



STATE DOCTORS CHOOSE THEIR TAX WEAPONS

Doctors in the public sector will probably abandon a Constitutional Court challenge in favour of lobbying or declaring a dispute with their employers to secure 'tax parity' with their legal peers in government.

The initiative could benefit all public sector health care workers, the top echelons of which lost tens of thousands of rands annually after the tax law was streamlined 2 years ago to disallow certain tax write-offs by people in full-time employment.

Lawyers probing a possible Constitutional Court challenge on behalf of doctors have so far established that at least one other profession in the State sector (lawyers) have their professional registration paid for by the State, unlike health care professionals. However they strongly doubt whether a constitutional challenge would succeed because they would first need to prove that the amended Tax Act was not rationally connected to a legitimate government purpose (ease of tax collection).

SAMA to mediate?

Instead they will recommend that the South African Medical Association (SAMA) attempts mediation or arbitration with the State employer to secure professional registration fees and ongoing education expenses as part of equitable salary packages. Health care staffers currently cannot get a State job without agreeing to pay their own registration and annual subscriptions, plus expenses incurred on continuing professional development (CPD).

Salaried employees in the private or public sector cannot claim indemnity cover, professional fees and registration and CPD expenses off their tax bill – they have to negotiate with their employer to include this in their package.

Professor Denise White, SAMA Vice Chairman and a psychiatrist in the

public sector for the past 22 years, described the lack of parity between health care workers and lawyers in the public service as 'a huge disincentive' for any health care worker wanting to enter government service. 'We're obviously angry that our employer seems to disregard us. More and more they seem to have shelved responsibility in terms of indemnifying those of us in the system,' she added. White said the fight was not as much with the health department as with the department of public administration that determined their salaries.

'Perhaps we should be attacking this through the labour caucus and let Cosatu get involved in terms of being an umbrella body covering health care workers,' she mused. She said the situation aggravated the lack of State health care delivery as it contributed to the migration of doctors, nurses and other staff, both overseas and to the local private health care sector.

The South African Revenue Services considers private physicians – and any public sector doctors and nurses who earn more than half their income through limited private practice (remuneration for work outside the public service or RWOPS) – to be businesses.

Irky quirk

However, in a quirky Catch 22, the State (and provinces) will not allow doctors to earn more than half their income outside of its employ. Self-employed private health care professionals can write off administrative and indemnity costs as expenses incurred in the generation of revenue.

The anomalies are the result of amendments to Section 23 (M) of the Income Tax Act (58 of 1962), made 2 years ago in an attempt to close down tax loopholes – but which have instead had a punitive effect on State health care staffers. Explains Professor Keith

Bolton, chairman of SAMA's Committee for Full Time Hospital Doctors and Chief Paediatrician at Coronation Hospital: 'We've fallen between two stones.'

'The law was changed to ease the government's ability to collect taxes, but with the understanding that those who were prejudiced by this would then get paid back by their employer.' The employer (the State) however has refused to play ball.

The Constitutional Court case was being prepared with Bolton as the guinea pig applicant, and would have questioned whether the Ministers of Justice and Finance applied their minds correctly when proposing the tax amendment in parliament. Instead, SAMA will now probably prepare a provincial arbitration challenge and if successful, use the precedent to leverage the other nine provinces.

The Democratic Nurses Organisation of South Africa (Denosa) has been pitted against the SA Nursing Council for several years in attempting to waive the registration fees of State nurses. Said Denosa's industrial relations manager, Jabu Magagula: 'We say we shouldn't be paying anything as the very council that levies these fees is set up by the same government under whose tax regime they now suffer'.

Nurses in the State sector should be subsidised and funded entirely by government, added Magagula. Denosa includes legal and funeral cover as part of nurse members' annual subscription fees.

'We're not yet going down the arbitration road as we need to reach consensus on an approach with both National Education, Health and Allied Workers Union (Nehawu) and the Hospital Association of South Africa (Hasa), he added.

Chris Bateman