

31 May 2021

**To: The South African Revenue Service**

Lehae La SARS  
299 Bronkhorst Street  
PRETORIA  
0181

**Via email:** SARS – [SARSDisabilityTeam@sars.gov.za](mailto:SARSDisabilityTeam@sars.gov.za)

**RE: SAIT COMMENTS ON THE DRAFT FOR PUBLIC COMMENT RELATING TO THE DRAFT LIST OF QUALIFYING PHYSICAL IMPAIRMENT OR DISABILITY EXPENSES**

Dear Colleagues,

We refer to the invitation to comment on the draft list relating to qualifying physical impairment or disability expenses in respect of section 6B(1) of the Income Tax Act, No. 58 of 1962 (the Act). Our comments contained herein relate to the three items that were amended; namely, numbers 7, 8 and 9 under item F, “SERVICES”.

Our comments are set out below for your consideration.

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## 1. The right to access education

In South Africa, ordinary (even private) schools do not actively address the needs of learners with physical impairments. It follows that in order for learners with physical impairments to access education, their specific requirements have to be addressed and accommodated for education even to take place. In essence, by addressing the requirements resulting from the physical impairments, the school creates the bridge to the education that the child is entitled to in terms of our Constitution.<sup>1</sup>

## 2. Introduction of section 6B of the Act

In 2011, the system of deductions for medical scheme contributions was converted to credits in an attempt to improve the equity of the tax system. The conversion was based on the notion that medical tax credits provide a more equitable form of relief than medical deductions because the relative value of the relief does not increase with higher income levels.

To replace the remaining aspects of the deduction system for medical expenses with the tax credit system, section 6B was introduced in 2012 in respect of all qualifying medical expenses for all taxpayers.

From an equity point of view, the rebate ensured that taxpayers in lower income brackets will receive an increased 'benefit', while those in higher brackets will receive a lower 'benefit' than under the previous dispensation.

The so-called 'benefit' in reality being tax relief designed to assist taxpayers that have to contend with physical impairments to exist in a country that, in the vast majority of circumstances, does not provide them with the same access as their fellow South Africans.

## 3. Policy intent

It is acknowledged that medical expenses are private in nature and that in the absence of a specific policy decision, there would be no deductibility or rebate in respect of these expenses.

It is well-known and accepted that state-funded options to address access to education for learners with physical impairments are extremely limited. The result is that the demographic of parents that make use of a special needs schools is broad, from high-net worth households, to blue-collar workers.

According to our understanding, the aim of the rebate under section 6B of the Act, is to provide tax relief to taxpayers in respect of the out-of-pocket medical expenses incurred directly as a result of addressing limitations that result from their (or their dependant's) physical impairment(s).

Where a disability limits a child's access to education, the policy aims to bridge that gap with the tax relief provided, so that the child's access to education can be restored.

<sup>1</sup> Section 29(1) of the Constitution provides that everyone has the "right to a basic education, including adult basic education, and to further education, which the state through reasonable measures, must make progressively available and accessible."

#### 4. Current dispensation regarding school fees

The expenditure prescribed by the Commissioner under the category of “services” currently follows a proxy approach in the case of school fees. Therefore, instead of identifying each specific expense per learner as is the approach with other expenses (e.g. aids and other devices), it recognises the fact that a special school provides:

1. Education; and
2. Access to education tailored to the requirements of learners with different impairments.

In limiting the expenditure to the amount in excess of the fees that would ordinarily be payable if the learner attended the closest fee-paying private or public school, the proxy eliminates the portion of the fees that related to education only. The proxy furthermore follows the current accounting model of schools that charge a composite school fee rather than providing itemised billing to learners.

It is acknowledged that a principle of taxation is to aim for ‘fairness’ and as such, there is an argument to be made that in the interest of fairness, the ‘benefit’ of the tax relief should be limited to actual expenses, rather than using a proxy. However, the proxy model uses demographic data to calculate the cost of education in a particular area per child. Any excess is attributed to addressing the limitations of learners with physical impairments.

In our view, the proxy recognises that the administrative burden on learners with physical impairments and their parents to negotiate the difficult road to education, is already significant and that, as a less onerous requirement (than ‘itemised billing’), the proxy model keeps the complexity and cost of claiming, proving, and auditing the rebate reasonable.

#### 5. Proposed dispensation regarding school fees

The note under point 8, details the following express requirement:

*“An itemised list detailing the nature and cost of each intervention, including school fees, must be specified on the invoice or on a covering letter issued by the school.”*

In our view, the fundamental change that is proposed is a shift, not in policy but rather in the way that the ‘qualifying medical expenses’ are viewed; that is in the case of school fees, not via a proxy but rather as ‘itemised billing’.

The statement is made in the document that from SARS’ perspective, “*school fees are not in the consequence of a disability, but in consequence of education*”. We respectfully disagree with this statement because, as we argued in 5. above, special needs schools provide both education and access to education.

We acknowledged that the ‘access to education’ can be address to some degree via the ‘itemised billing’-method. However, in our view, the administrative burden, the existence of a closed list of service providers, amongst other reason discussed above, make the method costly and inaccessible.

## 6. Conclusion

We are in favour of the proxy method remaining because despite the increased specificity that an 'itemised billing' requirement would bring, the current ability of taxpayers to obtain the tax relief will be severely impacted and the policy intent to support these taxpayers will not be met.

It is important to note that the special needs school structure provides different, necessary therapies to learners with physical impairments that must be administered in order for the learners to access education and in order for them to develop alongside their counterparts in mainstream schools.

Various studies have shown that children with disabilities are at a significant higher risk than the general population for various forms of abuse and human rights violations. Education is one of the ways in which a person with a physical impairment may access a community and be empowered. We are concerned that the effect of the proposal may be that fewer learners with physical impairments will be able to access education.

We recommend that prior to implementing the proposed change, which introduces substantial administrative requirements, specific engagement with the special needs schools and related advocacy groups be undertaken. Although we acknowledge the concern that SARS has with regard to risk management and fraudulent claims, we believe that the current proposal will have the effect of stifling access to the relief that the taxpayers are entitled to as a matter of policy. We trust that this manner of engagement will also assist SARS in balancing the need for revenue collection with the need to provide the taxpayer with adequate tax relief.

## 7. Conclusion

In conclusion, SAIT welcomes the opportunity to comment on this draft list prior to the finalisation thereof. We would welcome further engagement.

Yours faithfully,



Keith Engel  
**CEO**