South African Revenue Service

INTERPRETATION NOTE 142

DATE: 12 December 2025

ACT : INCOME TAX ACT 58 OF 1962
SECTION : PARAGRAPH (a) OF THE DEFINITION OF "INTEREST" IN SECTION 24J(1)
SUBJECT : MEANING OF "SIMILAR FINANCE CHARGES"

Contents

Preamble

In this Note unless the context indicates otherwise –

- **"borrower"** means, in relation to any instrument, any person who has incurred any interest or has any obligation to repay any amount in terms of such instrument or who would be liable to pay such interest if it was due and payable;
- **"instrument"** means an "instrument" as defined in **4**;
- **"interest"** means "interest" as defined in section 24J(1);
- **"lender"** means, in relation to any income instrument, any person who becomes entitled to any interest or amount receivable in terms of such instrument or who becomes entitled to receive payment of such interest if it was due and payable;
- **"paragraph (*a*)"** means paragraph (*a*) of the definition of "interest" in section 24J(1);
- **"section"** means a section of the Act;

- **"similar finance charges"** means similar finance charges contemplated in paragraph (*a*) (see **4.3**);
- **"the Act"** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note considers the meaning of "similar finance charges" and, by way of example, considers the application of that meaning in assessing whether raising fees in respect of a financial arrangement fall within the ambit of "similar finance charges".

The meaning of "similar finance charges" is considered from the perspective of the borrower. However, the same principles apply when considering the term from the perspective of the lender.

2. Background

Taxpayers are often party to financial arrangements when obtaining or granting loan or debt funding. Under these arrangements, the lender normally advances an amount to the borrower who is obliged to repay an amount that includes the amount advanced and interest (often calculated as a percentage of the loaned amount). Various finance charges, for example, loan application fees, service fees, administration fees, structuring fees and raising fees are often also payable by a borrower to the lender.[1]

Broadly, section 24J(2) deems a taxpayer to have incurred an amount of interest equal to the relevant accrual amounts in the particular year of assessment in respect of an instrument, or determined according to the alternative method, to be deductible from the income of a taxpayer if certain definitions, provisions and requirements are met.[2]

Interest for purposes of section 24J includes, amongst others, amounts constituting "interest" and "similar finance charges".

Uncertainty exists as to whether the finance charges referred to above qualify as "similar finance charges" in section 24J(1).

3. The law

Paragraph (*a*) of the definition of "interest" in section 24J(1)

> **24J. Incurral and accrual of interest.—**(1) For the purposes of this section, unless the context otherwise indicates—
>
> "interest" includes the—
>
> (*a*) gross amount of any interest or similar finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement;…

[1] The finance charges mentioned are not an exhaustive list of charges that may be charged on loan or debt funding.

[2] The general interpretation and application of section 24J are beyond the scope of this Note.

4. Application of the law

Broadly, section 24J regulates the timing of the incurral and accrual of interest over the term of instruments on a yield to maturity basis by deeming calculated amounts of interest to be incurred or have accrued in relevant years of assessment. Section 24J not only regulates the timing but also grants a deduction for or requires an inclusion in gross income of interest if the requirements of the section are met. The amounts of interest incurred or accrued may differ from the actual amounts of interest paid or received during a particular year of assessment.

Under section 24J(2), amounts of interest, as calculated under section 24J for the borrower of an instrument, are deemed to be incurred and are deductible from the income of a taxpayer if certain requirements are met.

Section 24J(5) provides, amongst others, that if an amount actually paid by a person in terms of an instrument is taken into account in calculating the amounts dealt with and granted a deduction under section 24J(2), no deduction will be allowable for such amount under section 11.

The term "instrument" is defined in section 24J(1) and means an interest-bearing arrangement or debt, an acquisition or disposal of a right to receive interest or the obligation to pay any interest in terms of any other interest-bearing arrangement, or a repurchase agreement or resale agreement. Lease agreements (excluding sale and leaseback agreements) and policies issued by long-term insurers do not, however, fall within this definition. An income instrument is a particular instrument defined in section 24J(1).

