, under certain circumstances, be transferred to:

- a person, excluding the spouse or common-law partner of the individual who is eligible for the disability tax credit, who supports the individual who is eligible for the disability tax credit, in terms of subsection 118.3(2) (CRA, 2013a: section 2.1 & 2.30); or
- the spouse or common-law partner of the individual who is eligible for the disability tax credit, in terms of section 118.8 (CRA, 2013a: section 2.1 & 2.40).

(b) Personal tax credits

Subsection 118(1) of the Canadian Income Tax Act provides for the deduction of non-refundable personal tax credits, which include (CRA, 2017a: sections 2.26, 2.28, 2.40, 2.43, 2.60 & 2.68):

- the spouse or common-law partner tax credit and the eligible dependent tax credit which are supplemented with the Canada caregiver amount where an individual supports a dependent with a mental or physical infirmity; and

- the Canada caregiver tax credit for adults and the Canada caregiver tax credit for children.

- *Spouse or common-law partner tax credit – Canada caregiver amount*

  In terms of paragraph 118(1)B(a) of the Canadian Income Tax Act, an individual who:

  - supports their spouse or common-law partner; and
  - is not living separately from the spouse or common-law partner due to a breakdown in marriage or common-law partnership,

  may claim a non-refundable tax credit, referred to as the "spouse or common-law partner tax credit" (CRA, 2017a: section 2.26), and where the spouse or common-law partner is dependent on the individual because of mental or physical infirmity the Canada caregiver amount (CRA, 2017a: section 2.28) is included in the determination of the tax credit. In terms of subsection 118(1)A and paragraph 118(1)B(a), read with the definition of "appropriate percentage" in subsection 248(1) and subsections 117.1(1), 117.1(3) and 117(2), the Canada caregiver amount results in a maximum increase in the tax credit of $341, which is calculated as 15% of $2 273 (CRA: 2016). In terms of subsection 118(1)A and subparagraph 118(1)B(a)(ii), read with the definition of "appropriate percentage" in subsection 248(1) and subsection 117(2), the spouse or common-law partner tax credit is reduced by $0.15 for every $1 dollar of a spouse or common-law partner's income. In terms of paragraph 118(4)(a), read with paragraph 118(1)B(a), an individual may not claim the spouse or common-law partner tax credit for more than one person.

- *Eligible dependent tax credit – Canada caregiver amount*

  In terms of paragraph 118(1)B(b) of the Canadian Income Tax Act, read with paragraph 118(1)B(b.1), an individual may claim a non-refundable tax credit, referred to as the "eligible dependant tax credit" by the CRA (2017a: section 2.40), where the individual at any time in the year:

  is either:

  – unmarried and not living in a common-law partnership; or
  – not living with or supporting a spouse or common-law partner and is not supported by a spouse or common-law partner; and

maintains, whether alone or jointly with one or more persons, and resides in a self-contained domestic establishment where the individual supports a relative who is:

- wholly dependent on the individual, or on the individual and the other person or persons, and the relative is either:
  - so dependent by reason of mental or physical infirmity;
  - under the age of 18 years; or
  - the individual's parent or grandparent; and

- a resident of Canada, although this residency requirement is not applicable if the relative is the individual's child,

and where the relative is:

- 18 years of age or older at the end of the taxation year and is, at any time in the year, dependent on the individual because of mental or physical infirmity; or
- under the age of 18 years at the end of the taxation year, other than a child of the individual in respect of whom the Canada caregiver tax credit (child) is claimed, and at any time in the year is dependent on the individual by reason of mental or physical infirmity for significantly more assistance with personal needs and care as opposed to children of the same age and is likely to be dependent on others for this assistance for a long and continuous period of indefinite duration,

the Canada caregiver amount (CRA, 2017a: section 2.43) is included in the determination of the tax credit. In terms of subsection 118(1)A and paragraph 118(1)B(b), read with the definition of "appropriate percentage" in subsection 248(1) and subsections 117.1(1), 117.1(3) and 117(2), the Canada caregiver amount results in a maximum increase in the tax credit of $341, which is calculated as 15% of $2 273 (CRA: 2016). In terms of subsection 118(1)A and subparagraph 118(1)B(b)(iv), read with the definition of "appropriate percentage" in subsection 248(1) and subsection 117(2), the eligible dependent tax credit is reduced by $0.15 for every $1 dollar of the dependant person's income for the year. The following restrictions apply in respect of claiming the eligible dependent tax credit:

- only one person is entitled to this tax credit in respect of the same person or same domestic establishment, in terms of paragraph 118(4)(b) read with paragraph 118(1)B(b);
- the individual may not claim this tax credit:
  - for the taxation year where such individual claims the spouse or common-law partner tax credit, in terms of paragraph 118(1)B(b) read with paragraph 118(1)B(a);
  - for more than one person, in terms of paragraph 118(4)(a) read with paragraph 118(1)B(b); and
  - in respect of a dependant for whom a spouse or common-law partner tax credit has been claimed by another individual, if throughout the year the dependant and other individual are married or in a common-law partnership and are not living separately due to a breakdown in marriage or common-law partnership, in terms of paragraph 118(4)(a.1) read with paragraphs 118(1)B(a)-(b).

- *Canada caregiver tax credit (adult)*

In terms of subsection 118(1)A and paragraph 118(1)B(d) of the Canadian Income Tax Act, read with subsection 118(6), the definition of "appropriate percentage" in subsection 248(1) and subsections 117.1(1), 117(2) and 117.1(3), an individual may claim a non-refundable tax credit of up to $1 091, which is calculated by multiplying an indexed dollar amount of $7 276 (CRA: 2016) by 15%, for each person who, at any time in the year, is:

- dependent on the individual by reason of mental or physical infirmity; and
- either:
  - over the age of 18 years and is a specified relative of the individual where such relative is dependent on the individual for support and is resident in Canada, although this residency requirement does not apply to the child or grandchild of the individual or the individual's common-law partner or spouse; or
  - the individual's spouse or common-law partner.

The CRA (2017a: section 2.60) refers to this tax credit as the "Canada caregiver tax credit (adult)". In terms of paragraph 118(1)B(d), read with subsections 117.1(1) and 117.1(3), when calculating the value of the tax credit the dollar amount of $7 276 must be reduced by the excess of the dependant's income for the year over $17 085 (CRA: 2016). In terms of paragraph 118(4)(c), read with paragraphs 118(1)B(a)-(b) and (d), where an individual is entitled to a spouse or common-law partner tax credit or an eligible dependent tax credit for a taxation year in respect of any person, the Canada caregiver tax credit (adult) may not be claimed by any individual for the year in respect of that same person.

- *Additional tax credit*

In terms of paragraph 118(1)B(e) of the Canadian Income Tax Act, read with paragraphs 118(1)B(a)-(b) and (d), where an individual is prohibited from claiming the Canada caregiver tax credit (adult) in respect of a person due to paragraph 118(4)(c), the individual is entitled to an additional tax credit in respect of the person for the excess of the amount that would be determined for the Canada caregiver tax credit (adult) over the spouse or common-law partner tax credit or eligible dependent tax credit, as the case may be, in respect of that person.

- *Canada caregiver tax credit (child)*

In terms of subsection 118(1)A and paragraph 118(1)B(b.1) of the Canadian Income Tax Act, read with paragraphs 118(1)B(a)-(b), paragraphs 118(4)(a)-(b), the definition of "appropriate percentage" in subsection 248(1) and subsections 117.1(1), 117.1(3) and 117(2), an individual may claim a non-refundable tax credit of $341, which is calculated by multiplying an indexed dollar amount of $2 273 (CRA: 2016) by 15%, for each child of the individual who is:

- under the age of 18 years at the end of the tax year; and
- is likely to be dependent on others, by reason of mental or physical infirmity, for a long and continuous period of indefinite duration for significantly more assistance with personal needs and care as opposed to children of the same age,

provided that one of the following conditions are met:

- the child ordinarily resides throughout the taxation year with the individual together with another parent;
- where the child does not ordinarily reside throughout the taxation year with the individual together with another parent:

- the individual is entitled to the eligible dependent tax credit in respect of the child; or
- the individual would have been entitled to the eligible dependent tax credit in respect of the child if:
  - the child had no income for the taxation year;
  - the individual had not claimed an eligible dependent tax credit for another dependent or a spouse or common-law partner tax credit for the taxation year (CRA, 2017a: 2.69); or
  - "the individual had not lived in the same domestic establishment with another individual who claimed the eligible dependent tax credit for another dependent for the tax year" as stated by the CRA (2017a: section 2.69).

The CRA (2017a: section 2.68) refers to this tax credit as the "Canada caregiver tax credit (child)". In terms of paragraph 118(4)(b.1), read with paragraph 118(1)B(b.1), only one person is entitled to the Canada caregiver tax credit (child) for a taxation year in respect of the same child. In terms of section 118.8, read with paragraph 118(1)B(b.1), under certain circumstances any unused portion of the tax credit may be transferred to a spouse or common-law partner.

(c) Home buyers' tax credit

In terms of subsection 118.05(3) of the Canadian Income Tax Act, read with the definition of "appropriate percentage" in subsection 248(1), the definition of "specified person" in subsection 118.05(1), the definition of "qualifying home" in subsection 146.01(1), paragraph (b) of the definition of "qualifying home" in subsection 118.05(1) and subsections 118.3(1), 117(2) and 118.05(2), a non-refundable home buyers' tax credit of $750 may be claimed by an individual who acquires a home, whether jointly or otherwise, for the benefit of:

- themselves, where the individual is eligible for the disability tax credit or would be if the requirement noted in paragraph 118.3(1)(c) is not taken into account; or
- a relative who meets the same disability-related criteria,

to enable the person with a disability to live in a home:

- that is more accessible or in which the person is more mobile or functional; or

- better suited to the person's needs, and

provided that:

- the individual claiming the tax credit intends for the person with a disability to live in the home as a principal place of residence within a year from the date of acquisition of the home;
- the home is registered in the name of the individual in accordance with the land registration system applicable to where the home is located; and
- the home is located in Canada.

(d) Home accessibility tax credit

In terms of subsection 118.041(3) of the Canadian Income Tax Act, read with the definition of "eligible dwelling", "qualifying expenditure" and "qualifying renovation" in subsection 118.041(1), the definition of "appropriate percentage" in subsection 248(1) and subsection 117(2), a qualifying individual or an eligible individual may claim a non-refundable home accessibility tax credit of 15% of the total amount of certain expenditure made or incurred in the taxation year in renovating or altering a housing unit of a qualifying individual or an eligible individual to:

- either:
  - reduce the risk of harm for the qualifying individual in accessing the housing unit or within the housing unit; or
  - enable the qualifying individual to gain access to the housing unit or to be mobile or functional within the housing unit, and

provided that:

- the renovations or alterations are integral to the housing unit and are of an enduring nature;
- the housing unit is located in Canada; and
- the housing unit is owned, jointly or otherwise, by:
  - the qualifying individual and is ordinarily inhabited, or reasonably expected to be ordinarily inhabited, at any time in the taxation year by the qualifying individual; or

- the eligible individual and is ordinarily inhabited, or reasonably expected to be ordinarily inhabited, at any time in the taxation year by the qualifying individual and the eligible individual on condition that another housing unit is not owned nor ordinarily inhabited by the qualifying individual throughout the taxation year.

In terms of subsection 118.041(3), read with the definition of "appropriate percentage" in subsection 248(1) and subsection 117(2), the tax credit is limited to $1 500. In terms of the definition of "qualifying individual" in subsection 118.041(1), read with subsection 118.3(1), a qualifying individual includes an individual who is eligible for the disability tax credit or would be if the requirement noted in paragraph 118.3(1)(c) is not taken into account. In terms of the definition of "eligible individual" in subsection 118.041(1), an eligible individual includes a qualifying individual's spouse or common-law partner and as noted by the CRA (2015: section 4): "certain supporting relatives of a qualifying individual". In terms of subsection 118.041(4), read with subsection 118.041(3) and section 118.2, the same expense may be claimed in the determination of both the medical expense tax credit and the home accessibility tax credit.

(e) Medical expense tax credit

In terms of subsection 118.2(1) of the Canadian Income Tax Act, read with section 64, subsections 118.2(2)-(3), 122.51(2) and 118(6) and the definition of "Minister" in subsection 248(1), an individual may a claim a non-refundable medical expense tax credit where such individual, or the individual's legal representative, paid eligible medical expenses in respect of:

- the individual;
- the individual's spouse or common-law partner;
- the individual's child who is under the age of 18 years at the end of the taxation year; or
- certain relatives of the individual where such relative is dependent on the individual for support and is resident in Canada, although this residency requirement does not apply to the child or grandchild of the individual or the individual's common-law partner or spouse,

provided that:

- the expenses were paid within any period of 12 months that ends in the tax year, with a certain exception;
- receipts to support the medical expenses are filed with the Minister of National Revenue;
- the eligible medical expenses are, with a certain exception, non-refundable;
- the medical expense was not claimed by another taxpayer in the determination of the medical expense tax credit, disability support expenses deduction or the refundable medical expense supplement for any tax year; and
- the medical expense was not claimed by the individual in the determination of the medical expense tax credit, disability support expenses deduction or the refundable medical expense supplement for a previous tax year.

In terms of subsection 118.2(1), read with the definition of "appropriate percentage" in subsection 248(1) and subsections 117.1(1), 117.1(3) and 117(2):

- The medical expense tax credit equates to 15% of the excess of eligible medical expenses incurred in respect of the individual, the individual's spouse or common-law partner or the individual's child who is under the age of 18 years at the end of the taxation year over the lesser of 3% of the individual's income for the taxation year and $2 397 (CRA: 2016).
- Where the individual incurred medical expenses in respect of a dependant relative, excluding the individual's child who is under the age of 18 years at the end of the taxation year, the tax credit is supplemented by 15% of the excess of eligible medical expenses incurred in respect of the dependant over the lesser of 3% of the dependant's income for the taxation year and $2 397 (CRA: 2016).

