

# Draft Tax Administration Laws Amendment Bill 2020

Comments for proposed changes to Section 10(1)(q)

**Addressing an anomaly in the  
tax exemption of employer provided bursaries**



Page 25

**Comment :**

Reinstating the salary sacrifice requirement undermines Government's objective for skills development.

**Response :**

Not accepted. While Government remains committed to the skills development objectives, Government also needs to acknowledge when policy decisions previously taken are making tax abuse easier for taxpayers. Further to the above, and in the strictest interpretation of the law, a bursary that is subject to an element of salary sacrifice is not a bona fide bursary as defined. In fact, a bursary that is subject to an element of salary sacrifice enables employees to pay for their children or relative's school fees with "pre tax income", whereas employees who do not receive the benefit of an employer provided bursary pay for their children or relative's school fees with "after tax income". Allowing a tax exemption in cases where a bursary is subject to an element of salary sacrifice results in the employee effectively paying for educational costs and receiving a tax deduction for those educational costs.

## Section 10(1)(q)

### Background as per the Draft Explanatory Memorandum on the Draft TLAB 2020

- The Act contains provisions that provide exemption in respect of **bona fide bursaries or scholarships** granted by employers to employees or relatives of qualifying employees, subject to certain monetary limits and requirements stipulated in the Act.
- When these provisions were initially introduced in 1992, the applicability of the exemption was dependent on the fact that the employee's remuneration package **was not subject to an element of salary sacrifice**.
- However, in 2006 changes were made to the tax legislation for specifically section 10(1)(q) **which deals only with bona fide scholarships or bursaries** to remove the exclusion of salary sacrifice from the exemption requirements.
- The policy rationale for the removal of this **exclusion was to encourage skills development as a means of addressing the country's skills shortage**.
- Following the 2006 amendments, the tax exemption was available irrespective of whether a bursary or scholarship scheme contained an element of salary sacrifice.

## Explanatory Memorandum on the TLAB 2006 page 11

### DRAFT

### INCENTIVES FOR EMPLOYEE SCHOLARSHIPS AND BURSARIES

#### Current Law

**Bona fide scholarships and bursaries granted** to an employee to study at a recognised educational or research institution are exempt from income tax in the employee's hands (section 10(1)(q)). Taxation arises only if the Commissioner views the grant as a payment in lieu of salary (i.e., salary sacrifice). If an employer grants a bona fide scholarship or bursary to an employee's relative, section 10(1)(q) provides limited relief to relatives of low income employees.

**Current law also contains an anti-avoidance charge designed to dissuade employers from providing scholarships or bursaries as a form of salary sacrifice. Section 23(j) accordingly makes these salary sacrifice payments non-deductible for employers.**

#### Reasons for change

**Salary sacrifice as a component of the exemption creates unnecessary difficulties in application. While justifiable as a matter of legal theory, this distinction makes little economic sense in light of the skills shortage within South Africa.**

## Explanatory Memorandum on the TLAB 2006 page 11

DRAFT

### INCENTIVES FOR EMPLOYEE SCHOLARSHIPS AND BURSARIES

#### Proposal

To simplify matters, the proposed amendment provides **that all bona fide scholarships and bursaries for employees will be tax-exempt regardless of whether or not elements of a salary sacrifice are present.** Similarly, the denial of employer deductions for scholarship and bursary payments acting as a salary sacrifice will be removed (i.e. section 23(j) will be deleted).

Instead, bona fide scholarships and bursaries to an employee or relative will be tax-exempt as long as the employee or relative agrees to repay the employer if the employee fails to fulfil his or her scholarship or bursary obligation. This repayment clause provides an incentive for employees to take their scholarship or bursary commitments seriously. However, the employee need not repay the employer if the failure directly results from death, ill-health, or injury (see also section 12H(5)(b) allowing comparable relief in terms of incomplete learnerships).

#### Effective Dates

This proposal is deemed to come into operation on 1 January 2007 in respect of any bona fide scholarship or bursary granted on or after that date.