The term "interest" is widely defined in section 24J(1) and includes the items listed under paragraphs (*a*) to (*c*) of that definition. An amount that is payable in terms of, in respect of, or in connection with a financial arrangement is not automatically interest for purposes of section 24J. The amount must meet the definition of "interest" in section 24J(1) to be interest for the purposes of section 24J.

For purposes of this Note, paragraph (*a*) and more specifically "interest or similar finance charges ... payable … in terms of or in respect of a financial arrangement", is of relevance.

The meaning of the terms "financial arrangement", "interest" and "similar finance charges" are considered below.

4.1 Meaning of "financial arrangement"

The phrase "financial arrangement" is not defined in the Act and its ordinary grammatical meaning should therefore be considered.

The online *Cambridge Dictionary* defines the words "financial" and "arrangement" as follows:

> *Financial*
>
> "relating to money or how money is managed"[3]

[3] **https://dictionary.cambridge.org/dictionary/english/financial** [Accessed 12 December 2025].

Arrangement

"a plan for how something will happen" or "an agreement between two people or groups about how something happens or will happen"[4]

Lawinsider.com defines the phrase "financial arrangement" as –[5]

"a debt or debt instrument or an arrangement under which a person receives money in consideration for the provision of money to any person, either at a future time, or when an event occurs (or does not occur) in the future. Essentially, a financial arrangement is any transaction that involves deferral of the giving of consideration."

The phrase "financial arrangement" thus has a wide meaning and includes, for purposes of paragraph (*a*), a contractual arrangement involving finance or the obtaining or granting of credit of some kind.

4.2 Meaning of "interest" as contemplated in paragraph (*a*)

The ordinary grammatical meaning of "interest" must be considered given the reference to it in the definition of "interest".

The *Merriam Webster Dictionary* defines "interest" as –[6]

"3 a : a charge for borrowed money generally a percentage of the amount borrowed".

Dictionary.com defines "interest" as –

"a sum paid or charged for the use of money or for borrowing money:"[7]

The term "interest" has also been considered judicially. The following court cases give guidance on what is regarded as common law interest.

In *Riches v Westminster Bank Limited*, the following was stated in regard to interest by the House of Lords:[8]

"[T]he essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for that deprivation."

In ITC 1496 Melamet J stated as follows:[9]

"Interest is an expense to compensate a lender for the time period during which the money is lent to a second party. It cannot be incurred prior to the time during which the money is used.[10] It is incurred and accrues from day to day."

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4 **https://dictionary.cambridge.org/dictionary/english/arrangement** [Accessed 12 December 2025].

5 **www.lawinsider.com/dictionary/financial-arrangement** [Accessed 12 December 2025].

6 **www.merriam-webster.com/dictionary/interest?utm_campaign=sd&utm_medium=serp &utm_source=jsonld** [Accessed 12 December 2025].

7 **www.dictionary.com/browse/interest** [Accessed 12 December 2025].[8] 1947 All ER469 (HL) at 472.

8 1947 All ER469 (HL) at 472.

9 (1991) 53 SATC 229 (T) at 249.

10 This view on the timing of the incurral of interest has been criticised as being too broadly stated and not necessarily correct. Subsequent to this case, section 24J, which deals with, amongst others, the timing of the incurral of interest, was introduced.

This meaning of interest was echoed in *Commissioner for Inland Revenue v Cactus Investments (Pty) Ltd*[11] when Wunsh J referred to ITC 1485[12] and stated that interest is "compensation for the receipt and retention of the money" but disagreed that interest was necessarily incurred on a day-to-day basis.

In *Cactus Investments (Pty) Ltd v Commissioner for Inland Revenue,*[13] the SCA noted that –

> "… bearing in mind again that we are dealing with loans for consumption which brought about that each borrower became the owner of the money received, the interest cannot be compensation to Cactus for the use of *Cactus'* money."