In terms of subsection 118.2(2), read with subsections 118.2(2.1)-(2.2), the medical expenses that are eligible to be claimed under the medical expense tax credit fall within certain broad categories of expenses, which the CRA (2013b: paragraph 4) identifies as follows:

- Fees paid to medical professionals
- Cost of attendant care and care in certain types of facilities
- Transportation and travel expenses
- Artificial limbs, aids and other devices and equipment
- Products required because of incontinence
- Vision care

- Oxygen, insulin and injections for pernicious anaemia
- Guide and hearing-ear dogs and other animals
- Bone marrow or organ transplants
- Alterations to an existing dwelling or construction of a new dwelling
- Rehabilitative therapy
- Sign language services
- Note-taking services
- Voice recognition software
- Reading services
- Deaf-blind intervening services
- Moving expenses
- Driveway alterations
- Van for wheelchair
- Caretaker training
- Therapy for eligible person with a disability
- Tutoring services
- Individualized therapy plan
- Devices and equipment prescribed by regulation
- Drugs, medicaments and other preparations or substances
- Preventive, diagnostic and other treatments
- Dentures
- Premiums paid to a private health services plan (PHSP)
- Gluten-free food
- Drugs not yet approved for sale
- Medical devices not yet approved for sale
- Medical marihuana and cannabis products for medical purposes…
- Fertility-related expenses

The list above reflects a broad category of expenses, however, technical rules and conditions exist (Beam *et al.*, 2016: 602) within subsection 118.2(2), read with subsections 118.2(2.1)-(2.2), to determine whether an expense falls within the ambit of a medical expense for the purposes of section 118.2.

3.3.1.2 Refundable tax credits

There are two refundable tax credits – a refundable medical expense supplement and the Canada Workers Benefit disability supplement.

(a) *Refundable medical expense supplement*

The CRA (2013b: section 1.148) notes that an individual with low income and high medical expenses for a taxation year may be able to claim a refundable medical expense supplement in terms of section 122.51 of the Canadian Income Tax Act. In terms of subsection 122.51(2), read with the definition of "eligible individual" in subsection 122.51(1), section 64 and subsections 117.1(1), 117.1(3) and 118.2(1), an individual may claim the supplement provided that:

- the individual was resident in Canada throughout the year;
- the individual was 18 years or older at the end of the year;
- the individual's income from the following sources was at least $3 714 (CRA: 2016) for the year:
  - employments and offices, with a certain income exclusion;
  - businesses carried on alone or as an actively engaged partner; and
  - the program established under the Wage Earner Protection Program Act, section 1 of chapter 47 of the Statutes of Canada, 2005;
- a tax return was filed in respect of the individual in the year; and
- the individual was eligible to claim the disability support expense deduction or the medical expense tax credit for the year.

Subsection 122.51(2) deems the medical expense supplement to be income tax paid by the eligible individual in respect of the tax year. In terms of subsection 122.51(2), read with subsections 117.1(1), 117.1(3), 117(2) and 118.2(1), the definition of "appropriate percentage" in subsection 248(1) and section 64:

- the first step in calculating the supplement is to determine the lesser of $1 272 (CRA: 2016) and the total of:

- 0.25 divided by 0.15 multiplied by the medical expense tax credit claimed by the eligible individual; and
- 25% of the disability support expenses deduction claimed by the eligible individual; and

- the second step in calculating the supplement is to reduce the amount determined in step one by 5% of the amount by which the individual's adjusted income for a taxation year exceeds $28 164 (CRA: 2016).

(b) Canada Workers Benefit disability supplement

The Department of Finance Canada (2019: 366) note that the "Canada Workers Benefit is a refundable tax credit that supplements the earnings of low-income workers". Subsection 122.7(3) of the Canadian Income Tax Act provides for a disability supplement to the Canada Workers Benefit. In terms of subsection 122.7(3), read with subsections 118.3(1) and 122.7(2), an individual is eligible for the disability supplement when the following conditions are met:

- the individual is eligible for the Canada Workers Benefit (CRA, 2018: paragraph 8);
- a tax return was filed in respect of the individual for the taxation year; and
- the individual was eligible to claim the disability tax credit for the taxation year.

Subsection 122.7(3) deems the disability supplement to be income tax paid by the individual in respect of the tax year. In terms of subsection 122.7(3), read with subsections 117.1(1) and 117.1(3), the first step in calculating the disability supplement is to determine the lesser of:

- $713, which is calculated as $700 indexed to inflation of 1.9% (CRA: 2016) after the 2019 year of assessment; and
- 26% of the excess of the individual's working income for a tax year over $1 150.

In terms of subsection 122.7(3), read with subsections 118.3(1), 117.1(1) and 117.1(3), the second step in calculating the disability supplement is to reduce the amount determined in step one by:

- 12% of the excess of the individual’s adjusted net income for a tax year over $24 569, which is calculated as $24 111 indexed to inflation of 1.9% (CRA: 2016), where the individual did not have an eligible dependant or an eligible spouse for the taxation year;
- 12% of the excess of the individual’s adjusted net income for a tax year over $37 176, which is calculated as $36 483 indexed to inflation of 1.9% (CRA: 2016), where the individual had an eligible dependant for the taxation year;
- 12% of the excess of the individual’s and eligible spouse’s total adjusted net incomes for a tax year over $37 176, which is calculated as $36 483 indexed to inflation of 1.9% (CRA: 2016), where the individual had an eligible spouse for the taxation year who was not entitled to claim a disability tax credit for the taxation year; or
- 6% of the excess of the individual’s and eligible spouse’s total adjusted net incomes for a tax year over $37 176, which is calculated as $36 483 indexed to inflation of 1.9% (CRA: 2016), where the individual had an eligible spouse for the taxation year who was entitled to claim a disability tax credit for the taxation year.

In terms of the definition of “eligible dependant” in subsection 122.7(1), read with subsection 122.7(2), an eligible dependant of an individual is a child of an individual who at the end of the taxation year:

- was under the age of 19 years;
- resided with the individual; and
- was not eligible for the Canada Workers Benefit.

In terms of the definition of “eligible spouse” in subsection 122.7(1), an “eligible spouse” in relation to an eligible individual means “…an individual (other than an ineligible individual) who was resident in Canada throughout the taxation year and who was, at the end of the taxation year, the cohabiting spouse or common-law partner of the eligible individual.” In terms of section 122.71, read with subsections 122.7(2)-(3), the Canada Workers Benefit and the disability supplement may be reconfigured for residents of provinces in accordance with agreements between the Minister of Finance and the province’s government.

3.3.1.3 Benefits

The Canada Child Benefit is a monthly amount paid to assist eligible families with the cost of raising children (CRA, 2019a: 11). The child disability benefit may supplement the Canada Child Benefit (CRA, 2019a: 11) and the CRA (2008: paragraph 1) note that this benefit "…is a tax-free monthly payment made to families who care for a child under age 18 with a severe and prolonged impairment in physical or mental functions". The child disability benefit payment period is a 12-month period that commences from the first of July of each year (CRA, 2019a: 28-29). In terms of subsection 122.61(1) of the Canadian Income Tax Act, read with section 118.3 and the definition of "Minister" in subsection 248(1), an individual is eligible for the child disability benefit when the following conditions are met:

- the individual is eligible for the Canada Child Benefit (CRA, 2008: paragraph 2) at the beginning of the month in which the child disability benefit arises;
- the qualified dependant is eligible for the disability tax credit for the taxation year that includes the month in which the child disability benefit arises; and
- an income tax return has been filed in respect of the individual, and the individual's cohabiting spouse or common-law partner when required by the Minister of National Revenue, for the base taxation year in relation to the month in which the child disability benefit arises.

In line with the definition of "base taxation year" in section 122.6, for the payment period of July 2019 to June 2020, the base taxation year is the 2018 taxation year. In terms of the definition of "qualified dependant" in section 122.6, read with paragraph 118(1)B(a), a qualified dependant means a person who is under the age of 18 years and specifically excludes a person in respect for whom:

- a special allowance in terms of the Children's Special Allowance Act, Schedule to Chapter 48 of the Statutes of Canada, 1992, is payable for the month that the child disability benefit arises; and
- a spouse or common-law partner tax credit was claimed for the base taxation year in relation to the month that the child disability benefit arises.

Subsection 122.61(1) of the Canadian Income Tax Act deems the child disability benefit to be an overpayment of income tax paid by the individual therefore allowing this benefit to be delivered through the income tax system. In terms of subsection 122.61(1)M, read with section 118.3, the definition of "base taxation year" in section 122.6 and subsections 122.61(5) and 122.61(7), for the benefit payment period of July 2019 to June 2020 the child disability benefit is $2 832 (CRA, 2019a: 32) for each qualified dependant who is eligible for the disability tax credit and the total of this is reduced by:

- 3.2% of the excess of the individual's adjusted income for the 2018 taxation year over $67 426 (CRA, 2019a: 32), where the individual has one qualified dependant who is eligible for the disability tax credit; or
- 5.7% of the excess of the individual's adjusted income for the 2018 taxation year over $67 426 (CRA, 2019a: 32), where the individual has two or more eligible dependants who are eligible for the disability tax credit.

3.3.1.4 <u>Deductions</u>

There are three deductions – the child-care expense deduction, the additional child-care expense deduction and the disability support expense deduction.

(a) Child-care expense deduction

Subsection 63(1) of the Canadian Income Tax Act provides for a child-care expense deduction. In terms of the definition of "eligible child" in subsection 63(3), read with paragraph 118(1)B(c), subsection 117.1(1) and subsection 117.1(3), an individual's eligible child is:

- a child of the individual or the individual's spouse or common-law partner; or
- a child dependent on the individual or on the individual's spouse or common-law partner for support and who has income for the year which does not exceed the basic personal amount (CRA, 2013c: section 1.3), which is either $12 298 or $13 229 (CRA: 2016), depending on the circumstances,

where, at any time in the year, such child:

- has a mental or physical infirmity and is dependent on the individual or on the individual's spouse or common-law partner; or
- is under the age of 16 years.

In terms of the definition of "supporting person" in subsection 63(3), a "supporting person" of an individual's eligible child refers to:

> … a person, other than the taxpayer, who is
>
> (a) a parent of the child,
>
> (b) the taxpayer's spouse or common-law partner, or
>
> (c) an individual who deducted an amount under section 118 for the year in respect of the child,
>
> if the parent, spouse or common-law partner or individual, as the case may be, resided with the taxpayer at any time during the year and at any time within 60 days after the end of the year.

There is a general rule that where there is both a taxpayer and a supporting person of the individual's eligible child, the individual with the lower income should claim the deduction (CRA, 2013c: section 1.22) and this is because in terms of subsection 63(2), read with paragraphs 60(v.1) and 60(w), where the taxpayer's income exceeds the income of the supporting person of the taxpayer's eligible child, with both taxpayer's income being calculated without reference to certain deductions, the taxpayer with the higher income is disallowed a deduction for child-care expenses unless specific circumstances apply. In terms of section 63(1), read with the definition of "annual child care expense amount" and "child care expense" in subsection 63(3), subsections 63(4) and 118.2(2) and sections 118, 118.3 and 64.1, an individual may claim a deduction for child-care expenses paid in the year by the individual in respect of the individual's eligible child, or paid by a supporting person of the individual's eligible child, subject to a limit equal to the lesser of:

- two-thirds of the individual's earned income for the year; and
- the sum of the annual childcare expense amount for each eligible child of the individual, which is:
  - $11 000 for each eligible child who qualifies for the disability tax credit for the tax year;

- $8 000 for each eligible child who is under the age of 7 years at the end of the tax year and who does not qualify for the disability tax credit; and
- $5 000 for each eligible child in any other case,

based on the assumption that the individual has a lower income than the supporting person of the individual's eligible child and provided that the following conditions are met:

- the child-care expenses were incurred to enable the taxpayer or the supporting person of the individual's eligible child, who resided with the child at the time the expense was incurred, to:
  - carry on a business either alone or as an actively engaged partner;
  - engage in employment;
  - carry on grant-funded research or similar work; or
  - attend a secondary school or a designated educational institution where the individual or the supporting person is registered in a program which the CRA (2013c: section 1.11) refers to as a full-time educational program, or in a program which the CRA (2013c: section 1.11) refers to as a part-time educational program;
- the child-care services were performed in Canada, with certain exceptions, by a resident of Canada, with certain exceptions, other than by the following persons:
  - an individual under the age of 18 years who is related to the individual;
  - a parent of the child;
  - a supporting person of the child; or
  - an individual in respect of whom a personal tax credit was claimed by the individual or a supporting person of the individual's eligible child;
- the child-care expenses are not:
  - medical expenses that are eligible to be claimed under the medical expense tax credit;
  - expenses for medical or hospital care, clothing, transportation or education;
  - expenses for board and lodging, with a certain exception; and
  - already included as an amount deductible in terms of subsection 63(1) by any other individual;
- the taxpayer is not entitled to a reimbursement or any other form of assistance in respect of the child-care expense; and

- the taxpayer filed an income tax return, and the prescribed form and receipts issued by the payee to support the child-care expenses and these receipts contain the payees' Social Insurance Number where the payees are individuals, with certain exceptions.