## Reasons for change as per the Draft Explanatory Memorandum on the Draft TLAB 2020

- It has come to Government's attention that a **number of schemes have emerged in respect** of employer bursaries granted to the employees or relatives of employees.
- These bursary schemes are **developed by an institution** other than the employer and marketed to the employer as a means of providing tax exempt bursaries to their employees or relatives at no additional cost to the employer. These schemes seek to reclassify ordinary taxable remuneration received by the employee as a tax-exempt bursary granted to the relatives of employees. As a result, an employee can cater for their **relative's studies by way of a salary sacrifice**.
- The portion of the salary sacrificed by the employee is paid directly by the employer to the respective school and is treated as a **tax-exempt bursary in the employee's** or relative's hands. When these provisions were initially introduced in 1992, the applicability of the exemption was dependent on the fact that the employee's remuneration package was not subject to an element of salary sacrifice.
- The **increase in the number of these schemes** as well as the **tax planning opportunities** that result in a **loss to the fiscus** resulted in Government **reviewing its policy position taken in 2006** of making the tax exemption available irrespective of whether a bursary or scholarship scheme contained an element of salary sacrifice.

- Employers **were not utilizing** the scholarship and bursary program as availed by government;
- Thus **no real encouragement** towards Government's efforts to address skills development as a means of addressing the **country's skills shortage**;
- **Service providers** recognised that Section 10(1)(q) was **not being utilised** and established a means of offering their services to employers **at no cost to ensure** that the scholarship and bursary program **can be used**;
- Services offered in a way **compliant with the regulations** by applying a **salary sacrifice** and allowing an employee to pay for their children and relative's **education pre-tax**.
- **Qualifying employees** who can now pay for their children or relative's education pre-tax **ARE ONLY** those employees who **EARNED LESS THAN R600 000** for the prior tax year.

Year	Nr of Taxpayers	Amount
2003	10 003	R61 000 000.00
2004	10 710	R62 000 000.00
2005	11 175	R62 000 000.00
2006	10 615	R64 000 000.00
2007	10 982	R69 000 000.00
2008	10 272	R81 000 000.00
2009	10 316	R82 000 000.00
2010	7	R0.00
2011	1	R0.00
2012	34	R0.00
2013	7 236	R90 000 000.00
2014	7 331	R103 000 000.00
2015	7 455	R110 000 000.00
2016	7 084	R93 000 000.00
2017	5 703	R86 000 000.00
2018	4 458	R81 000 000.00

Table depicts how many South Africans Utilized Section 10(1)(q)

- Service providers who **administer** and **implement** the scholarship and bursary program as a **salary sacrifice resulted** in:
  - **Encouraging efforts** of Government to address **skills development and the country's skills shortage**;
  - **Lower to middle class employees** are able to reduce their PAYE **BECAUSE** they are **contributing** towards the **educational costs** of a child or relative

## SARS and Treasury comment to public hearing on 9 Sept 2020

- During their introduction at the start of the hearing, SARS stated that they did **not mind that service providers** were offering the services to employers;
- They said it **made no difference** if it was employers implementing it themselves, or service providers doing it on the employer's behalf.
- Towards the end of the one hour discussion by stakeholders on this topic, **SARS said that they indeed** have a concern with the service providers who administer and implement the bursaries on behalf of employers.

## Public Hearing 7 October 2020

- After stakeholder presentations, the **Honourable Chair** requested that Treasury **investigate and report back** on if the bursary and scholarship program **benefits the black middle class**;
- National **Treasury** had indicated that they **would quantify the loss** to the Fiscus as available data shows that **only a few million rand** can be attributed to the bursary and scholarships and as a result the benefit to the **lower and middle class outweighs** the loss to the Fiscus;
- These comments **were to be included** in the feedback expected on the 13th of October 2020.

## SARS and Treasury Feedback to ScOF on 13 October 2020

- Treasury stated that if a salary sacrifice is used for a bursary / scholarship, then it is **NOT a bona fide bursary**;
- This is **contradictory** to the inclusion of the element of a salary sacrifice for Section 10(1)(q) during 2006 as this section in the Act deals **ONLY** with bona fide bursaries and scholarships.
- Both the requests raised by the Honourable Chair on 7 October, were **not answered** by Treasury or SARS;
- Committee Member Mr. Geordin Hill-Lewis raised the queries again at the end of the meeting and it seems as if these queries **were still not addressed**.