At first glance, it may be tempting to conclude that the SCA held that interest is not for the use of money. However, it is apparent that the court was considering a technical point regarding loans for consumption by noting that, with a loan for consumption, "ownership" of the money changes and therefore it cannot be said that the interest was for the use of the lender's money since it was technically no longer the lender's money.

Further, it was in response to an analogy by the taxpayer between the use of property under a lease with the emphasis on the continuing performance obligations under such contracts for the purpose of determining the time of accrual. The court held that it was not an apt analogy because in a loan for consumption the ownership of the money transferred so it could not be said that there was use of the another's property and, further, once the lender had transferred the money no further performance was required. Whether or not the amount constituted interest was not in dispute, the timing of the accrual of the interest was in dispute and so, having made the statement that interest on a loan for consumption was not use of the lender's money, it was not necessary for the court to give an alternative definition of "interest" for loans for consumption.

In the absence of the SCA giving a definition of "interest" in the case of a loan for consumption, the High Court's definition as noted above ("compensation for the receipt and retention of the money") remains relevant. The context of the wording is important, and the meaning must be restricted to the compensation paid to the lender for the lending of the relevant amount of money to the borrower and, therefore, no longer being in possession of the money until it is repaid. Interest would not include any and all finance charges connected to the loan that a borrower may incur and be liable for to the lender or other third parties.

In the context of a loan for consumption, it is submitted that colloquially an interest charge is widely understood and referred to as being for the use of money despite ownership of the money having technically changed. It is often thought of as the lender's money because the borrower has an obligation to repay it to the lender. Therefore, when "use of money" terminology is used for a loan for consumption, even though referring to "compensation for the receipt and retention of money" might be more accurate, the meaning is the same and nature of the charge is clear.

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11 1999 (1) SA 264 (T), 59 SATC 1 at 27.

12 1990 52 SATC 337 (T). At page 342 Melamet J cited the same definition of "interest" as that cited in ITC 1496 and included in the Note above.

13 1999 (1) SA 315 (SCA), 61 SATC 43; 61 SATC 43 at 46.

In light of the above, it can be concluded that the amount which constitutes interest is the charge for the use of money borrowed and which a person receives for giving someone the use of the money.

An amount of interest remains interest irrespective of whether it is calculated with reference to a fixed or variable rate of interest, or is payable or receivable in a lumpsum or unequal instalments over the terms of the financial arrangement.[14] Interest may be in the form of cash or kind[15] and it could be calculated using a fixed or variable rate of interest or on some other basis. The determination of whether an amount can be regarded as "interest" is fact dependent.

4.3 Meaning of "similar finance charges"

The phrase "finance charges" is not defined in the Act. The ordinary grammatical meaning of "finance charge" is –[16]

> "a fee charged for the use of credit or the extension of existing credit. It may be a flat fee or a percentage of borrowings, with percentage-based finance charges being the most common".

According to *Investopedia.com* –

> "a finance charge is often an aggregated cost, including the cost of carrying the debt along with any related transaction fees, account maintenance fees, or late fees charged by the lender"[17]

and –

> "a finance charge is the total amount of money a consumer pays for borrowing money. … Common finance charges include interest rates, origination fees, service fees, late fees, and so on".[18]

Therefore, finance charges include, but are not limited to, loan application fees, monthly service fees, administration fees, structure fees, and raising fees (also commonly referred to as originating fees).