(b) Child-care additional deduction

Subsection 63(2.2) of the Canadian Income Tax Act, read with subsection 63(2.3) and paragraphs 60(v.1) and 60(w), provides for the deduction of an additional amount in respect of child-care expenses for an eligible child for periods where an individual attended a designated educational institution or a secondary school provided that:

- the individual was enrolled in a full-time or part-time educational program (CRA, 2013c: section 1.37);
- the individual filed an income tax return and a prescribed form; and
- either:
  - there is no supporting person of the individual's eligible child; or
  - if there is a supporting person, the taxpayer's income exceeds that of the supporting person, with both taxpayers' income being calculated without reference to certain deductions, and the taxpayer and the supporting person were both enrolled in educational programs at the same time in the year.

In terms of subsection 63(2.3), read with definition of "periodic child care expense amount" and "annual child care expense amount" in subsection 63(3), subparagraph 63(1)(e)(ii), paragraphs 60(v.1) and 60(w), section 118.3 and subsection 63(2.2), an individual may, based on the assumption that there is no supporting person of the individual's eligible child, deduct the lesser of:

- the excess of the amount paid for child-care services for the year in respect of the individual's eligible child over the amount that is deductible by the individual in terms of subsection 63(1) for the year;
- two-thirds of the individual's income, calculated without reference to certain deductions, for the year;

- the excess of the sum of the annual child-care expense amount for each eligible child of the individual over the amount that is deductible by the individual in terms of subsection 63(1) for the year; and
- the sum of the periodic child-care expense amount for each eligible child of the individual for the year, which is:
  - $275 for each eligible child who qualifies for the disability tax credit;
  - $200 for each eligible child who is under the age of 7 years at the end of the year and who does not qualify for the disability tax credit; and
  - $125 for each eligible child in any other case,

  multiplied by the total of:

  - the number of weeks in the year that the taxpayer was enrolled in the full-time educational program (CRA, 2013c: section 1.46); and
  - the number of months in the year that the taxpayer was enrolled in the part-time educational program (CRA, 2013c: section 1.46).

(c) Disability support expense deduction

In terms of section 64 of the Canadian Income Tax Act, read with sections 5-7 and 118.2 and paragraphs 56(1)(n), 56(1)(o), 56(1)(r) and 64.1(b), an individual may claim a deduction for certain disability support expenses paid by the individual in the year, net of any reimbursements or other forms of assistance that the individual is or was entitled to receive in respect of those expenses, provided that the following conditions are met:

- the expenses were incurred for the purpose of enabling such individual to:
  - engage in employment;
  - carry on a business either alone or as an actively engaged partner;
  - carry on grant-funded research or similar work; or
  - attend a secondary school or a designated educational institution where the individual is registered in an educational program;
- the individual filed an income tax return and the prescribed form for the tax year;
- the expenses were not claimed by the individual or any other person in determining a medical expense tax credit for any tax year; and

- receipts issued by the payee are filed to support the expenses and in a relation to certain attendant cares expenses the receipts contain the payees' Social Insurance Number, with a certain exception,

and the deduction is subject to a limit of the sum of the following amounts:

- the individual's income for the year from a business carried on alone or as an actively engaged partner;
- the sum of the individual's income for the year from an office or employment, research grants, financial assistance and scholarships or similar amounts; and
- where the individual is a student at a designated education institution or secondary school and is enrolled in an educational program, the lesser of:
  - $15 000;
  - $375 multiplied by the number of weeks in the year that the individual is in attendance at the educational institution or secondary school; and
  - the excess of the taxpayer's income, calculated without reference to the disability support expenses deduction, over the sum of the individual's income from a business carried on alone or as an actively engaged partner, an office or employment, research grants, financial assistance and scholarships or similar amounts.

Subparagraph 64(a)(ii) specifies the disability support expenses that qualify for deduction and the conditions under which these expenses qualify and examples of this, amongst others, include; the cost of:

- sign-language interpretation services paid to a person engaged in the business of providing these services where the individual has a speech or hearing impairment, in terms of clause 64(a)(ii)(A); and
- a teletypewriter to enable the individual to make and receive telephone calls where the device was prescribed by a medical practitioner and the taxpayer is deaf or mute, in terms of clause 64(a)(ii)(B).

3.3.1.5 Exempt income

There are various income tax exemptions, including the exemption of certain income support for persons with disabilities, tax-free withdrawals from registered retirement savings plans and non-taxable employment benefits and allowances.

(a) Income support for persons with disabilities

Income tax exemptions were identified in Canada for various types of income support for persons with disabilities and their families, including workplace injury compensation, personal injury compensation, insurance disability benefits, social assistance payments and certain other compensation provided by government.

- *Workplace injury compensation*

Worker's compensation paid in terms of Canadian employees' or workers' compensation law in respect of disability is not taxable, as the amount is initially included in income in terms of paragraph 56(1)(v) of the Canadian Income Tax Act and is rendered non-taxable through a corresponding deduction in terms of subparagraph 110(1)(f)(ii).

- *Personal injury compensation*

The following personal injury compensation is exempt from income tax or non-taxable:

- tort compensation for personal injuries based on the decision of the Federal Court in *Cirella v. M.N.R.* (1977), [1978] C.T.C. 1, 77 D.T.C. 5542 (F.C.T.D.), as noted by Duff (2000: 802-803); and
- income derived from personal injury award property, or from any property substituted for this property, and any further resulting income, provided that the income was earned before the end of the taxation year in which the injured person attained the age of 21 years, in terms of subparagraph 81(1)(g.1)(i) and paragraph 81(1)(g.2) of the Canadian Income Tax Act.

- *Insurance disability benefits*

The following insurance disability benefits are exempt from income tax or non-taxable:

- the portion of compensation received from certain wage loss replacement plans that equates to the total contributions made by the employee to the plan after 1967, provided that the compensation was received on a periodic basis and the individual's employer contributed to the plan, in terms of paragraph 6(1)(f) of the Canadian Income Tax Act (CRA, 1979: section 1); and
- proceeds from certain wage loss replacement plans where employees pay all the contributions to the plan because such plans do not fall within the ambit of subparagraph 6(1)(f) of the Canadian Income Tax Act, as noted by the CRA (1979, section 16).

- *Social assistance payments*

Certain social assistance payments are not taxable, as these payments are initially included in income in terms of paragraph 56(1)(u) of the Canadian Income Tax Act and are then rendered non-taxable through a matching deduction in terms of paragraph 110(1)(f).

- *Other compensation provided by government*

The following compensation provided by the government is exempt from income tax:

- certain war service pensions received from a foreign country on account of disability, in terms of paragraph 81(1)(e) of the Canadian Income Tax Act; and
- certain amounts received from the federal government, including the following compensation provided that the federal government paid these amounts in terms of specific statutory rules applicable to such compensation:
  - disability-related pensions, benefits, awards, allowances and compensation in respect of the service of members and veterans of the Canadian Forces, in terms of paragraph 81(1)(d) and subparagraphs 81(1)(d.1)(ii)-(iv) of the Canadian Income Tax Act read with paragraphs 21(1)(a), 21(1)(e) and 21(2)(a) and sections 21(5), 38(1), 38(4)-(8) and 72(1) of the Pension Act, chapter P-6 of the Revised Statutes of Canada, 1985, and subsections 44.1(1), 45(1), 47(1), 56.6(1), 60(1)-(5), 65.1(1) and 132(1) and the definition of "member" and "veteran" in section 2(1) of the Veterans Well-being Act, chapter 21 of the Statutes of Canada, 2005;
  - disability-related pensions and allowances in respect of certain war-time service of members of specified civilian groups, in terms of paragraph 81(1)(d) of the

Canadian Income Tax Act read with the Civilian War-related Benefits Act, chapter C-31 of the Revised Statutes of Canada, 1985;

* disability-related allowances for certain veterans and their survivors, in terms of paragraph 81(1)(d) of the Canadian Income Tax Act read with paragraph 4(1)(c) and the definition of "veteran" in subsection 2(1) of the War Veterans Allowance Act, chapter W-3 of the Revised Statutes of Canada, 1985;
* disability-related pensions and compensation in respect of the service of members of the Royal Canadian Mounted Police, in terms of paragraph 81(1)(i) of the Canadian Income Tax Act read with section 5 and the definition of "Force" in subsection 2(1) of the Royal Canadian Mounted Police Pension Continuation Act, chapter R-10 of the Revised Statutes of Canada, 1970, and sections 32 and 33 and the definition of "Force" in subsection 2(1) of the Royal Canadian Mounted Police Superannuation Act, chapter R-11 of the Revised Statutes of Canada, 1985;
* compensation received in respect of the injury of any person employed in, or under the direction of any department of, the federal public administration as a direct result of a flight undertaken by that person in the course of duty, in terms paragraph 81(1)(d) of the Canadian Income Tax Act read with section 9(1) of the Aeronautics Act, chapter A-2 of the Revised Statutes of Canada, 1985; and
* pensions, grants and allowances "in respect of… injury sustained in the explosion in Halifax in 1917", in terms of paragraph 81(1)(f) of the Canadian Income Tax Act.

(b) Extension of education-related tax benefits to part-time students with disabilities

Certain education-related tax benefits aimed at full-time students may be claimed by eligible part-time students with disabilities or impairments and this includes the scholarship exemption (The Disability Advisory Committee, 2019: 95) and tax-free withdrawals from retirements savings through a Lifelong Learning Plan.

In terms of subparagraph 56(3)(a)(i) of the Canadian Income Tax Act, read with paragraphs 56(3.1)(a) and 56(1)(n), subparagraph (a)(i) of the definition of "qualifying student" in subsection 118.6(1), subsection 118.6(3) and section 118.3, scholarships, fellowships, bursaries and prizes received by a part-time student who:

- is eligible for the disability tax credit; or
- has written certification from the appropriate medical practitioner, as noted in paragraph 118.6(3)(b), that the student has a mental or physical impairment that prevents them from being a full-time student,

are exempt from income tax to the extent that such award was intended to support the student's enrolment in a qualifying educational program at a designated educational institution in the current, preceding or following taxation year.

In terms of subsection 146(8) of the Canadian Income Tax Act, read with sections 146.01 and 146.02, amounts withdrawn from registered retirement savings plans are taxable with certain exceptions and included in the exceptions are withdrawals through a Lifelong Learning Plan. In terms of subsection 146(8), read with the definition of "eligible amount" and paragraph (a) of the definition of "excluded withdrawal" in subsection 146.02(1), an individual may withdraw up to $10 000 in a calendar year, and up to a maximum of $20 000, from the individual's registered retirement savings plan on a tax-free basis through the Lifelong Learning Plan to finance the individual's, or the individual's spouse's or common-law partner's, education, subject to certain conditions being met. In terms of paragraph (f) of the definition of "eligible amount", one of these conditions is that the student must have been enrolled or was entitled to enrol before March of the following year, in a qualifying educational program as a full-time student at the time of withdrawal. In terms of the definition of "full-time student" in subsection 146.02(1), read with subsection 118.6(3) and section 118.3, an eligible student with a disability, where eligibility is based on the same criteria as noted for the scholarship exemption, need only be a part-time student. In terms of subsection 146.02(4), read with the definition of "repayment period" in subsection 146.02(1), the withdrawn funds must be repaid to the registered retirement savings plan in minimum annual instalments over a fixed time period to remain non-taxable.

(c) Withdrawal of retirement savings through the Home Buyers' Plan

In terms of subsection 146(8) of the Canadian Income Tax Act, read with subsection 118.3(1) and the definition of "eligible amount", "supplemental eligible amount", "specified disabled person" and paragraph (a) of the definition of "excluded withdrawal" in subsection 146.01(1), an individual may withdraw up to $35 000 from the individual's registered retirement savings plan on a tax-free basis through the Home Buyers' Plan to:

- finance the construction or acquisition of a qualifying home for the individual where such individual is eligible for the disability tax credit, or would be if the requirement noted in paragraph 118.3(1)(c) is not taken into account, or for a relative who meets this same disability eligibility criteria; or
- assist a relative, who meets the disability eligibility criteria noted above, finance the construction or acquisition of a qualifying home,

provided that that the purpose of the withdrawal is to enable the person with a disability to live in a home that is:

- more accessible or in which the person is more mobile or functional; or
- better suited to the person's needs,

and subject to certain other conditions being met. The other conditions are that:

- the individual making the withdrawal from the registered retirement savings plan must:
  - have a nil balance on the individual's Home Buyers' Plan account on the first of January of the taxation year in which the individual is making such withdrawal, in terms of paragraph (h) of the definition of "supplemental eligible amount" in subsection 146.01(1);
  - submit the prescribed form to the CRA, in terms of paragraph (a) of the definition of "supplemental eligible amount" in subsection 146.01(1);
  - be a resident of Canada when the withdrawal is made and up to the time the qualifying home is acquired, in terms of paragraph (f) of the definition of "supplemental eligible amount" in subsection 146.01(1);
  - intend for the person with a disability to use the qualifying home as a principal place of residence within one year after acquiring the home, in terms of subparagraph (a)(ii) of the definition of "supplemental eligible amount" in subsection 146.01(1);
- the individual acquiring or constructing the qualifying home:

- must have a written agreement in place to do so before receiving the funds, in terms of paragraph (c) of the definition of “supplemental eligible amount” in subsection 146.01(1);
- or such individual’s spouse or common-law partner, must not have owned the qualifying home more than 30 days before receiving the funds, in terms of paragraph (e) of the definition of “supplemental eligible amount” in subsection 146.01(1); and
- must acquire the qualifying home, or a replacement property for it, before the first of October of the calendar year following the calendar year in which the funds were received, with certain exceptions, in terms of subparagraph (d)(i) of the definition of “supplemental eligible amount” in subsection 146.01(1) read with the definition of “completion date” in subsection 146.01(1) and paragraph 146.01(2)(c).