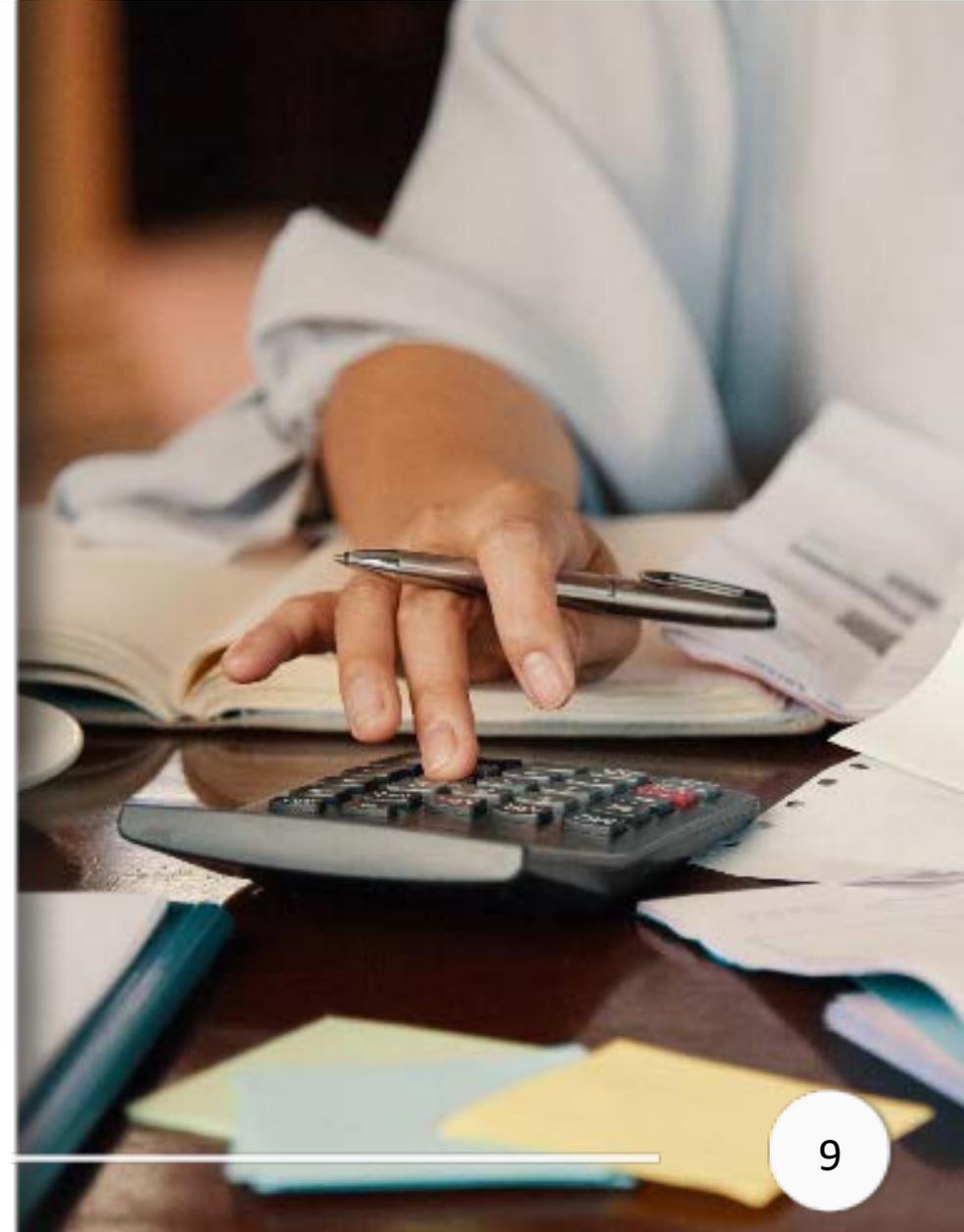
- Recent Statistics SA data which found that **almost two in every 10 potential learners** are unable to attend school or a tertiary institution due to a **lack of funds**.
- For 2019 : The **estimated cost of educating a child** at school is about **R130.50 a day** (school fees R112/day).

Below are the expected costs for one year of education at public and private high schools, and universities over the next 18 years.

Expected cost of one year of education	2018	2023	2030	2035
Public Primary or High School	R34 613	R53 256	R97 355	R149 792
Private Primary School	R84 742	R130 386	R238 351	R366 733
Private High School	R136 065	R209 352	R382 704	R588 838
University	R58 860	R90 563	R165 553	R254 725