Before the introduction of section 24J, a trend that had gained popularity was for financial instruments to be issued at a discount or to have interest the payment of which was deferred. Certain borrowers claimed the discount or deferred interest as fully deductible in the year of issue, however, certain lenders claimed the amounts were taxable only when the instrument matured. Additionally, there were conflicting judgments from the special court on the subject. Section 24J was accordingly introduced to address when interest is incurred by borrowers and accrued to lenders, that is, to address the timing of incurrals and accruals of interest. This was achieved by introducing an accrual basis that recognises the spreading of interest (including discounts and premiums) on a yield-to-maturity basis.[19] The term "interest" was defined as including, amongst others, "interest and related finance charges" with the intention that finance charges of the same kind or nature as interest would be treated in the same manner as interest (as it is commonly understood) under section 24J. There was no intention to broaden the meaning of interest to the extent that, for

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14 Paragraph (i) and (ii) of the definition of "interest" in section 24J(1).
15 Section 24J(10).
16 **www.investopedia.com/terms/f/finance_charge.asp** [Accessed 12 December 2025].
17 **www.investopedia.com/terms/f/finance_charge.asp** [Accessed 12 December 2025].
18 **www.investopedia.com/terms/t/total-finance-charge.asp** [Accessed 12 December 2025].
19 *Explanatory Memorandum on the Income Tax Bill, Act 21 of 1995.*

example, legal fees incurred on setting up a loan would, through the provisions of section 24J, be included as interest and be deemed to be incurred on a yield-to-maturity basis over the period of the loan. Even if those legal fees could be viewed as related to the loan, they are not related in kind to interest or interest by nature.

Before 2004 there were different views regarding whether interest was always of a revenue nature or whether, depending on the facts of a specific case, it was of a capital nature. To provide certainty on the tax treatment of interest and to introduce the principle that interest should be, and going forward would be, treated on revenue account, section 24J(2) and section 24J(3) were amended to, respectively, provide for a deduction from income or an inclusion in income, provided the requirements of those sections were met.[20] There was no legislative intent with this amendment to broaden the definition of "interest" to include all finance charges related to the same loan. Finance charges other than "interest" as defined in section 24J would therefore still need to meet the requirements of section 11(*a*) or gross income before, as appropriate, qualifying for a deduction or being included in gross income.

The phrase "related finance charges" was considered in *C: SARS v South African Custodial Services (Pty) Ltd*[21] within the context of the repealed section 11(*b*A). The repealed section 11(*b*A)[22] provided for a deduction of "any interest (including related finance charges)" not otherwise allowable as a deduction under the Act, that had been actually incurred by the taxpayer on any loan, advance or credit to, broadly speaking, acquire specified assets when those assets had not yet been brought into use for the purposes of the taxpayer's trade but were subsequently so brought into use. Plasket AJA held that the various fees associated with the raising of the loans qualified as "related finance charges" because of "their close connection to the obtaining of the loans and the furtherance of SACS projects" and were therefore deductible under section 11(*b*A).[23]

In practice, it was noticed that taxpayers used the *South African Custodial Services (Pty) Ltd* judgment referred to above as authority to include various finance charges in interest under the ambit of "related finance charges" as contemplated in paragraph (*a*). Taxpayers would then claim a deduction for those finance charges (as part of interest) under section 24J(2). SARS considered such use of the judgment to be inconsistent with interpreting the meaning of the wording within the context in which it was used in section 24J, which is unique and different to the context of the interpretation required under the now repealed section 11(*b*A) given the overarching purpose of section 24J and the reason for its inclusion in the Act.

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20 *Explanatory Memorandum on the Revenue Laws Amendment Bill*, *2004*, pages 19 – 23.

21 2012 (1) SA 522 (SCA); 74 SATC 61.

22 Section 11(*b*A) was repealed with effect from 1 January 2012 and is not applicable to years of assessment commencing on or after that date. The *Explanatory Memorandum on the Taxation Laws Amendment Bill 17B of 2011* explained that section 11(*b*A) was obsolete in light of section 11A.

23 2012 (1) SA 522 (SCA), 74 SATC 61 at 75.

To clarify the inclusion and meaning of the words "related finance charges" in paragraph (*a*), the definition was amended in 2016[24] and the word "related" was substituted with the word "similar", resulting in the relevant portion of paragraph (*a*) to be more focussed and now reading "interest or *similar* finance charges" (own emphasis).[25]

The reason for this amendment is explained as follows in the *Explanatory Memorandum on the Taxation Laws Amendment Bill 17B, 2016*:

> "The proposed amendment in paragraph (*a*) of the definition of "interest" in subsection (1) replaces the word "related" with the word "similar" to clarifies (sic) the policy position that this applies to finance charges of the same kind or nature."