In terms of subsection 146.01(4) the withdrawn funds must be repaid to the registered retirement savings plan in minimum annual instalments over a fixed time period to remain non-taxable.

(d) Employment benefits and allowances

The value of an employment benefit relating to, or a reasonable allowance in respect of expenses incurred by the individual for the following is not taxable:

- in terms of subsection 6(16)(b) of the Canadian Income Tax Act, read with section 118.3, “an attendant to assist the individual in the performance of the individual’s duties” provided that the individual is eligible for the disability tax credit or would be if the requirement noted in paragraph 118.3(1)(c) is not taken into account; and
- in terms of subsection 6(16)(a) of the Canadian Income Tax Act, read with section 118.3, “the transportation of the individual between the individual’s ordinary place of residence and the individual’s work location (including parking near that location)” provided that the individual is either blind or eligible for the disability tax credit on account of a mobility impairment or would be if the requirement noted in paragraph 118.3(1)(c) is not taken into account.

(e) Income-splitting provisions

Income splitting is a strategy used to divert income from high-income owners of private corporations to family members with lower personal income tax rates (CRA, 2017b: paragraph

3). Section 120.4 of the Canadian Income Tax Act addresses this strategy, specifically subsection 120.4(2) imposes income tax at the highest marginal rate on split income for specified individuals. In line with definition of "split income" in subsection 120.4(1), BDO (2018: paragraph 4) notes that the following income generally falls within the ambit of split income:

- Dividends and shareholder benefits from a private company;
- Income received from a partnership or trust where the income was derived from a related business, or the rental of property in certain cases;
- Income on certain debt obligations (e.g., interest); and
- Income or gains from the disposition of certain property disposed of after 2017.

In terms of the definition of "split income" in subsection 120.4(1), read with paragraph (a) of the definition of "excluded amount" in subsection 120.4(1) and section 118.3, an individual's income for the taxation year from property inherited from any person does not fall within the ambit of the definition of "split income" and, therefore, is not subject to the provisions of subsection 120.4(2) provided that:

- the individual has not attained the age of 24 years before the year; and
- is eligible for the disability tax credit for the year, although this requirement does not apply if the property was inherited from the individual's parent.

3.3.1.6 Deferral of income tax

Included in the deferral of income tax is the deferral of the payment of income tax on:

- investment income in a registered disability savings plan;
- retirement savings when transferred to dependent children or grandchildren;
- investment income in a registered education savings plan; and
- investment income when transferred from a registered education savings plan to a registered disability savings plan.

(a) Registered disability savings plan

The Disability Advisory Committee (2019: 57) note that:

> The purpose of an RDSP [registered disability savings plan] is to help an individual and their family members and friends save for the long-term financial security of a person who is eligible for the DTC [disability tax credit]. RDSP [Registered disability savings plan] account holders may also qualify for associated grants and bonds to bolster their long-term savings…
>
> Contributions can be made to an RDSP [registered disability savings plan] until the end of the year in which the beneficiary turns 59, but they are not tax deductible. When contributions are withdrawn, they are not included as income to the beneficiary. However, the Canada disability savings grant, the Canada disability savings bond, investment income earned in the plan, and the proceeds from rollovers are included in the beneficiary's income for tax purposes when they are withdrawn from the RDSP [registered disability savings plan].

An individual who meets the following criteria may be designated as a beneficiary of a registered disability savings plan, the individual must:

- be eligible for the disability tax credit, or would be if the requirement noted in paragraph 118.3(1)(c) is not taken into account, in terms of the definition of "DTC-eligible individual" in subsection 146.4(1), read with section 118.3, paragraph 146.4(2)(a), subparagraph 146.4(a)(i), paragraph (c) of the definition of "disability savings plan" and the definition of "registered disability savings plan" in subsection 146.4(1);
- have a Social Insurance Number, in terms of paragraph 146.4(2)(b);
- be a resident in Canada at the time the plan is entered into, with a certain exception, and at the time contributions are made, in terms of paragraph 146.4(2)(c) and subparagraph 146.4(4)(g)(ii) respectively; and
- be under the age of 60 years of age in the tax year when the plan is opened, in terms of subparagraph 146.4(4)(g)(i).

A tax benefit of the registered disability savings plan is that the investment income in the plan is only subject to income tax when it is paid to the beneficiary as part of a disability assistance payment, in terms of subsections 146.4(5)-(6) and paragraph 56(1)(q.1), read with the definition of "disability assistance payment" in subsection 146.4(1) and subsection 146.4(7). In terms of subparagraph 146.4(4)(g)(iii), contributions to the plan or to any other registered disability savings plan of the beneficiary are limited to a lifetime maximum contribution of $200 000.

(b) Retirement savings property

Where an individual receives certain retirement savings property as a consequence of a parent's or grandparent's death and the individual was financially dependent on the deceased for support, at the time of the deceased's death, by reason of mental or physical infirmity, the amount received by the individual may be transferred on a tax-deferred basis to the individual's registered disability savings plan, eligible plan or fund or to an issuer to acquire an eligible annuity, subject to conditions (CRA, 2019b: 5, 6, 28, 31 & 33; CRA, 2020: 11; Beam *et al.*, 2016: 540). A review of the legislation relating to one of these transfers reveals that, where the amount received under these circumstances is from a registered retirement savings plan such amount may be transferred to the individual's registered disability savings plan on a tax-deferred basis based on the following:

- where the amount is paid into the deceased annuitant's estate the deceased annuitant's legal representative and the individual may jointly elect for the amount to be deemed to be received by the individual, in terms of subsection 146(8.1) of the Canadian Income Tax Act, read with paragraph (b) of the definition of "refund of premiums" in subsection 146(1);
- the individual may deduct the amount received from income on transfer of the amount to the individual's registered disability savings plan provided that certain conditions are met, in terms of section 60(m), read with subsections 60.02(1)-(2); and
- the amount transferred into the registered disability savings plan is only subject to income tax when paid to the individual as part of a disability assistance payment, in terms of subsections 146.4(5)-(6) and paragraph 56(1)(q.1), read with the definition of "disability assistance payment" in subsection 146.4(1) and subsection 146.4(7).

(c) Registered education savings plan

A registered education savings plan allows individuals to save for a child's post-secondary education (CRA, 2019c: 6). Within the ambit of registered education savings plans are specified plans which relate to persons with disabilities. In terms of the definition of "specified plan" in subsection 146.1(1) of the Canadian Income Tax Act, read with section 118.3, a specified plan means a single beneficiary registered education savings plan:

- under which the beneficiary is eligible for the disability tax credit, or would be if the requirement noted in paragraph 118.3(1)(c) is not taken into account, "for the beneficiary's taxation year that ends in the 31st year following the year in which the plan was entered into"; and
- "that provides that, at all times after the end of the 35th year following the year in which the plan was entered into, no other individual may be designated as a beneficiary under the plan".

In terms of paragraphs 146.1(2)(h)-(i), the contribution period and the maximum life of a specified plan is longer than any other registered education savings plan. The following are some key features of a registered education savings plan and these apply equally to a specified plan:

- investment income accumulates in a registered education savings plan on tax-free basis and is only subject to income tax when it is paid to the beneficiary as part of an educational assistance payment, in terms of subsections 146.1(5)-(6) and 146.1(7) and paragraph 56(1)(q) read with the definition of "trust", "subscriber", "educational assistance payment" and "refund of payments" in subsection 146.1(1);
- the lifetime contribution limit to a registered educations savings plan in respect of a beneficiary is $50 000 and additional tax is payable by the subscriber on the subscriber's share of excess contributions, in terms of subsection 204.91(1) read with subsection 204.9(1);
- for an individual to be designated as a beneficiary of a registered education savings plan the individual must be a resident in Canada and have a Social Insurance Number, with certain exceptions, in terms of subparagraph 146.1(2)(g.3)(i) read with subsection 146.1(2.3); and

- the Canada Education Savings Grant and the Canada Learning Bond are incentives linked to registered education savings plans that are provided by the Canadian government (CRA, 2019c: 6).

(d) Transfer of investment income from a registered education savings plan

In terms of subsections 146.1(1.1)-(1.2) and paragraph 146.1(7.1)(a) of the Canadian Income Tax Act, read with the definition of "accumulated income payment", "educational assistance payment", "refund of payments" and paragraph (a) and (c)-(e) of the definition of "trust" in subsection 146.1(1), investment income may be transferred from a registered education savings plan to a registered disability savings plan without attracting income tax when paid as part of an accumulated income payment, where both plans have the same beneficiary and certain other conditions are met. In terms of subsections 146.4(5)-(6) and paragraph 56(1)(q.1), read with the definition of "disability assistance payment" in subsection 146.4(1) and subsection 146.4(7), the amount transferred into the registered disability savings plan is only subject to income tax when paid to the beneficiary as part of a disability assistance payment.

3.3.2 Capital Gains Tax Relief Measures

It is the practice of the CRA to not subject amounts received as damages in respect of personal injury to tax (CRA, 1987: section 2). In terms of subparagraph 81(1)(g.1)(ii) of the Canadian Income Tax Act, a taxable capital gain from the disposition of property acquired "as an award of, or pursuant to an action for, damages in respect of physical or mental injury", or from any property substituted for this property, is exempt from income tax provided that the injured person was under the age of 21 during any part of the year.

In terms of subsection 120.4(4), read with subsection 120.4(2) and subparagraph (a)(i) of the definition of "split income" in subsection 120.4(1), a taxable capital gain made by a specified individual who has not attained the age of 17 years before the tax year on the disposition of shares in a private company, on a non-arm's length basis, is deemed not to be a taxable capital gain and rather twice the amount is deemed to be received by the specified individual as a taxable dividend and is subject to tax on split income. In terms of subsection 120.4(4) an excluded amount is not subject to the provisions of subsection 120.4(4) and in terms of paragraph (a) of the definition of "excluded amount" in subsection 120.4(1), read with section

118.3, an excluded amount includes an individual's taxable capital gain for the taxation year from the disposition of property that was inherited from any person provided that:

- the individual has not attained the age of 24 years before the year; and
- is eligible for the disability tax credit for the year, although this requirement does not apply if the property was inherited from the individual's parent.

3.4 CONCLUSION

In relation to Canada, this chapter has provided a brief overview of the types of taxes from which persons with disabilities and their families may claim tax relief, a detailed explanation of the tax relief measures available to such persons, and the eligibility requirements to gain access to these tax relief measures. The tax relief measures identified are summarised in **Table 3.1.** and certain of the tax relief measures are only available where a claim has not been made for certain other tax relief measures. A number of the tax relief measures are linked to or impacted by an individual's eligibility for the disability tax credit, whilst certain other tax relief measures are linked to an individual being dependent, by reason of mental or physical infirmity, on a family member.

Table 3.1: Tax relief measures in Canada for persons with disabilities

Description	**Tax relief measure**
Personal income tax	
Non-refundable tax credits	Disability tax credit: $1 286. Unused portions of the tax credit are under certain circumstances transferable to a person who supports the individual or to a spouse or common-law partner.
	Supplement to the disability tax credit for children with disabilities: Up to $750, reduced by $0.15 for every $1 that was claimed in excess of $2 930 in respect of expenses for the care or supervision of the child in the determination of certain other tax measures.

	Canada caregiver amount: Inclusion of the Canada caregiver amount in the determination of the spouse or common-law partner tax credit or the eligible dependent tax credit resulting in an increase of up to $341 in the tax credit which is reduced by $0.15 for every $1 of the spouse's or common-law partner's or dependant person's income, as the case may be.
	Canada caregiver tax credit (adult): Up to $1 091 for each dependant, reduced by $0.15 for every $1 of the dependant's income in excess of $17 085.
	Additional tax credit: The excess of the amount that would be determined for the Canada caregiver tax credit (adult) in respect of a person over the spouse or common-law partner tax credit or the eligible dependent tax credit, as the case may be, in respect of that person.
	Canada caregiver tax credit (child): $341 for each child.
	Home buyers' tax credit: $750.
	Home accessibility tax credit: 15% of certain renovation expenditure incurred, subject to a limit of $1 500.
	Medical expense tax credit: The sum of: • 15% of the excess of the eligible medical expenses incurred in respect of the individual, the individual's spouse or common-law partner or the individual's child who is under the age of 18 years over the lesser of 3% of the individual's income for the year and $2 397; and • 15% of the excess of the eligible medical expenses incurred in respect of a dependant relative over the lesser of 3% of the dependant's income for the year and $2 397.