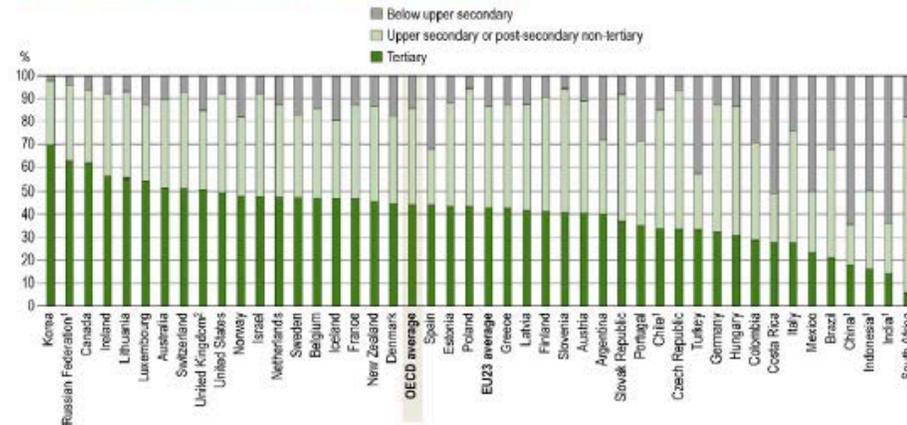
- The second main barrier to education is financial constraints. These include the **cost of schooling** (the reason given for 13% of children not attending schools) – which would also include related costs such as **uniform and transport** – and the opportunity costs of education where children have family commitments such as child minding (4%) or are needed to work in a family business or elsewhere to support household income (2%).

- Approximately 8.2 million (**40.1%**) of South Africa's **20.4 million young people** aged 15 to 34 **are not in employment, education or training** of any sort, according to the latest figures released by Statistics SA in the Quarterly Labour Force Survey (QLFS).



- **Tertiary attainment** in South Africa is **the lowest across all OECD and partner countries**, with the **majority** of the population having an upper secondary or post-secondary non-tertiary qualification as their highest level of education.

Figure 1. Educational attainment of 25-34 year-olds (2018)



1. Year of reference differs from 2018. Refer to Table A1.1 for more details.  
2. Data for upper secondary attainment include completion of a sufficient volume and standard of programmes that would be classified individually as completion of intermediate upper secondary programmes (13% of adults aged 25-64 are in this group).  
Countries are ranked in descending order of the percentage of tertiary-educated 25-34 year-olds.  
Source: OECD (2019), Education at a Glance Database, <https://stats.oecd.org>. See Source section for more information and Annex 3 for notes (<https://doi.org/10.1787/8d7880d-en>).

- **Tertiary qualifications** are less common in South Africa. **Only 7% of adults have a tertiary education, the lowest among all OECD and partner countries.** Tertiary attainment is equally low among younger adults: only 6% of 25-34 year-olds were tertiary educated, also the lowest across OECD and partner countries and well below the G20 average of 38%.

Education at a Glance: OECD Indicators (OECD, 2019[1]) is the authoritative source for information on the state of education around the world. It provides data on the structure, finances and performance of education systems in OECD and partner countries.



- For **every hundred national tertiary students in South Africa, four are enrolled abroad**. About half of them study in English-speaking countries: Australia (8%), the United Kingdom (17%) and the United States (23%).
- According to UNICEF only **22.0 per cent of South African children could read at the appropriate Grade level**.

## **Some of the key goals of the NDP to be realised by 2030 include**

- Ensure **universal access** to one phase of **ECD**, namely Grade R (Reception year prior to Grade 1);
- **Improve** South Africa's standing in **international comparative standardised tests** by providing performance benchmarks;
- **Eradicate** all infrastructure backlogs by 2030; and
- Ensure that all **schools are funded** at the minimum per learner levels determined nationally, and that funds are utilised **transparently and effectively**.



## Testimonials:



**Sandile Bolani**

Dis-Chem

“ The education benefit is helping me a great deal, I can now cover my kids school needs more than before. Thamsanqa (my son) is currently attending school workshops which I could not afford previously. The bursary has released a lot of pressure from me and I am very grateful for that. ”

**Barbara Venter**

Dis-Chem

“ Thanks to EdNVest's friendly team for advice and assistance to help me apply for the bursary. I can now pay more money towards my children's school fees. This benefit is a blessing for stressed parents. ”



**Patricia Mokoena**

Liquid Telecom

“ There are no words good enough to thank you for changing my life and the lives of my family members with the Education Tax Benefit. ”

# Examples of an employee PAYE saving with the Bursary for a relative

Employee annual salary	R 90 084
Bursary amount	R 6 980
Annual PAYE saving	R 1 256

Employee annual salary	R 247 200
Bursary amount	R 20 000
Annual PAYE saving	R 5 200

Employee annual salary	R 99 984
Bursary amount	R 18 000
Annual PAYE saving	R 3 420

Employee annual salary	R 455 000
Bursary amount	R 20 000
Annual PAYE saving	R 6 200

Employee annual salary	R 114 000
Bursary amount	R 12 000
Annual PAYE saving	R 3 600

Employee annual salary	R 505 000
Bursary amount	R 20 000
Annual PAYE saving	R 7 200