Even in the absence of consensus as to whether the amendment was merely a clarification or a substantive change, it is clear that "similar finance charges" must be interpreted more narrowly than "related finance charges".

The word "similar" is not defined in the Act. According to its ordinary grammatical meaning in the *Merriam Webster Dictionary*, "similar" means –[26]

> "1**:** having characteristics in common**:** strictly comparable".

The *Cambridge Dictionary* defines "similar" as –[27]

> "looking or being almost, but not exactly, the same".

Synonyms for "similar" include "nearly alike", "close", "comparable", "like" or "akin".[28]

In addition to considering the ordinary meaning of "similar", it is also important to consider the context in which the words "similar finance charges" are used in paragraph (*a*)[29] and its legislative history.

It is a principle in interpretation of legislation that application of the *eiusdem generis* rule is sometimes expressed by the *maxim noscitur a sociis*, that is, the measuring of a word may be ascertained by reference to those associated with it.

Operation of these rules was succinctly described by Innes CJ in *Director of Education, Transvaal v McCagie & others* as follows:[30]

> "The words 'other evidence', are, no doubt, wide, but their interpretation must be affected by what precedes them. General words following upon and connected with specific words are more restricted in their operation than if they stood alone. [*Noscitur*] *a sociis*; they are coloured by their context; and their meaning is cut down so as to

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24 The definition was amended by section 45 of the Taxation Laws Amendment Act, 15 of 2016.

25 For completeness it is noted that in ITC 1963 (2022) 85 SATC 246 (B), Molitsoane J held that "related finance charges" as used in the definition of "interest" in section 24J(1) before its amendment in 2016, included finance charges comprising raising fees, debt origination fees and relevant structuring fees. Although SARS may respectfully not agree with all aspects of the judgement, the outcome highlighted the need for clarification of the legislative intention and therefore the importance of the clarifying amendment to the definition in 2016.

26 **www.merriam-webster.com/dictionary/similar** [Accessed 12 December 2025].

27 **https://dictionary.cambridge.org/dictionary/english/similar** [Accessed 12 December 2025].

28 **https://dictionary.cambridge.org/thesaurus/similar** [Accessed 12 December 2025].

29 *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

30 1918 AD 616 at 623.

> comprehend only things of the same kind as those designed by the specific words – unless, of course, there is something to show that a wider sense was intended."

In other words, if two or more words, which are susceptible of analogous meaning, are coupled, they are understood to be used in their cognate sense. They take, as it were, their colour from each other. In context, a finance charge that is included must be similar to interest.

Having regard to the above, it is concluded that, irrespective of what a finance charge is called, finance charges resembling interest (either in kind or nature) without being identical to interest, are regarded as similar finance charges. Therefore, the phrase "similar finance charges" does not include all forms of costs associated with acquiring and executing a loan and should not be interpreted and applied too widely.

The relevant aspect of similarity that a finance charge must have with interest to be a "related finance charge" is that it must be of the same kind or nature.

For example, a monthly service fee levied for administering a loan account may be viewed by some as a finance charge as it is a cost that is incurred in connection with the loan and therefore part of the total cost of borrowing. Administering the loan account for which the service fee is charged is very different to and distinguishable from the use of the funds loaned for which interest is charged. Accordingly, a monthly service fee is not a finance charge that is similar to interest. See **4.4** for an example that considers whether a raising fee is a finance charge that is similar to interest, that is, a similar finance charge.

When determining whether a particular finance charge is a "similar finance charge" to interest, and therefore included under paragraph (*a*), it is important to take the wording of the section, the above principles, and the purpose of section 24J into consideration. The history and reason for the deletion of "related" and replacement with "similar" is also a relevant consideration.