Refundable tax credits	Refundable medical expense supplement: The lesser of $1 272 and the total of: • 0.25 divided by 0.15 multiplied by the medical expense tax credit claimed by the individual; and • 25% of the disability support expense deduction claimed by the individual. The amount is reduced by 5% of the amount by which the individual's adjusted income for the tax year exceeds $28 164.
	Canada Workers Benefit disability supplement: The lesser of: • $713; and • 26% of the excess of the individual's working income for a taxation year over $1 150. The tax credit is gradually phased out where the individual's adjusted net income exceeds a certain threshold, which is determined with reference to the individual's personal circumstances.
Benefit	Child disability benefit: $2 832 for each qualified dependant who is eligible for the disability tax credit for the benefit payment period of July 2019 to June 2020. The total benefit is gradually phased out where the individual's adjusted income exceeds $67 426 for the base tax year.
Deductions	Child-care expense deduction: for qualifying child-care expenses incurred in respect of an eligible child, subject to a limit.
	Child-care additional deduction: for an additional amount for child-care expenses where the individual was enrolled in an educational program.
	Disability support expense deduction: for disability support expenditure paid in the year, net of reimbursement or assistance, subject to a limit.
Exemptions	Exemption from income tax or non-taxability of certain: • workplace injury compensation; • personal injury compensation; • income derived from personal injury compensation; • compensation received from certain wage loss replacement plans; • social assistance payments; • disability-related foreign war service pensions; and

	• other compensation provided by the government, for example certain disability-related pensions and compensation in respect of the service of members of the Royal Canadian Mounted Police.
	The following income tax relief is also provided: • the extension of the scholarship exemption and tax-free withdrawals of retirement savings through the Lifelong Learning Plan to eligible part-time students with disabilities; • tax-free withdrawals of retirement savings through the Home Buyers' Plan; • the treatment of employment benefits or reasonable allowances for attendant services and transportation costs as non-taxable; and • the exclusion of income earned from inherited property from the application of the income-splitting provisions.
Deferral of income tax	Deferral of the payment of income tax on: • investment income in a registered disability savings plan; • certain retirement savings property received by an individual as a consequence of the death of a parent or grandparent when transferred to an eligible plan or fund or to an issuer to acquire a qualifying annuity; • investment income in a registered education savings plan and where the plan is a "specified plan" a longer contribution period and maximum life applies when compared to any other registered education savings plan; and • investment income when transferred from a registered education savings plan to a registered disability savings plan where both plans have the same beneficiary.
Capital gains tax	
Various tax relief measures	The following capital gains tax relief measures are provided: • the treatment of damages in respect of personal injury as non-taxable; • capital gains tax exemption of any taxable capital gain arising from the disposition of personal injury award property, or from any property substituted for this property; and • the exclusion of a taxable capital gain from the disposition of inherited property from the application of the income-splitting provisions.

Source: Own design

The tax types for which persons with disabilities and their families may claim tax relief in Ireland is discussed in the chapter that follows, together with the tax measures available to such persons and the eligibility criteria to gain to access to these tax measures.

CHAPTER 4: TAX RELIEF MEASURES IN IRELAND

4.1 INTRODUCTION

The following is explained in this chapter in relation to Ireland:

- the types of taxes from which persons with disabilities and their families may claim tax relief; and
- the tax relief measures available to persons with disabilities and their families, together with the eligibility criteria to gain to access to these tax relief measures.

This discussion will ensure that the first two-sub goals of the research in relation to Ireland are addressed and this will contribute to achieving the main goal of comparing the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland, with a view to identifying potential areas for improvement.

4.2 TYPES OF TAXES

The types of taxes with potential tax relief measures for persons with disabilities and their families are personal income tax, gift tax and capital gains tax.

4.2.1 Personal Income Tax

Income tax is levied, in terms of section 12 of the Taxes Consolidation Act, 39 of 1997 (referred to as the "Taxes Consolidation Act"), in respect of all property, profits or gains detailed in schedules C to F in sections 17 to 20 and in accordance with the provisions applicable to each of those schedules. In terms of the definition of "taxable income" in section 3(1), read with section 458(1)(a), taxable income is the income on which tax is charged and is the amount that remains after deducting certain personal allowances and reliefs from total income (Gaynor, Holly, Kennedy, Murphy & Sheridan, 2019: section 8.8). In terms of the definition of "total income" in section 3(1), total income is the aggregate of income from all sources. Certain income sources are exempt from income tax and the majority of the exemptions that relate to individuals are set out in sections 189 to 205A. In terms of section 15(1)-(3), read with sections 1017, 1031C and 462B and the table to section 15, income up to a certain threshold is subject to income tax at the standard rate of tax and income above that threshold is subject to income tax at the higher rate of tax and this threshold varies depending on the individual's personal circumstances. For the 2020 year of assessment the standard rate of tax is 20 percent and the higher rate of tax is 40 percent, in terms of section 15(1)-(2) read with the table to section 15. In terms of section 458(1)(b), an individual's income tax liability may be reduced by certain tax credits and other reductions.

In terms of section 172B(1) of the Taxes Consolidation Act, read with the definition of "dividend withholding tax" in section 172A(1)(a), a dividend withholding tax is deducted at source from distributions made by an Irish resident company at a rate of 25% for the 2020 year of assessment. In terms of section 257(1), read with paragraph (d) of the definition of "appropriate tax" and the definition of "relevant interest" in section 256(1), a withholding tax, called a deposit interest retention tax (Gaynor *et al.*, 2019: section 19.3.5), is deducted at source from interest paid by certain deposit takers in respect of certain deposits at a rate of 33% for the 2020 year of assessment.

4.2.2 Gift Tax

In terms of sections 4 and 50 of the Capital Acquisitions Tax Consolidation Act, 1 of 2003 (referred to as the "Capital Acquisitions Tax Consolidation Act"), read with paragraphs 1-4 of part 1 of Schedule 2 and part 2 of that Schedule, gift tax is levied on the taxable value of a taxable gift and shall amount to:

- 33% of the excess of the accumulated taxable value of all gifts and inheritances taken by a donee since 5 December 1991, which have the same group threshold as the current gift or inheritance, over a tax-free group threshold amount,

reduced by:

- 33% of the excess of the accumulated taxable value of all previous gifts and inheritances taken by a donee since 5 December 1991, which have the same group threshold as the current gift or inheritance, over a tax-free group threshold amount.

In terms of section 28(1)-(2), the taxable value of a gift is the market value of the gift at the valuation date, after deducting any relevant liabilities attached to the gift and any consideration paid by the donee for the gift. In terms of the definition of "group threshold" in paragraph 1 of part 1 of Schedule 2, the tax-free group threshold amount is determined with reference to the relationship between the donor and donee and ranges between €16 250 and €335 000 for the 2020 tax year. Part 9 of the Capital Acquisitions Tax Consolidation Act contains gift tax exemptions. In terms of section 45(1)(a), liability for payment of gift tax rests with the donee.

4.2.3 Capital Gains Tax

In terms of section 28(1) of the Taxes Consolidation Act, capital gains tax is levied on chargeable gains accruing to an individual on the disposal of assets. In terms of section 28(3) the rate of capital gains tax is 33%, subject to certain exceptions. The principle provisions relating to the taxation of chargeable gains are contained in sections 532 to 613A, which includes certain reliefs and exemptions from capital gains tax.

4.3 TAX RELIEF MEASURES

The taxes outlined briefly in the previous section include a wide range of relief measures for persons with disabilities and their families. This section discusses relevant definitions of the different types of disability and the tax relief measures relating to these disabilities, including tax relief in respect of qualifying health and disability-related expenses and covenants for persons with disabilities. All the tax relief measures discussed relate to the 2020 year of assessment.

4.3.1 Personal Income Tax Relief Measures

An analysis of the Taxes Consolidation Act identified various income tax relief measures for persons with disabilities and their families, including non-refundable tax credits, deductions, income tax exemptions and relief from withholding taxes.

4.3.1.1 <u>Non-refundable tax credits</u>

Included in non-refundable tax credits are personal tax credits, a tax credit for health expenses and a tax credit for medical and dental insurance premiums.

(a) Personal tax credits

Non-refundable personal tax credits that relate to persons with disabilities and their families include the single person child carer credit, widowed parent tax credit, incapacitated child tax credit, dependent relative tax credit, home carer tax credit and blind person's tax credit, in terms of the definition of "personal tax credit" in section 3(1) of the Taxes Consolidation Act and section 458(1A), read with sections 462B, 463, 465, 466, 466A and 468 and part 2 of the table to section 458.

- *Single person child carer credit*

Section 462B(3) of the Taxes Consolidation Act, read with section 462(B)(1)(b)-(2)(a) and section 461(a)-(b), provides for the "single person child carer credit" of €1 650 for single individuals whose spouse or civil partner did not die in the year of assessment and who reside with a qualifying child for the whole or the greater part of the year of assessment. In terms of the definition of "qualifying child" in section 462B(1)(a), read with section 462B(6)(a), a qualifying child includes a child of the individual, or a child that the individual, at the individual's own expense, has custody of and maintains, who is over the age of 18 years at the commencement of the year of assessment and became permanently incapacitated by reason of mental or physical infirmity from self-maintaining before attaining the age of 21 years, or whilst in receipt of full-time instruction at an educational establishment, including undergoing full-time training for any trade or profession under such circumstances where the training is for a minimum of two years. In terms of section 462B(5), the tax credit remains the same irrespective of the number of qualifying children residing with the individual.

- *The widowed parent tax credit*

Section 463(2) of the Taxes Consolidation Act, read with section 463(1), provides for "the widowed person, or surviving civil partner, with dependent child tax credit" for widowed parents, or surviving civil partners, who:

- reside with a qualifying child, as defined in section 462B(1)(a) read with section 462B(6)(a), for the whole or the greater part of the year of assessment;
- have not remarried or entered into a new civil partnership before the commencement of the year of assessment; and
- have not entered into a cohabitating relationship in the year of assessment.

In terms of section 463(2), the tax credit is for five years immediately following the year of assessment in which the individual's spouse or civil partner dies and is:

- €3,600 for the first year;
- €3,150 for the second year;
- €2,700 for the third year;
- €2,250 for the fourth year; and
- €1,800 for the fifth year.

In terms of the definition of "qualifying child" in section 463(1), read with section 462B(5), the tax credit remains the same irrespective of the number of qualifying children residing with the individual.

- *Incapacitated child tax credit*

Section 465(1) of the Taxes Consolidation Act, read with sections 465(2)(a), 465(3)(a) and 465(4)(a), provides for an "incapacitated child tax credit" of €3 300 where there is evidence that the individual has a child or, at the individual's own expense, has custody of and maintains a child who is:

- "under the age of 18 years and is permanently incapacitated by reason of mental or physical infirmity", which means that there must be a reasonable expectation that if the child was over the age of 18 years the child's infirmity would result in the child being unable to self-maintain; or
- over the age of 18 years at the commencement of the year and became permanently incapacitated from self-maintaining by reason of mental or physical infirmity before attaining the age of 21 years, or whilst in receipt of full-time instruction at an educational establishment including undergoing full-time training for any trade or profession under such circumstances where the training is for a minimum of two years.

"Maintain" in this context refers to an ability to earn income from working (Office of the Revenue Commissioners, 2019a: 3). In terms of section 465(1), the tax credit may be claimed in respect of each qualifying child. In terms of section 465(2)(b), read with section 466, the incapacitated child tax credit is in substitution for and not in addition to the dependent relative tax credit in respect of a child. There is no provision in the Taxes Consolidation Act that excludes an individual from claiming both:

- the single person child carer tax credit; or

- the widowed parent tax credit; and

the incapacitated child tax credit.

- *Dependent relative tax credit*

In terms of sections 466(2)(a) and 466(2)(c) of the Taxes Consolidation Act, read with sections 466(2A)(a) and 466(2A)(c), an individual may claim a “dependent relative tax credit” of €70 where the individual, at the individual’s own expense, maintains:

- a relative or a relative of the individual’s spouse or civil partner and such relative is incapacitated by reason of infirmity from self-maintaining; or
- a child, or a child of a civil partner, who resides with the individual and the individual requires the child’s service by reason of infirmity,

provided that such relative’s or child’s income does not exceed a specified amount. In terms of section 466(2), the tax credit may be claimed in respect of each dependant that the individual maintains.

There is a link between eligibility for the dependent relative tax credit and mortgage interest relief provided by section 244 of the Taxes Consolidation Act, however mortgage interest relief is not discussed further in the present research as this tax relief only relates to qualifying mortgage loans taken out between 1 January 2004 and 31 December 2012 (Office of the Revenue Commissioners, 2017a: paragraph 3) and the tax relief is being phased out between the 2017 to 2020 tax years and ceases altogether from the 2021 tax year (Office of the Revenue Commissioners, 2017b: paragraphs 1-3).

The dependent relative tax credit is modest in comparison to the incapacitated child tax credit as the two tax credits are aimed at different personal circumstances (Houses of the Oireachtas: 2020).

- *Home carer tax credit*

In terms of section 466A(2) of the Taxes Consolidation Act, read with the definition of "qualifying claimant" in section 466A(1), paragraph (c) of the definition of "dependent person" in section 466A(1) and sections 466A(3), 1017 and 1031C, a "home carer tax credit" of €1 600 is available to married couples or civil partners who are jointly assessed to income tax where:

- a spouse or civil partner cares for a person who is permanently incapacitated because of mental or physical infirmity; and
- such person resides with the married couple or civil partners, or where the dependant person is a relative of the married couple or civil partners, such relative lives either:
  - next door in an adjacent residence;
  - on the same property; or
  - within two kilometres,

  and there is a direct system of communication between the married couple or civil partners and the relative.

In terms of section 466A(4), the tax credit remains the same irrespective of the number of dependants residing with the married couple or civil partners. In terms of section 466A(6)(a), where the carer spouse or civil partner has income in excess of €7 200 in a year of assessment the tax credit is reduced by one-half of the amount of the excess of the income over €7 200.

