



Pretoria Preparatory School

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SPECIALISING IN REMEDIAL EDUCATION

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Dear Parents and Guardians

Call for public comment i.r.o. amendment to Section 6B of the Income Tax Act, 1962: List of Qualifying Physical Impairment or Disability Expenditure

This letter serves to share information with you, as a fee-paying parent of Pretoria Preparatory School, i.r.o. a call for public comment made by SARS in publishing a proposed amendment to the List of Qualifying Physical Impairment or Disability Expenditure. Please note that the content of this letter is intended for parents and guardians of Pretoria Preparatory School in the context of enrolment at Pretoria Preparatory School where all intervention, including therapies, is inclusive in the school fee.

Background

In March 2020, SARS amended the existing List of Qualifying Physical Impairment or Disability Expenditure to issue a rebate based on the *comparison of fees paid at a private special needs school against the fees of the nearest private school to the taxpayer's home*.

This had the effect of reducing the rebate for which many Pretoria Preparatory School families qualified. As Pretoria Preparatory School, we attended a discussion with SARS in terms of the fairness and constitutionality of this change, and joined in the support of the wider group of LSEN (Learners with special educational needs) schools in the ISASA (Independent Schools of Southern Africa) fold, led by Alison Scott of Bellavista School, across the country, in furthering the discussion. In October 2020, with the support of this network of schools, Bellavista School approached the office of the SARS Disability Team. A series of rich and robust engagements followed between that first approach and May 7, 2021.

Our Initial objection:

In the tax change around medical rebate for disability effective 1 March 2020, it was understood that the list of allowable claims for rebate was amended so that the excess claimable is limited to the difference between:

1. private special education needs school to closest fee-paying private school;
2. public special education needs school to closest fee-paying public school;
3. School not mainly for learners with special educational needs – limited to the difference between fees paid for the learner with disability and a learner without disability in the same school.

Previously, prior to March 2020, there was a medical rebate claim for the difference between the private special education needs school to closest fee-paying public school to their residence, and the plea was that SARS would reconsider this change, given:

- SARS made a fundamental assumption that all our enrolled parents must have been considering or included in the enrolment of the private school near their residence. This assumption was flawed.
 - o Many of our parents are referred for fulltime placement from public schools or a subsidised community schooling system as there is no public school with the right service offering, or within a reasonable proximity, to meet the disability needs of their child.
 - o The public sector is hugely under-resourced in this area; there simply are not the number of schools required to support the needs of the children who require placement or inclusion. If parents are to secure the help their child needs, they must seek private placement.
 - o Not only are there too few schools, these schools are also under-resourced and not equipped to deal with the specialist disability intervention required.
 - o In peri-urban and rural communities, there may not even be a public system facility to attend.
 - o The previous medical tax rebate assisted in making this placement affordable for many families.

- The second assumption SARS made was that all children with a disability are streamed to the special needs school sector for long term schooling and negates the intensity and objective of a remedial school placement within that sector.
 - o Our sector is driven by the issue of social justice; if a child receives the right intervention educationally and therapeutically, he or she should return to and be included in their local school to participate in basic education as they ought.
 - o Achieving this objective is possible but it requires high intensity intervention.
 - o Regrettably, our schooling system is not yet provisioned to give impetus to this objective and afford this basic human right, unless parents participate in a fee payment that secures the specialist therapists and also the high frequency of support.
 - o Public schools are grossly under-resourced in terms of personnel in this area.

The departing point assumed by SARS may have appeared reasonable in that every child, whether with a disability or not, needs to go to school. Some may argue that to give relief on full school fees will be unfair to parents of those children who do not have a disability. Equity and equality are fundamentally two different matters. The child with the disability and the guardians or parents who raise that child are set up at a disadvantage. The costs of schooling a child with a disability to the standard and level wherein that human being has *equitable access to schooling*, i.e. opportunity to participate fully, and enjoy an independent, dignified life through and after school, means that they are, by virtue of the disability, financially burdened with more educational costs than parents who only concern themselves with regular schooling.

The school fees at our schools are incurred as a consequence of disability, and while there is likely variance in each parent's circumstance, the placement is often not a choice but an absolute necessity. The previous rule wherein the difference is calculated between the private special needs school and the nearest public school was fairer: it deducted the costs of a basic education as offered in a geographical area and it assumed that parents are subsidising the costs of their child's education in a manner that takes substantial burden off the state.

In the appeal, we highlighted that it was unfortunate for our parents of children with disabilities, that in this year particularly, with the crushing economic effect that COVID-19 has brought, their child's disability brings further economic penalty. SARS relief and aid has been offered in support of the circumstance of many citizens. Therefore, we brought this appeal before SARS with some urgency. As a sector, we undertook to participate in appropriate consultation with SARS so that the decision made or upheld is based on rich data from the real circumstances that these parents face.

It was our experience that the SARS Disability Team engaged openly, professionally and in a constructive manner at every turn.