The facts of each case will determine if a particular finance charge relating to a financial arrangement constitutes "interest" as defined in section 24J. A similar finance charge is interest irrespective of whether it is calculated with reference to a fixed or variable rate of interest, or is payable or receivable in a lumpsum or unequal instalments over the terms of the financial arrangement.[31] A similar finance charge may be in the form of cash or kind[32] and it could be calculated using a fixed or variable rate of interest or on some other basis.

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31 Paragraphs (i) and (ii) of the definition of "interest".

32 Section 24J(10).

4.4 Application of the principles in 4.3 in assessing whether a raising fee, as an example, constitutes a "similar finance charge"

A raising fee is generally a fee payable to the lender or arranger of a loan in consideration for work done in providing or arranging the loan.[33] Otherwise stated, when looking at the nature of the fee and what it is for, raising fees are typically related to the acquisition of capital and not for the use of money.

Essentially, a raising fee is paid to the lender or a third party for initiating or setting up the financial arrangement. The archived *Income Tax Practice Manual*[34] provides the following helpful guidance on the distinction between interest and raising fees:[35]

- Raising fees are a cost of raising capital, whilst interest is a payment for the use of capital.
- A raising fee is (*generally*) a once-off payment whilst interest is normally a recurring payment.
- Interest is *(generally)* calculated by reference to time whilst a raising fee is usually unrelated to time.
- Interest, even pre-production interest, is not an expense of a capital nature because of its recurring nature (*whereas a raising fee may be of a capital or revenue nature*).

(Our insert)

A raising fee that is paid to *obtain* funds cannot be said to be similar to interest that is paid for the *use* of such borrowed funds. The nature of a raising fee, or otherwise stated what it is for, is very different to the nature of interest. A raising fee is typically a fee that a lender or third-party charges for the work performed in relation to setting up the loan and is payable irrespective of what portion of the facility is ultimately borrowed and when it is repaid. Even if a raising fee is calculated and expressed in terms of a rate (for example, 1% of capital borrowed), it is fundamentally distinct from interest, which is a payment for the use of borrowed money. A raising fee is not a charge of the same kind or character as "interest". Consequently, a raising fee, as described above, is not a similar finance charge and does not constitute "interest" as defined in paragraph (*a*). It will therefore not qualify for a deduction under section 24J(2).[36]

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33 **www.derebus.org.za/the-deductibility-of-front-end-fees/** [Accessed 12 December 2025].

34 Income Tax Practice Manual Handbook "*[A:D10] Deductions – Raising fees – Section 11(bA) and Section 11(bB)*" [online – archived] (My LexisNexis: January 2024].

35 Although this guidance was given with reference to "related finance charges" in the repealed section 11(*b*A), the guidance is still relevant as it highlights the reasons why a raising fee is different to interest and those differences are part of the reason why it is not a finance charge that is similar to interest.

36 By comparison, section 24J(3) would not apply to include the raising fee as "interest" in gross income of the lender or third party that charged the raising fee. The raising fee would also not be interest for purposes of the provisions dealing with withholding tax on interest if the lender or third party was a foreign person.

Having regard to the words, context and the purpose of paragraph (*a*) and section 24J as a whole, this outcome aligns with the fact that it was not the intention of the legislature to include finance charges such as raising fees in "similar finance charges". This intention is also evident in paragraph 20(2) of the Eighth Schedule to the Act, which refers to borrowing costs as "including interest as contemplated in section 24J, raising fees, bond registration costs or bond cancellation costs". The legislature specified raising fees, bond registration cost and bond cancellation costs separately since these expenses were not included in "interest as contemplated in section 24J".