- *Blind person's tax credit*

Section 468(2) of the Taxes Consolidation Act provides for a "blind person's tax credit" of €1 650 where there is proof that an individual is a "blind person", as defined in section 468(1), for the whole or any part of the year of assessment. A "blind person" is defined in section 468(1) as meaning:

> a person whose central visual acuity does not exceed 6/60 in the better eye with correcting lenses, or whose central visual acuity exceeds 6/60 in the better eye or in both eyes but is accompanied by a limitation in the fields of vision that is such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) Tax credit for health expenses

In terms of the definition of "health expenses" in section 469(1) of the Taxes Consolidation Act, "health expenses" represent the cost of -

(a) the services of a practitioner,
(b) diagnostic procedures carried out on the advice of a practitioner,
(c) maintenance or treatment necessarily incurred in connection with the services or procedures referred to in paragraph (a) or (b),
(d) drugs or medicines supplied on the prescription of a practitioner,
(e) the supply, maintenance or repair of any medical, surgical, dental or nursing appliance used on the advice of a practitioner,
(f) physiotherapy or similar treatment prescribed by a practitioner,
(g) orthoptic or similar treatment prescribed by a practitioner,
(h) transport by ambulance, or
(i) as respects a person who for the year of assessment—
    (a) is under the age of 18 years, or
    (b) if over the age of 18 years, at the commencement of the year of assessment, is receiving full-time instruction at any university, college, school or other educational establishment,

    either or both—
    (i) educational psychological assessment carried out by an educational psychologist, and
    (ii) speech and language therapy carried out by a speech and language therapist;

In terms of section 469(2)(a), read with the definition of "appropriate percentage" and "specified amount" in section 469(1) and sections 15(1) and 469(3)(c) and the table to section 15, where an individual paid for health expenses incurred in the provision of health care during the year of assessment and these expenses were not recovered by the individual, the individual is entitled to a non-refundable tax credit of 20% of the cost of the health expenses. In terms of section 469(5), an individual may elect to claim relief for health expenses relating to health care provided in the year of assessment but only paid subsequent to the end of the year of assessment. The Office of the Revenue Commissioners (2020b: 25) note that the tax relief available for health expenses extends to certain other expenses incurred in respect of children with permanent disabilities who require regular hospital attendance or supervision, specifically:

- costs incurred in transporting the child and the parents or guardians of the child to and from the hospital;
- travel and accommodation costs incurred by the parents or guardians of the child to visit the child who is staying in hospital where the trip and accommodation are essential to the treatment of the child;
- costs incurred in relation to telephone rental and calls where the child is being treated at home and where the costs incurred are connected directly to the treatment of the child and this relief may be claimed at a flat rate of €315; and
- costs incurred in relation to hygiene products and special clothing for the child subject to a limit of €500.

The Office of the Revenue Commissioners (2020b: 20-21) permits a person who is entitled to the blind person's tax credit and owns and maintains a trained guide dog provided by an organisation accredited by the Irish Guide Dog Association, or an individual who maintains a trained assistance dog provided by an organisation accredited by Assistance Dogs Europe, to claim €825 as a health expense.

(c) Tax credit for medical and dental insurance premiums

In terms of section 470(2) of the Taxes Consolidation Act, read with sections 470(1) and 15(1) and the table to section 15, an individual is entitled to a non-refundable tax credit of 20% of medical insurance or dental insurance premiums paid to an authorised insurer in terms of a contract of medical insurance that provides for the reimbursement or discharge of actual health expenses or a contract of dental insurance that provides for the reimbursement or discharge of dental expenses, other than expenses in respect of routine dental treatment, and the value of the tax credit is subject to an annual limit of the aggregate of €200 in respect of each adult and €100 in respect of each child to whom the relevant contract relates. In terms of section 470(3), read with sections 470(1)-(2) and 15(1) and the table to section 15, the individual may claim the tax relief due in terms of section 470(2) by deducting 20 percent from the premium due to the authorised insurer and the authorised insurer recovers the remaining premium due from the Office of the Revenue Commissioners. Gaynor *et al*. note (2019: section 11.3.3): "The effect of the TRS [tax relief at source] is that an individual who might not otherwise be in a position to claim tax relief on medical insurance premiums (e.g., an individual exempt from tax), can obtain tax relief at source by paying a reduced premium".

4.3.1.2 Deductions

There are three deductions from total income - the nursing home fees deduction, carer expense deduction and a deduction for income under disposition.

(a) Nursing home fees deduction

In terms of section 469(2)(a) of the Taxes Consolidation Act, where an individual contributes towards maintenance and treatment in a nursing home, which provides on-site 24-hour nursing, the individual may deduct from total income the expenditure incurred.

(b) Carer expense deduction

In terms of section 467(2) of the Taxes Consolidation Act, read with section 467(1), an individual who is totally incapacitated by physical or mental infirmity may deduct the cost of employing a carer, subject to a limit of €75 000, from total income. In terms of section 467(2), read with section 467(1), an individual may also claim this relief in relation to employing a carer for a spouse, civil partner, relative or a relative of a spouse or civil partner who is totally incapacitated by reason of physical or mental infirmity. In terms of section 467(4), read with sections 465 and 466, the incapacitated child tax credit and the dependent relative tax credit may not be claimed in respect of the carer where relief is granted in terms of section 467 of the Act.

(c) Deduction for income under disposition

Gaynor *et al.* (2019: section 12.2.1) note that:

> A Deed of Covenant is a legal instrument by which a person binds himself/herself (the covenantor) to make periodic payments of income to another person (the covenantee).
>
> The advantage to be derived from such a deed is that it enables the covenantor to divest part of his/her statutory income by transferring it to the covenantee.

Where a covenantor makes a payment to a covenantee, excluding a payment to a covenantor's minor child, in terms of a deed of covenant that lasts for a period exceeding six years and the covenantee is permanently incapacitated by reason of mental or physical infirmity, the following tax consequences arise:

- the covenantor must withhold tax at the standard rate of twenty percent from the covenant payment, in terms of section 237(1)(b) of the Taxes Consolidation Act, and must account for this to the revenue authorities (Gaynor *et al.*, 2019: section 12.2.1);
- the payment is allowed as a deduction from the covenanter's total income, in terms of section 16(1);
- the payment is included in the covenantee's total income, in terms of section 59 read with sections 237, 792(1)(a)(i), 792(1)(b)(iv)-(v), 792(2)(a)-(b), 794(4) and 795(1) and the definition of "settlement" in section 794(1); and
- the tax deducted at source by the covenantor is allowed as a tax credit against the covenantee's income tax liability, in terms of section 59 read with section 237.

The effective result of these tax consequences is that the income under disposition is subject to income tax in the hands of the covenantee only.

4.3.1.3 Exempt income

Income tax exemptions providing various forms of income support for persons with disabilities were identified in Ireland, including severance benefits, personal injury compensation, social assistance payments and certain other compensation provided by government.

(a) Severance benefits

Payments received in connection with retirement or removal from an office or employment on account of injury to or disability of the holder of an office or employment is exempt from income tax, subject to a life-time exemption limit of €200 000, in terms of sections 201(2)(a)(i)(II) and 201(2)(c) read with section 123.

(b) Personal injury compensation

The following income is exempt from income tax:

- income arising from the investment or reinvestment of payments made to or in respect of an individual who is permanently and totally incapacitated because of mental or physical infirmity from self-maintaining following:

  - the institution of civil action for damages by the individual, or on behalf of the individual; or
  - an order of the Personal Injuries Assessment Board in terms of section 38 of the Personal Injuries Assessment Board Act, 46 of 2003,

  in respect of a personal injury giving rise to the individual's infirmity, provided that the income and chargeable gains derived from these payments exceed 50 percent of the individual's aggregate total income and total chargeable gains for the year of assessment, in terms of section 189(2)(b)(i) read with section 189(1) and the definition of "relevant income" in section 189(2)(a);
- payments under a periodic payment order "to compensate injured victims in cases of catastrophic injury where long term permanent care is required", as stated by the Office of the Revenue Commissioners (2019b: 2), in terms of section 189B(2) read with section 189B(1); and
- payments made by the Minister for Health and Children or by the foundation known as Conterganstiftung für behinderte Menschen (Thalidomide Foundation for Disabled Persons) to or in respect of an individual who has a disability because the individual's mother took preparations containing thalidomide during pregnancy, together with any income arising from the investment or reinvestment of these payments, in terms of section 192(2) read with section 192(1).

In terms of sections 172C(1) and 172C(2)(da)(i) of the Taxes Consolidation Act, read with section 172B(1), dividend withholding tax should not be deducted at source where a distribution is exempt from income tax in terms of sections 189(2) or 192(2). In terms of sections 739G(2)(j) and 730GA, relief from certain other withholding taxes is also available where income is exempt from income tax in terms of sections 189(2) or 192(2).

The Office of the Revenue Commissioners (2019c: 3) explains the meaning of "permanent and total incapacity" as follows:

> In cases where an individual is not capable of earning a living from any kind of work, Revenue will regard such cases as satisfying the "totally incapacitated" requirement. The incapacity must also be permanent so that there must be no prospect of the individual recovering or of the condition improving to the extent that the individual would be able to maintain him or herself.

(c) Social assistance and similar payments

The following income is exempt from income tax:

- certain welfare payments including the disability allowance and the disablement gratuity, in terms of section 126(6A) of the Taxes Consolidation Act, read with the table to that section;
- state support provided by way of payments by the Health Service Executive in accordance with the Nursing Home Support Scheme to a nursing home for the long-term residential care of an individual, in terms of section 192C(1) of the Taxes Consolidation Act read with section 192C(3), the definition of "care services", "State support", "Executive" and "Scheme" in section 3(1) of the Nursing Home Support Scheme Act, 15 of 2009 (referred to as the "Nursing Home Support Scheme Act") and section 12(1)-(2) of the Nursing Home Support Scheme Act;
- certain fuel grants made in connection with the transportation of persons with severe and permanent disabilities, in terms of section 192D of the Taxes Consolidation Act read with section 81 of the Finance Act, 52 of 2015; and
- child benefits made in accordance with part 4 of the Social Welfare Consolidation Act, 26 of 2005 (referred to as "Social Welfare Consolidation Act"), which includes benefits in relation to a child who is under the age of 19 years and is incapable of self-support by reason of mental or physical infirmity and is likely to remain so incapable for a prolonged period, in terms of section 194 of the Taxes Consolidation Act read with sections 219(1)(a), 219(1)(b)(ii) and 221(1) of the Social Welfare Consolidation Act.

(d) Other compensation provided by the government

Wound and disability pensions and gratuities in respect of wounds and disabilities granted in terms of the Army Pensions Acts, 26 of 1923 to the Army Pensions Acts, 21 of 1980, are exempt from income tax, in terms of section 204(2) of the Taxes Consolidation Act, read with section 204(1)(a) – (b).

4.3.1.4 Relief from withholding tax

In terms of section 267(3) of the Taxes Consolidation Act, read with section 267(1)(b), a refund of deposit interest retention tax may be claimed by an individual where the individual or the individual's spouse or civil partner is permanently incapacitated by reason of mental or physical infirmity from self-maintaining, to the extent that the deposit interest retention tax exceeds the individual's overall income tax liability (Gaynor *et al.*, 2019: section 19.3.5).

4.3.1.5 Higher threshold at which income is subject to income tax at the higher rate of tax

In terms of section 15(2)(a)-(b) of the Taxes Consolidation Act, read with part 1 and 2 of the table to section 15 and sections 1017, 1031C and 462B, the threshold at which income is subject to income tax at the higher rate of tax is €39 300 for single persons who qualify for the single person child carer tax credit as compared to a threshold of €35 300 for single persons who do not qualify for such tax credit. Refer to section 4.3.1.1 in the present research study for details regarding the single person child carer tax credit. This tax credit relates to persons with disabilities.

4.3.1.6 Higher income exemption limit

In terms of section 188(4) of the Taxes Consolidation Act, read with section 188(3), an individual is entitled to an exemption from income tax in a year of assessment that the individual is aged 65 years or older and has total income that does not exceed a specified amount. In terms of section 188(5), read with section 188(3), where an individual who is aged 65 years or older has total income for a year of assessment which does not exceed twice a specified amount, the individual may claim marginal relief from income tax and this marginal relief limits the income tax payable to 40% of the excess of the individual's total income over the specified amount (Gaynor *et al.*, 2019: section 11.7.2). In terms of section 188(2), read with sections 461(a), 1017 and 1031C, the specified amount is €36 000 for married couples or civil partners who are jointly assessed to income tax and €18 000 in any other case. In terms of section 188(2A), where the individual is living with a qualifying child, as defined in section 462B(1)(a) read with section 462B(6)(a), at any time during the year of assessment the specified amount is increased for that year of assessment by:

- €575 in respect of the first qualifying child;
- €575 in respect of the second qualifying child; and
- €830 in respect of each qualifying child in excess of two.

This increase in the specified amount is beneficial from a tax perspective. The definition of "qualifying child" is provided in section 4.3.1.1 in the present research study. This definition relates to persons with disabilities.

4.3.2 Gift Tax Relief Measures

A review of the Capital Acquisitions Tax Consolidation Act identified tax relief measures for persons with disabilities and their families in the form of the exemption of the following gifts from gift tax:

- the receipt by a donee of a sum for damages or compensation for any wrong or injury suffered by that donee in the donee's "person, property, reputation or means of livelihood", in terms of section 82(1)(a) of the Capital Acquisitions Tax Consolidation Act;
- the receipt by a donee of a gift taken exclusively for the purposes of discharging expenses relating to the medical care of an individual who is permanently incapacitated by reason of physical or mental infirmity, in terms of section 84(2) read with section 84(1);
- the receipt by a donee who is permanently and totally incapacitated by reason of physical or mental infirmity from self-maintaining, of a dwelling house from a relative, provided that:
  - the dwelling house was continuously occupied by the donee as the donee's only or main residence for a specified time period immediately preceding the date of the gift, with certain exceptions;
  - the donee does not have a beneficial interest in or entitlement to another dwelling house at:
    - the date of the gift of the first-mentioned dwelling house; and

    * the valuation date of the gift of the first-mentioned dwelling house where both dwelling houses are from the same donor;
  - the house is occupied as a main residence and is not disposed of by the donee for a specified period from the date of the gift, with certain exceptions,

  in terms of sections 86(4) and 86(9)(b), read with sections 86(2), 86(3), 86(4A), 86(6), 86(7) and 86(9)(c), the definition of "relevant period" in section 86(1) and paragraph (i) of the definition of "dependent relative" in section 86(9)(a);
- the receipt by a donee who is permanently incapacitated by reason of physical or mental infirmity from self-maintaining of money or money's worth for:
  - support, maintenance or education from a parent or a parent's civil partner during the parent's or civil partner's lifetime, provided that such support, maintenance or education would form part of the normal expenditure of an individual in the donor's circumstances and is reasonable having regard to donor's financial circumstances, in terms of section 82(2)(a)(ii);
  - support, maintenance or education from a deceased parent where the other parent is also dead, or from a parent's civil partner where the parent and civil partner are both dead, provided that such support, maintenance or education would form part of the normal expenditure of an individual in the deceased donor's circumstances immediately preceding death and is reasonable having regard to the deceased donor's financial circumstances immediately preceding death, in terms of section 82(4)(b); and
- the receipt by a donee who is incapacitated by infirmity from self-maintaining of money or money's worth for support or maintenance from a relative provided that the income of the donee is below a specified amount and such support or maintenance would form part of the normal expenditure of an individual in the donor's circumstances and is reasonable having regard to the donor's financial circumstances, in terms of section 82(2)(b) read with section 466(2).

