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Sars wants to limit tax relief for disabled costs

Sars argues in the document that school fees are not in the consequence of a disability.

By Amanda Visser 27 May 2021 00:02



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The South African Revenue Service's (Sars) continued attack on the ability of taxpayers to claim tax relief for the education costs of the disabled has been described as "mean and disrespectful".

School fees as a qualifying expense have been removed in the recent draft response document on the list of qualifying physical impairment or disability expenditure. This is the latest curveball thrown at parents of disabled children to ostensibly "curb abuse" and prevent discrimination against parents with abled children.

Sars argues in the document that school fees are not in the consequence of a disability but in consequence of education. Therefore, school fees will no longer qualify as a medical expense.

Craig Miller, tax director at Webber Wentzel, says this is a very simplistic way of looking at it. There is a reason for the existence of special needs schools.

Special needs children cannot survive in a mainstream environment and the government has not provided any viable alternatives, he says.

Disability interventions

"The special needs school creates the structure from where the different therapies can be administered in order for the children to develop, as mainstream schools typically do not have the infrastructure. These schools often operate on the premise that the school fees cover the therapies offered at the school."

Last year parents received the first blow when school fees for private and public special education needs schools were limited to the amount in excess of fees at their closest fee paying private or public schools.

In terms of the proposed new rules, the parent must separately list the cost of "interventions" at the school "in consequence" of the disability. This includes among others, a care worker assisting a child, a social worker or psychologist, occupational therapist, physiotherapist, or audiologist assisting the learner.

"It (Sars) wants you to itemise every [separate] therapy which is provided at the school. It is really difficult to see how this will work in practice."

Unfair comparisons

When Sars started with its attack on relief for school fees for disabled or impaired learners it argued that it would be unfair to parents of those children who do not have a disability.

"Parents of disabled children do not simply send their kids to special needs private schools because they think it is a nice thing to do. It is a necessity," remarks Miller.

Kyle Mandy, tax technical and policy director at PwC, says the reason learners with disabilities go to special needs schools is precisely because they have a disability. The link with the disability is therefore obvious.

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“Inevitably this will be the case because (even without the interventions on the Sars list) costs are higher due to the need for smaller classes and specialist teaching skills,” says Mandy.

“It is therefore wrong to say that these additional costs are not in consequence of a disability.”

Miller adds that the education of a child going to a mainstream school, who then matriculates and decides which university to attend, can surely not be compared to the education of a severely autistic child.

“These special needs schools deal with integrated therapies and responses for disabled children. It is a known fact that the state cannot provide these services,” says Miller.

Beatrice Gouws, head of the South African Institute of Taxation, agrees. 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.

“Where a disability affects a child’s ability to access education, the policy has been to bridge that gap with the tax relief provided, so that the child’s access can be restored,” says Gouws.

“By discounting the value of this basic right, their future livelihood, happiness, and the contribution that these children may make to our society and economy, is dealt a severe blow.”

The formula

Miller explains that Sars is using a formula – depending on the expenditure – to calculate the tax credit. The taxpayer could claim a percentage of the disability expenditure as a credit to the total tax liability.

For example, if the parent earned R100 000 per annum, with a tax liability of R20 000 a year, and school fees of R10 000 a year the parent was allowed to claim one-third of the medical expenses (33%) which could be offset against the tax liability. (R20 000 minus R3 333).

There are many parents who rely heavily on this relief. When the first round of changes was introduced Sars ignored the most heart-rending submissions by parents affected by the changes.

One parent, with a severely autistic daughter, said it left a bad taste in her mouth for Sars to think that parents of special needs children were abusing the system.

“It is difficult enough to be a parent of a special needs child and for Sars to redraft the qualifying list of expenses limiting the expenditure is disrespectful and demeaning.”

It appears that Sars considers parents wanting to give their special needs children the best possible treatment in private schools – when there is no other alternative – to be “abusive”, another parent said.

Miller says he cannot imagine that the latest change will result in a material revenue gain to the fiscus. In fact, if Sars focused their energies on a few other things they may find that this is small change in terms of tax collection.

“This new amendment is particularly surprising given that Sars has recently amended the treatment of school fees. Now it is changing [the guidelines] again and people have not been given proper notice.”

Affected parties have until May 21 to respond

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