In a recent tax court case,[37] a wide interpretation was given to the phrase "similar interest charges" to the extent that it is practically indistinguishable from the previous formulation "related finance charges". Although SARS agrees that "similar finance charge" does not require the finance charge to be identical to interest, SARS respectfully disagrees with the tax court's wide interpretation, and is appealing the judgment. SARS's view, taking into account the text, context and purpose of the section, related rules of interpretation, legislative amendments to the definition of "interest" and interpretative aids such as relevant explanatory memorandums, is that to be similar to interest, a finance charge must be of the same kind or nature as interest, and that the raising fee dealt with in the tax court case did not meet that requirement. Other characteristics, such as when the charge is incurred, how it is calculated and when it is paid, may assist but are not determinative.

Deductions under other sections of the Act

To determine whether finance charges in respect of a financial arrangement, that are not similar to interest and do not qualify for a deduction under section 24J(2), are deductible under another provision of the Act, one has to consider the requirements of the relevant provision. Under the so-called general deduction formula in section 11(*a*), read with section 23(*g*), expenditure and losses actually incurred for purposes of trade and that are in the production of income may be deducted from income, provided such expenditure and losses are not of a capital nature.[38]

The phrase "capital nature" is not defined in the Act and although it has been held that the ordinary economic meaning should be attached to the word "capital", it has not been possible to devise a definitive or all-embracing test despite the regularity with which the issue has arisen.[39] The courts have provided some valuable guidelines to determine whether an expense is of a revenue or capital nature. Generally, expenditure incurred to perform income-earning operations is regarded as being of a revenue nature and any expenditure incurred to establish, improve or add to the income-earning structure of a taxpayer's business is capital in nature.[40] There must also be a sufficiently close link between the expenditure and the taxpayer's income-earning operations in order to conclude that it forms part of the cost of performing the

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37 IT 76795 – https://www.sars.gov.za/legal-counsel/dispute-resolution-judgments/tax-court/tax-court-2025-2023/.

38 A detailed consideration of section 11(*a*) and section 23(*g*) is beyond the scope of this Note. However, a brief consideration of some of the aspects of the capital or revenue nature of raising fees on loans is included.

39 *WJ Fourie Beleggings v CSARS* 2009 (5) SA 238 (SCA), 71 SATC 125 at 129.

40 *New State Areas Ltd v CIR* 1946 AD 610, 14 SATC 155. Authority for the view that money spent in creating an income-earning structure is of a capital nature can also be found in, amongst others, *CIR v George Forest Timber Co Ltd*, 1924 AD 516, 1 SATC 20; *SIR v Cadac Engineering Works (Pty) Ltd*, 1965 (2) SA 511 (A), 27 SATC 61 and *BP Southern Africa (Pty) Ltd v C: SARS*, 2007 JDR 0145 (SCA), 69 SATC 79.

taxpayer's income-earning operations, rather than the cost of expanding the income-producing structure. Usually, if an asset that has an enduring benefit is created, the associated costs are of a capital nature.

In ITC 882,[41] the nature of raising fees was considered. In this case a bond was raised for the purpose of acquiring an asset of a capital nature. It was held that the fee for the raising of the bond to acquire a capital asset at a time before the building was a lettable proposition, was part of the money expended to produce the revenue producing asset. Therefore, the expenditure, that is, the raising fee, was held to be more closely connected to the taxpayer's income earning structure and of a capital nature.

Kuper J held the following:[42]

> "As I have already said, the Genn case dealt with the particular facts found in that case, and it was on those facts that the Court held that the commission paid as a fee for the raising of loans made by the company during the currency of its business, in order to enable it to acquire stock from time to time for the purpose of its business, was an expenditure incurred in the production of its income and was not an expenditure of a capital nature. Here the bond was raised for the purpose of acquiring an asset of a capital nature. The fee for the raising of the bond at a time before the building was a lettable proposition was part of the money expended in order to produce the revenue-producing asset and in the view of this Court it was therefore an expenditure of a capital nature."

When applying the above principles, a raising fee is often of a capital nature. As such, it is not deductible under section 11(*a*). Ultimately, the facts of each case must be considered on their merits when determining whether finance charges, that are not similar to interest and are not deductible under section 24J, are deductible under section 11(*a*).