4.3.3 Capital Gains Tax Relief Measures

A review of the Taxes Consolidation Act identified capital gains tax relief measures for persons with disabilities and their families in the form of the following chargeable gains being exempt from capital gains tax:

- compensation or damages received for any wrong or injury suffered by an individual in that individual's person or profession, in terms of section 613(1)(c) of the Taxes Consolidation Act;
- chargeable gains arising from the disposal of assets acquired with the certain payments or with funds derived from the investment or reinvestment of these payments, specifically:
  - payments made to or in respect of an individual who is permanently and totally incapacitated because of mental or physical infirmity from self-maintaining following:
    - the institution of civil action for damages by the individual, or on behalf of the individual; or
    - an order of the Personal Injuries Assessment Board,

    in respect of a personal injury giving rise to the individual's infirmity, provided that the income and chargeable gains derived from these payments exceed 50 percent of the individual's aggregate total income and total chargeable gains for the year of assessment, in terms of section 189(2)(b)(ii) read with sections 189(1)-189(2)(a);
  - payments made by the Minister for Health and Children or by the foundation known as Conterganstiftung für behinderte Menschen (Thalidomide Foundation for Disabled Persons) to or in respect of an individual who has a disability because the individual's mother took preparations containing thalidomide during pregnancy, in terms of section 192(3) read with section 192(1); and
- the proportion of a chargeable gain made by an individual on the disposal of a dwelling house that is applicable to a period of time that a relative of the individual, or a relative of the individual's spouse or civil partner, occupied the dwelling house as a sole residence for no consideration where such relative was incapacitated by infirmity from self-maintaining, subject to certain restrictions, in terms of section 604(11)(b) read with sections 604(3), 604(11)(a), 604(11)(c) and 604(12).

4.4 CONCLUSION

In order to identify and understand tax relief measures for persons with disabilities and their families in Ireland, a brief overview of the types of taxes from which persons with disabilities and their families may claim tax relief has been provided in this chapter. The tax relief measures identified within these tax types have been explained in detail together with the eligibility requirements to gain access to these tax relief measures. **Table 4.1** provides a summary of the tax relief measures identified and certain of these tax relief measures are contingent upon claims not having been made for certain other tax relief measures. Certain of the tax relief measures are linked to an individual being incapacitated by reason of mental or physical infirmity from self-maintaining, with the threshold of incapacity varying across the tax relief measures.

Table 4.1: Tax relief measures in Ireland for persons with disabilities

Description	**Tax relief measure**
Personal income tax	
Non-refundable tax credits	Single person child carer credit: €1 650.
	The widowed parent tax credit: • €3,600 for the first year; • €3,150 for the second year; • €2,700 for the third year; • €2,250 for the fourth year; and • €1,800 for the fifth year, following the year of assessment in which the individual's spouse or civil partner died.
	Incapacitated child tax credit: €3 300 in respect of each qualifying child.
	Dependent relative tax credit: €70 in respect of each dependant.
	Home carer tax credit: €1 600.
	Blind person's tax credit: €1 650.
	Tax credit for health expenses: 20% of the cost of health expenses. Health expenses for health care services provided in the current year can be claimed in the determination of the tax credit even if the expense was only paid in the subsequent tax year.
	Tax relief for medical or dental insurance premiums: Tax relief at source equal to 20% of the medical or dental insurance premiums, subject to an annual limit of the aggregate of €200 in respect of each adult and €100 in respect of each child to whom the relevant insurance contract relates.
Deductions	Nursing home fees deduction: for expenditure incurred on maintenance and treatment in a nursing home that provides on-site 24-hour nursing.

Description	Tax relief measure
	Carer expense deduction: for expenditure incurred on employing a carer, limited to €75 000.
	Deduction for income under disposition: deduction for payments made in terms of a deed of covenant.
Exemptions	Income tax exemption of certain: • payments received in connection with retirement or removal from an office or employment on account of injury to or disability of the holder of an office or employment; • income derived from the investment or reinvestment of certain personal injury compensation; • payments under a period payment order in respect of catastrophic injuries; • payments to individuals affected by thalidomide; • welfare and similar payments; and • army wound and disability pensions and gratuities in respect of army wounds and disabilities.
Miscellaneous tax relief measures	• Refund of deposit interest retention tax to the extent that it exceeds the individual's overall income tax liability. • A higher threshold at which income is subject to income tax at the higher rate for single individuals who qualify for the single person child carer tax credit, when compared to other single individuals. • A higher income exemption limit for individuals who live with a "qualifying child" when compared to other individuals who do not reside with a qualifying child.
Gift tax	
Exemptions	Gift tax exemption of: • damages or compensation for any wrong or injury suffered by a donee in the donee's person, property, reputation or means of livelihood; • gifts taken exclusively for the purposes of discharging expenses relating to the medical care of an individual who is permanently incapacitated by reason of physical or mental infirmity; • a dwelling house from a relative;

Description	Tax relief measure
	• money or money's worth for reasonable support, maintenance or education from a parent or a parent's civil partner during the parent's or civil partner's lifetime; • money or money's worth for reasonable support, maintenance or education from a deceased parent where the other parent is also dead, or from a parent's civil partner where the parent and civil partner are both dead; and • money or money's worth for reasonable support or maintenance from a relative.
Capital gains tax	
Exemptions	Capital gains tax exemption of: • compensation or damages received for any wrong or injury suffered by an individual in that individual's person or profession; • chargeable gains arising from the disposal of assets acquired with certain personal injury payments or with funds derived from the investment or reinvestment of these payments; • chargeable gains arising from the disposal of assets acquired with certain payments made to individuals affected by thalidomide or with funds derived from the investment or reinvestment of these payments; and • the proportion of a chargeable gain made by an individual on the disposal of a dwelling house that is applicable to a period of time that a relative of the individual occupied the dwelling house as a sole residence for no consideration where such relative is incapacitated by infirmity from self-maintaining.

Source: Own design

The following chapter will compare the tax relief measures for persons with disabilities and their families in South Africa to those of Canada and Ireland, with a view to identifying potential areas for improvement in South Africa.

CHAPTER 5: COMPARISON OF TAX RELIEF MEASURES

5.1 INTRODUCTION

Chapters 2 – 4 briefly discussed the taxes from which persons with disabilities and their families may claim tax relief in South Africa, Canada and Ireland, together with the tax relief measures available to such persons and the eligibility criteria to gain to access to these tax relief measures. This chapter compares the tax relief measures in South Africa with those of Canada and Ireland and identifies potential tax relief measures available in Canada and Ireland that could be implemented in South Africa. This will achieve the main goal of comparing the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland, with a view to identifying potential areas for improvement.

5.2 COMPARATIVE STUDY

All the jurisdictions discussed in this thesis provide income tax relief for persons with disabilities and their families through income tax exemptions and through non-refundable tax credits that recognise the cost of medical care, however the South African income tax measures for persons with disabilities and their families are restricted to this, whereas the Canadian and Irish income tax measures also include a wide range of other income tax relief measures. In the case of Canada the benefits include refundable tax credits, the tax-free payment of benefits deemed to be overpayments of tax and therefore refunded through the tax system, deductions, and other miscellaneous benefits. In Ireland, a number of deductions from taxable income are provided, together with miscellaneous benefits.

Notable other income tax measures in Canada include:

- the disability tax credit which provides tax relief to individuals who meet certain disability-related eligibility criteria and recognises the indirect costs associated with a disability;
- the supplement to the disability tax credit for children who are under the age of 18 years and eligible for the disability tax credit;
- the Canada caregiver tax credit (adult), which provides tax relief to individuals who support an adult relative who is dependent on the individual by reason of mental or physical infirmity;

- the refundable medical expense supplement which is a refundable tax credit that provides tax relief to individuals with low incomes and high medical expenses in a tax year;
- the child disability benefit, which is a benefit delivered through the tax system, that provides assistance to individuals who care for a child who is eligible for the disability tax credit and is under the age of 18 years;
- the disability support expense deduction which recognises the cost of certain disability support expenses incurred by a person to engage in work or certain other activities; and
- the registered disability savings plan which is a tax vehicle that encourages individuals to "save for the long-term financial security of a person who is eligible for the DTC [disability tax credit]", as noted by the Disability Advisory Committee (2019: 57).

Notable other income tax relief measures in Ireland include:

- the incapacitated child tax credit, which provides tax relief to individuals who have a child who is permanently incapacitated by reason of mental or physical infirmity and became so before attaining the age of 21 years, or whilst in receipt of full-time instruction at an educational establishment;
- the home carer tax credit, which provides relief to married couples or civil partners, who are jointly assessed for tax, where a spouse or civil partner cares for a person at home who is permanently incapacitated by reason of mental or physical infirmity; and
- the blind person's tax credit, which provides tax relief to individuals who have a visual impairment that meets a certain criterion.

As noted, all the jurisdictions discussed in this thesis provide income tax relief for persons with disabilities and their families through:

- Income tax exemptions, however, the number of income tax exemptions in South Africa and Ireland are limited when compared to Canada.
- Non-refundable tax credits that recognise the cost of medical care. South Africa and Ireland recognise the cost of medical scheme or medical insurance fees through the medical scheme fees tax credit and the tax credit for medical and dental insurance premiums, respectively. A key difference in the tax relief provided by the two jurisdictions is that the Irish tax relief may be claimed at source, which means that the relief is extended to individuals whose tax

liability is such that the individual would not otherwise be able to claim the tax credit in part or in whole. South Africa, Canada and Ireland recognise the cost of certain medical expenses through the additional medical expense tax credit, the medical expense tax credit and the tax credit for health expenses, respectively. The South African additional medical expense tax credit for persons with disabilities is generous when compared to the corresponding tax credits available in Canada and Ireland. As non-refundable tax credits, the medical scheme fees tax credit (section 6A) and the additional medical expenses tax credit (section 6B) in the South African Income Tax Act confer no benefit on taxpayers with no taxable income or an assessed loss, or a limited benefit where the tax rebates (credits) exceed the tax liability.

South Africa only provides donations tax relief through a donations tax exemption of reasonable contributions made towards the maintenance of an individual. Ireland provides similar gift tax relief through the gift tax exemption of:

- money or money's worth for reasonable support and maintenance by certain relatives, where the donee is permanently incapacitated, by reason of physical or mental infirmity, from self-maintaining; and
- gifts exclusively for the purpose of discharging expenses relating to the medical care of a person who is permanently incapacitated because of physical or mental infirmity.

Furthermore, Ireland also provides a generous gift tax exemption of a receipt of a dwelling house from a relative, where the donee is permanently and totally incapacitated by reason of physical or mental infirmity from self-maintaining.

The only capital gains tax relief measure in South Africa is a capital gains tax exemption of compensation for personal injury and illness. Canada and Ireland also provide capital gains tax relief in respect of compensation for personal injury, but under certain circumstances these jurisdictions also provide a capital gains tax exemption of capital gains made from the disposal of assets acquired with personal injury compensation or with funds derived from the investment or re-investment of such compensation. Furthermore, Ireland also provides a generous capital gains tax exemption in respect of the proportion of a chargeable gain made by an individual on the disposal of a dwelling house that is applicable to a period of time that a relative of the individual, or a relative of the individual's spouse or civil partner, occupied the dwelling house as a sole residence for no consideration where such relative was incapacitated by infirmity from self-maintaining.

It is clear that South Africa provides limited personal income tax, donations tax and capital gains tax relief measures for persons with disabilities and their families when compared to Canada and Ireland and there are areas for improvement.

5.3 RECOMMENDATIONS

Based on the comparative study it was identified that there are areas for improvement in respect of tax relief for persons with disabilities and their families in South Africa. Potential tax relief measures available in Canada and Ireland that could be implemented in South Africa are discussed below, including personal income tax, donations tax and capital gains tax relief measures. Reference to a person with a "disability" in the recommendations refers to a person who has a "disability" as defined in section 6B(1) of the South African Income Tax Act.

5.3.1 Personal Income Tax Relief Recommendations

Included in the recommendations for personal income tax relief measures for persons with disabilities and their families are non-refundable tax credits, refundable tax credits, benefits delivered through the income tax system, deductions, income tax exemptions and the deferral of the payment of income tax.