The consultations

These consultations between the ISASA LSEN sector and the SARS Disability Unit, in addition to other input from various stakeholders affected, have led to an amendment, now out for public comment. Last week, SARS published a draft of their proposed amendment and invited you, the taxpayer, to engage:

"SARS is responsible for updating and publishing the list of qualifying physical impairment or disability expenditure (the List). An extensive consultation process was carried out and the List was updated with effect from 1 March 2020. Certain stakeholders raised some concerns recently regarding items 7, 8 and 9 under paragraph F in the List (Services) dealing with the treatment of school fees. Taking into consideration various submissions received from various stakeholders, SARS has reconsidered items 7, 8 and 9 under paragraph F, relating to expenses that are incurred and paid in consequence of a physical impairment or disability. You are encouraged to peruse the updated draft List and provide your comments (if any) in respect of the items under review by 31 May 2021. The document can be accessed on the [Draft Documents for Public Comments page](https://www.sars.gov.za/legal-counsel/preparation-of-legislation/draft-documents-for-public-comment/)." (https://www.sars.gov.za/legal-counsel/preparation-of-legislation/draft-documents-for-public-comment/)

The aforementioned amendment requires of the school that it specifies on the annual tax certificate or covering letter, *a declaration of the costs that are in consequence of education and also the costs of intervention that are in consequence of disability embedded in the fees levied.*

We believe that this approach is fairer than a calculation of the disability tax rebate being the difference between the costs of Pretoria Preparatory School versus the costs of attending the nearest private school to your home. We are aware of various communications from Disability Tax Advisors who have their own interpretations of the amendment that they feel compelled to share with their clients. We must emphasize that it is not the purpose of this letter to dispense legal advice but rather to share with you our views having had the benefit of engaging with the SARS Disability Team and understanding intimately how important it is for you, the parents, to be able to provide the necessary assistance to your children.

Positively, we note that the SARS Disability Team are moving constructively to apply the proposed amendment before the next tax filing season. This deadline serves our parents well as, if such amendment is not approved, the directions of March 2020, wherein the rebate is calculated on the difference between the Pretoria Preparatory School fees and fees of the private school nearest to your home, will stand.

Our reflections

The amendment published as a draft has various implications:

1. The costs of basic education at a special needs school are no longer considered to be a consequence of disability.
 - Pretoria Preparatory School supports this notion. All children have the right to access basic education. It may be the state or it may be parents who finance this access. The costs of basic education are separable in our calculation of the school fees at Pretoria Preparatory School.
2. The costs of intervention in consequence of disability are deductible.
 - The ITR-DD form, qualifying the nature of the disability, as signed off by a medical practitioner, remains a requirement of any claim. This process is unchanged. Expenses as a consequence of the disability of that child are deductible because of the confirmed disability. Note, the school cannot sign off on the ITR-DD. It must be a medical health practitioner who, on the basis of prescribed criteria, makes this determination.

- The amendment proposed, and out for public comment at the time of writing, makes provision for a covering letter to be provided by the school wherein the school declares the portion of the fees that are *attributable to the provision of basic education* and the portion of the fees that are for *intervention in consequence of disability*. Pretoria Preparatory School believes that it is able to make a declaration to this effect on such a letter, ahead of each tax filing season.

In sum:

SARS has heard our appeal and has applied their minds to the principles we have put forward. If this proposed amendment is enacted as proposed and according to SARS' stated timeline, we understand that, with effect from this coming tax filing season:

- The costs of intervention as a consequence of disability remain tax deductible.
- The costs of basic education in consequence of education are not tax deductible.
- If your child has a confirmed disability per the ITR-DD and therefore qualifies for a rebate of expenditure arising as a consequence of that disability, there remains a deductible portion of your fees paid over to Pretoria Preparatory School and these will be reflected in the covering letter/ tax certificate issued by Pretoria Preparatory School annually.
- If your child is placed at Pretoria Preparatory School but does not qualify with a confirmed disability per the ITR-DD, the status quo remains.

Pretoria Preparatory School will support the amendment put out for public comment and also continue to advocate for the extension of the definition of disability to include all learning disabilities (ADHD, dyslexia etc.) not only the disabilities itemised on the ITR-DD. Further, it will appeal for the inclusion of the education of learners younger than age five who are assisted at early intervention centres. These are greater inclusion issues, which we will not neglect.

Pretoria Preparatory School cannot make the calculations, take responsibility for, nor determine the quantitative impact of taxation and associated claims on each household, as there are no universal caps or thresholds on intervention that can be applied to all persons uniformly.

It is for each taxpayer to respond as they feel fit and we do encourage you to use the platform for public comment to do so. It is important that you are informed and that you are sure that you understand. Ultimately, every person's circumstances differs and opportunities to bring your perspective forward should be seized to the fullest extent. Do send an email to SARSDisabilityTeam@sars.gov.za and comment before 31 May 2021.

ISASA will be taking the submissions from the LSEN sector to assist us with a united response.

Yours faithfully



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