Example – The treatment of raising fees under section 24J and section 11(*a*)

Facts:

Company X entered into a financial arrangement with ABC Bank to obtain a loan to acquire immovable property for rental purposes. The costs for the loan comprised interest as well as a raising fee. The interest was charged at a rate of 8% per year, and the raising fee was R100 000.

The loan was granted for a 10-year period and Company X settled its debt in full at the end of the term of the loan. In terms of the contract between Company X and ABC Bank, Company X paid the raising fee upfront.

41 (1959) 23 SATC 239 (T). See also ITC 1019 (1962) 25 SATC 411(N).

42 (1959) 23 SATC 239 (T) at 242.

Result:

The nature and character of the raising fee was very different to interest as it was not incurred for the use of the money underlying the loan. The raising fee was incurred by Company X to obtain the loan facility and was not compensation to ABC Bank for the period for which ABC Bank lent Company X the money. The raising fee did not constitute a "similar finance charge" as contemplated in paragraph (*a*) and a deduction under section 24J(2) was therefore not allowable. The raising fee paid to raise the loan for the acquisition of the immovable property was part of the money expended by Company X in order to produce an income-producing asset. Therefore, the expenditure was of a capital nature and was not deductible under section 11(*a*).

The interest charged at 8% per year was for the use of the funds underlying the loan and as such it was considered to be interest as contemplated in paragraph (*a*). A deduction under section 24J(2) was allowed since all of the requirements of section 24J were met.

5. Conclusion

In interpreting the phrase "similar finance charges" one has to have regard to the wording used, its context, and its purpose. The phrase must therefore be interpreted to mean charges similar in kind or nature to "interest". Furthermore, paragraph (*a*) stipulates that the charges contemplated must be "in terms of or in respect of a financial arrangement". The charges therefore need to be part of the financial arrangement itself. The term "similar finance charges" is not a catch-all for all forms of costs associated with a financial arrangement. Amounts charged for the granting, approval or administration of a financial arrangement while being linked to the arrangement, are not compensation for the use of the funds and are therefore not similar to interest.

Finance charges relating to a financial arrangement that do not qualify for a deduction under section 24J(2), may be deductible under section 11(*a*) depending on the facts of the case and whether the requirements of section 11(*a*), read with section 23(*g*) have been met.

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE

Annexure – The law

Definition of "instrument" in section 24J(1)(*a*)

"instrument" means—

(*a*) . . . . . .

(*b*) . . . . . .

(*c*) any interest-bearing arrangement or debt;

(*d*) any acquisition or disposal of any right to receive interest or the obligation to pay any interest, as the case may be, in terms of any other interest-bearing arrangement; or

(*e*) any repurchase agreement or resale agreement,

which was—

(i) issued or deemed to have been issued after 15 March 1995;

(ii) issued on or before 15 March 1995 and transferred on or after 19 July 1995; or

(iii) in so far as it relates to the holder thereof, issued on or before 15 March 1995 and was unredeemed on 14 March 1996 (excluding any arrangement contemplated in subparagraphs (i) and (ii)),

but excluding any lease agreement (other than a sale and leaseback arrangement as contemplated in section 23G) or any policy issued by an insurer as defined in section 29A;

Definition of "interest" in section 24J(1)(*a*)

"interest" includes the—

(a) gross amount of any interest or similar finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement;

(b) amount (or portion thereof) payable by a borrower to the lender in terms of any lending arrangement as represents compensation for any amount to which the lender would, but for such lending arrangement, have been entitled; and

(c) absolute value of the difference between all amounts receivable and payable by a person in terms of a sale and leaseback arrangement as contemplated in section 23G throughout the full term of such arrangement, to which such person is a party,

irrespective of whether such amount is—

(i) calculated with reference to a fixed rate of interest or a variable rate of interest; or

(ii) payable or receivable as a lump sum or in unequal instalments during the term of the financial arrangement;