5.3.1.1 Non-refundable tax credits

The South African National Treasury could consider introducing the following non-refundable tax credits for persons with disabilities and their families:

- a non-refundable personal tax credit for a person who has a "disability" and any unused portion of the tax credit should be transferable to a spouse or common-law partner or an individual who supports the person with a disability;
- a supplement to the non-refundable tax credit for a person who has a "disability" where the individual is under the age of 18 years and any unused portion of the tax credit should be transferable to an individual who supports the person with a disability;
- a non-refundable personal tax credit for an individual who has a child who:

  - is under the age of 18 years; and
  - has a “disability” where there is a reasonable expectation that if the child was an adult the child’s disability would result in the child being unable to self-maintain;
- a non-refundable personal tax credit for an individual who supports a person who is incapacitated, by reason of a “disability”, from self-maintaining, excluding the individual’s child who is under the age of 18 years, and the value of the tax credit should be supplemented where the individual who is providing the support is single or is 65 years of age or older; and
- a non-refundable tax credit for an individual who acquires a more accessible or suitable home for themself, where such individual has a “disability”, or for a relative who has a “disability”.

The South African National Treasury may also consider amending the two existing medically-linked non-refundable tax credits as follows:

- allow the tax relief provided through the medical schemes fees tax credit to be claimed at source, meaning that individuals will pay a reduced contribution to the medical aid and the medical aid will recover the difference from SARS; this would extend the tax relief granted through the medical schemes fees tax credit to individuals whose tax liability is such that the individual would not otherwise be able to claim the tax credit in part or in whole;
- provide for the refund of the additional medical expenses tax credit (section 6B) to the extent that the credit exceeds the tax liability; and
- the inclusion of qualifying medical expenses for health care services provided in the current tax year in the determination of the additional medical expense tax credit where the expense was only paid in the subsequent tax year.

5.3.1.2 Refundable tax credits and benefits

The South African National Treasury may consider introducing:

- a refundable tax credit to assist individuals who have a low income and high medical expenses in a tax year;
- a refundable tax credit to supplement the earnings of low-income workers who have a “disability”; and
- a benefit delivered through the income tax system to assist individuals who have a low income with the cost of raising a child who has a “disability”.

5.3.1.3 Deductions

The South African National Treasury could consider introducing the following deductions for persons with disabilities and their families:

- a deduction for:
  - an individual who incurred child-care expenses in respect of a child, irrespective of the child's age, who has a "disability" and is dependent on the individual; or
  - an individual with a "disability" who incurred disability support expenses,

  where such expenditure was incurred to enable the individual to engage in work or pursue education and does not fall within the ambit of a qualifying medical expense for the purpose of the additional medical expense tax credit; and
- a deduction for an individual who disposed of income to an individual, other than the disposer's minor child, who is permanently incapacitated by reason of a "disability" from self-maintaining, to achieve the overall tax result of allowing the income under disposition to be subject to income tax in the hands of the disponee only.

5.3.1.4 Exempt income

The South African National Treasury may consider introducing the following income tax exemptions for persons with disabilities and their families:

- an income tax exemption, subject to a certain lifetime limit, of any severance benefit received by or accrued to an individual in connection with loss of employment on account of incapacity through infirmity of mind or body, irrespective of whether the individual has previously accrued or received retirement fund lump-sum withdrawal benefits on or after 1 March 2009, severance benefits on or after 1 March 2011 and retirement lump sum benefits on or after 1 October 2007;
- an income tax exemption for any income arising from the investment or reinvestment of compensation for personal injury or illness paid to an individual who is permanently and totally incapacitated, by reason of a "disability", from self-maintaining, where the disability arose from the personal injury or illness and the income and capital gains derived from the compensation are the individual's main source of income, together with dividend withholding tax relief where such income takes the form of a taxable dividend;
- an income tax exemption for disability-related compensation in respect of the service of a member of the South African Police Service or the service of a veteran or member of the South African National Defence Force; and

- legislation should be introduced to allow an individual to withdraw funds up to a certain limit from the individual's retirement fund on a tax-free basis to:
  - finance the construction or acquisition of a home that is more accessible or suitable for the individual where the individual has a "disability" or for a relative who has a "disability";
  - assist a relative who has a "disability" to finance the construction or acquisition of a more accessible or suitable home;
  - finance the education of the individual where the individual has a "disability"; or
  - to finance the education of a spouse or common-law partner who has a "disability",

  subject to repayment terms being met in order for the withdrawn funds to remain non-taxable.

5.3.1.5 <u>Deferral of income tax</u>

The South African National Treasury may consider introducing legislation to allow for:

- a disability savings plan within which investment income may accrue on a tax-deferred basis to encourage individuals to save for the long-term financial security or post-secondary education of a person with a "disability"; and
- the transfer of retirement fund lump sums on a tax-deferred basis from a deceased member's or annuitant's retirement fund to the retirement fund of a child or grandchild who was dependent on the deceased for support, at the time of the deceased's death, by reason of a "disability".

5.3.2 Donations Tax Relief Recommendations

The South African National Treasury could consider introducing a donations tax exemption for the donation of a house to a relative who is permanently and totally incapacitated by reason of a "disability" from self-maintaining, where the relative resided, and continues to reside, in the house as a main residence for a specified time period and does not have a beneficial interest in or entitlement to another house at the date of the donation.

5.3.3 Capital Gains Tax Relief Recommendations

The South African National Treasury may consider introducing the following capital gains tax relief measures for persons with disabilities and their families: the disregard for capital gains tax purposes of:

- any capital gain arising from the disposal of an asset acquired with personal injury or illness compensation, or with funds derived from personal injury or illness compensation, made to an individual who is permanently and totally incapacitated, by reason of a "disability", from self-maintaining, where the disability arose from the personal injury or illness and the income and capital gains derived from the compensation are the individual's main source of income; and
- the first R2 million of a capital gain made on the disposal of a house that was occupied by a relative, who was incapacitated by reason of a "disability" from self-maintaining, as a sole residence for no consideration, as this would mirror the tax relief provided by paragraph 45(1)(a) of the Eighth Schedule to the South African Income Tax Act in respect of a capital gain made on the disposal of an individual's primary residence.

5.4 CONCLUSION

This chapter has provided a comparison of the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland. It was found that South Africa provides limited income tax, donations tax and capital gains tax relief measures for persons with disabilities and their families when compared to Canada and Ireland. Based on the comparative study, potential tax relief measures were recommended for implementation in South Africa.

The chapter that follows concludes the discussion and provides a brief summary of the findings.

CHAPTER 6: CONCLUSION

6.1 INTRODUCTION

The main goal of the research was to compare the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland, with a view to identifying potential areas for improvement. To achieve the main goal of the research, the following sub-goals were addressed:

1. provide a brief overview of the types of taxes in South Africa, Canada and Ireland from which persons with disabilities and their families may claim relief;
2. explain the tax relief measures in South Africa, Canada and Ireland for persons with disabilities and their families, together with the eligibility criteria to gain access to these tax relief measures;
3. compare the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland; and
4. identify potential tax relief measures available in Canada and Ireland that could be implemented in South Africa.

This chapter provides a summary of the findings in relation to the research goals.

6.2 FINDINGS

Chapter 2 addressed the first two sub-goals of the research in relation to South Africa. Persons with disabilities and their families in South Africa may claim tax relief from income tax, donations tax and capital gains tax. South Africa provides income tax relief by recognising the cost of medical care through the medical scheme fees tax credit and the additional medical expense tax credit and through the exemption of certain income support and scholarships for persons with disabilities. Donations tax relief is provided in South Africa through a donations tax exemption of reasonable contributions made towards the maintenance of an individual. South Africa provides capital gains tax relief through a capital gains tax exemption of capital gains arising where an individual receives personal injury or illness compensation. Certain income tax relief measures are linked to an individual having a “disability” as defined in section 6B(1) of the South African Income Tax Act.

Chapter 3 addressed the first two sub-goals of the research in relation to Canada. Persons with disabilities and their families in Canada may claim tax relief from income tax and capital gains tax. There is no gift or donations tax in Canada. A wide range of income tax relief measures were identified in Canada, with the most notable income tax relief measure being the non-refundable disability tax credit which recognises the indirect costs associated with disability. Other income tax relief measures in Canada include:

- non-refundable personal tax credits for individuals who support a relative who is dependent on the individual by reason of mental or physical infirmity;
- a non-refundable medical expense tax credit which recognises the cost of medical expenses;
- the refundable medical expense supplement which is targeted at assisting lower-income individuals with high medical expenses in a tax year;
- the child disability benefit which assists lower-income individuals who care for a child who is eligible for the disability tax credit;
- a disability support deduction which recognises the cost of disability support expenses incurred by an individual to engage in work and certain other activities;
- the exemption of certain income support for persons with disabilities, such as disability-related compensation in respect of the service of members of the Royal Canadian Mounted Police; and
- the registered disability savings plan which is a tax vehicle for individuals to "save for the long-term financial security of a person who is eligible for the DTC [disability tax credit]" as noted by the Disability Advisory Committee (2019: 57).

A small number of capital gains tax relief measures were identified in Canada with the most notable measures being:

- the treatment of personal injury compensation as non-taxable; and
- the exemption from capital gains tax of any taxable capital gain arising from the disposition of personal injury award property or from any property substituted for this property, under certain circumstances.

Eligibility for the disability tax credit enables access to certain other tax relief measures, whilst other tax relief measures are linked to an individual being dependent, by reason of mental or physical infirmity, on a relative.

Chapter 4 addressed the first two sub-goals of the research in relation to Ireland. Persons with disabilities and their families in Ireland may claim tax relief from income tax, gift tax and capital gains tax. Ireland provides various income tax relief measures for persons with disabilities and their families, including:

- a non-refundable blind person's tax credit for individuals who have a visual impairment that meets a certain criterion;
- a non-refundable tax credit for health expenses which recognises the cost of health expenses;
- a deduction for employing a carer; and
- the exemption of certain income support for persons with disabilities, such as certain disability-related welfare payments.

Ireland provides gift tax relief for persons with disabilities and their families through various gift tax exemptions, with the most notable of these being the gift tax exemption of the receipt of a dwelling house from a relative by a donee who is permanently and totally incapacitated by reason of physical or mental infirmity from self-maintaining, provided certain conditions are met. Ireland provides a small number of capital gains tax exemptions, including the capital gains tax exemption of the proportion of a chargeable gain made on the disposal of a dwelling house that is applicable to a period of time that a relative, who was incapacitated by reason of infirmity from self-maintaining, occupied the house as a sole residence for no consideration. Certain of the Irish tax relief measures are linked to an individual being incapacitated, by reason of mental or physical infirmity, from self-maintaining with the incapacity threshold varying across the tax relief measures.

In addressing the last two sub-goals of the research, chapter 5 provided a comparison of the tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland. Based on the comparison, recommendations were made for potential tax relief measures that could be implemented in South Africa.

The comparative study found that South Africa provides limited income tax, donations tax and capital gains tax relief measures for persons with disabilities and their families when compared with Canada and Ireland and areas for improvement were identified. Potential tax relief measures recommended for implementation in South Africa include, amongst others:

- a non-refundable personal tax credit for a person who has a "disability", as defined in section 6B(1) of the South African Income Tax Act;
- a non-refundable personal tax credit for an individual who has a child who:
  - is under the age of 18 years; and
  - has a "disability" where there is a reasonable expectation that if the child was an adult the child's disability would result in the child being unable to self-maintain;
- a non-refundable personal tax credit for an individual who supports a person who is incapacitated, by reason of a "disability", from self-maintaining, excluding the individual's child who is under the age of 18 years;
- a refundable tax credit to assist individuals who have a low income and high medical expenses in a tax year;
- a refundable tax credit to supplement the earnings of low-income workers who have a "disability";
- a benefit delivered through the tax system to assist individuals who have a low income with the cost of raising a child who has a "disability";
- a deduction for an individual with a "disability" who incurred disability support expenses to enable the individual to engage in work or pursue education;
- a disability savings plan within which investment income may accrue on a tax-deferred basis to encourage individuals to save for the long-term financial security or post-secondary education of a person with a "disability";
- a donations tax exemption for the donation of a house to a relative who is permanently and totally incapacitated by reason of a "disability" from self-maintaining, under certain circumstances; and
- the disregard for capital gains tax purposes of the first R2 million of a capital gain made on the disposal of a house that was occupied by a relative, who was incapacitated by reason of a "disability" from self-maintaining, as a sole residence for no consideration.

6.3 CONCLUSION

Persons with disabilities have a right to an adequate standard of living in terms of article 28 of the Convention on the Rights of Persons with Disabilities and Optional Protocol (United Nations: 2006). The South African government has an obligation to promote and protect this right, as South Africa ratified the Convention on the Rights of Persons with Disabilities and Optional Protocol in 2007 (United Nations Office of Legal Affairs: n.d.). The South African White Paper on the Rights of Persons with Disabilities identifies the reduction of the economic vulnerability of persons with disabilities as a strategic pillar to promote the realisation of the right of persons with disabilities to an adequate standard of living (Department of Social Development, 2016b: 61 & 103-105). The economic vulnerability of persons with disabilities can be reduced through the reduction of the cost of disability (Department of Social Development, 2016b: 105) and tax relief measures for persons with disabilities is a government intervention that may assist with this reduction (Philipps, 2001: 94). Furthermore, tax relief for persons with disabilities aligns with the principle of horizontal equity (Technical Advisory Committee on Tax Measures for Persons with Disabilities, 2004: 19 & 143).

In light of the importance of tax relief measures for persons with disabilities, the main goal of the research was to compare tax relief measures for persons with disabilities and their families in South Africa with those of Canada and Ireland, with a view to identifying potential areas for improvement.

It was found that income tax, donations tax and capital gains tax relief measures for persons with disabilities and their families in South Africa are limited when compared with those of Canada and Ireland. A wide range of tax relief measures for persons with disabilities and their families were recommended for implementation in South Africa based on those available in Canada and Ireland.

It is important to note that the tax relief measures in Canada co-exist with public health insurance and, therefore, tax relief measures for persons with disabilities in South Africa remains relevant despite the expected introduction of public health insurance in South Africa and the impact that this may have on the two medically-linked tax credits.

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