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Through analysis of and comment on new laws and judicial decisions of interest, Synopsis helps executives to identify developments and trends in tax law and revenue practice that may affect their business.

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Similar finance charges: Why SARS' Interpretation Note 142 may be wrong

SARS has published its final Interpretation Note ('IN 142') addressing the meaning of 'similar finance charges' for the purposes of section 24J. This article provides a critical examination of IN 142 and explores the implications of SARS' interpretations for various finance charges – particularly raising fees – and their deductibility for taxpayers. The article challenges several of SARS' conclusions and presents an alternative view on the proper application of section 24J, with particular emphasis on the purpose underlying the definition of 'interest' in that provision. Finally, even assuming SARS' interpretation is defensible, this article considers whether raising fees and similar charges may nevertheless be deductible under ordinary principles of deductibility.

Introduction

SARS released a draft Interpretation Note on 27 September 2024 addressing the meaning of 'similar finance charges' as used in the definition of 'interest' in section 24J(1) of the Act¹. This Interpretation Note was finalised and published on 12 December 2025.

The final IN 142 reflects only minor amendments from the earlier draft, with changes that are predominantly administrative and clarificatory in nature. The final version also incorporates a more comprehensive preamble containing definitions of key terms. Importantly, no significant substantive additions or amendments to SARS' interpretation were introduced. SARS' core position, adopting a narrow interpretation of the phrase 'similar

¹ Income Tax Act 58 of 1962 (as amended).

finance charges', remains unchanged, and the guidance on determining whether particular finance charges (such as raising fees) fall within the definition of 'interest' under section 24J(1)(a) is consistent with the draft.

To summarise:²

1. Paragraph (a) of the definition of 'interest' in section 24J provides that interest includes, among other things, 'the 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'. IN 142 seeks to clarify the meaning of 'similar finance charges' and to determine whether various finance charges payable under a financial arrangement fall within the scope of this term.
2. SARS observes that commercial financing arrangements commonly involve various finance charges payable by the borrower to the lender, including loan application fees, service fees, administration fees, structure fees, and front-end or raising fees. Consequently, uncertainty has arisen as to whether these (and other) finance charges qualify as 'similar finance charges' under the definition of 'interest' in section 24J(1).
3. Although this article critiques certain analyses and interpretations advanced by SARS in IN 142, it does not seek to determine whether the aforementioned charges do or do not qualify as 'similar finance charges'. In our view, such qualification is irrelevant to assessing whether these charges are deductible under

section 24J(2). Fundamentally, we disagree with SARS' interpretation of section 24J itself, having regard to the language used in the section (in light of ordinary grammar and syntax), the context of 24J and the Act as a whole, as well as the apparent purpose to which the section is directed.

What is the purpose of the definition of 'interest' in section 24J?

Interpretation set out in IN 142 in the context of raising fees

Part 4.3 of IN 142 sets out SARS' overview of the meaning of 'similar finance charges' having regard to case law and various other interpretational aids. Part 4.4 goes on to apply the principles set out under part 4.3 to determine whether raising fees³ constitute 'similar finance charges' and, therefore, whether raising fees fall within the scope of 'interest' as defined in section 24J.

SARS ultimately concludes that raising fees do not constitute 'similar finance charges'. In this regard, SARS states that:⁴

'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).

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".' (our emphasis)

Regardless of whether SARS' interpretation is correct in finding that raising fees do not constitute 'similar finance charges', in our view, for the reasons that follow, the answer to this question is *irrelevant* for purposes of applying section 24J(2).

² Refer also to our previous Synopsis articles on this topic, included in the [January](#) and [March 2025](#) Synopsis editions.

³ 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.

⁴ Pages 10–11 of IN 142.

Our interpretation of the purpose of the 'interest' definition

We respectfully disagree with the view that for these charges/fees to be deducted under section 24J(2), they have to first qualify as interest as defined. We hold the view that the question of whether such charges/fees qualify as interest as defined has no bearing on whether they fall to be deducted under section 24J(2).

Section 24J(2) provides as follows:

'Where any person is the **issuer in relation to an instrument** during any year of assessment, **such person shall for the purposes of this**



Act be deemed to have incurred an amount of interest during such year of assessment, which is equal to-

- a. the sum of all accrual amounts in relation to all accrual periods falling, whether in whole or in part, within such year of assessment in respect of such instrument; or
- b. an amount determined in accordance with **an alternative method** in relation to such year of assessment in respect of such instrument,

which must be deducted from the income of that person derived from **carrying on any trade**, if that amount is **incurred in the production of the income.**' (our emphasis)

Firstly, section 24J(2) does not state that an amount must first constitute interest as defined before such amount qualifies as a deduction. Instead, it states that if a person is an issuer in relation to an instrument, such person is then deemed to have incurred an amount of interest. In effect, the amount of interest which qualifies to be deducted under section 24J(2) is a *deemed amount* and not the amount of interest, as defined, actually incurred by the taxpayer.

In *Madzimbamuto v Lardner-Burke NO and Another NO; Baron v Ayre NO and Others NNO*⁵, the then Rhodesia Appellate Division considered the meaning of the word 'deemed' in the context of a deeming provision as follows:⁶

'Now, that language is, generally speaking, loose, because **when it is said that a thing is to be deemed to be something, it is not meant to say that it is that which it is deemed to be. It is rather an admission that it is not that which it is deemed to be**, and notwithstanding it is not that particular thing, nevertheless, for the purposes of the Act, **it is deemed to be that thing.**' (our emphasis)

⁵ [1968] 2 All SA 253 (RA).

⁶ At page 383 of [1968] 2 All SA 253 (RA).

If the above interpretative principle is applied to the word 'deemed' as it is used in section 24J(2), it follows that it is not interest as defined that is deducted by the taxpayer but, rather, it is the amount that section 24J(2) **deems** the taxpayer to have incurred which is deductible, provided the relevant requirements as set out in section 24J(2) are met.

SARS confirms this interpretation on page 3 of IN 142, stating:

'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.' (emphasis added)

Section 24J was introduced in 1995 and has since undergone various refinements. Initially, the deductibility of interest was governed by section 11(a) of the Act, read with section 23 (commonly referred to as the general deduction formula), with section 24J serving only to determine the timing of the deduction. However, subsequent amendments mean that both the deductibility of interest and the timing of such deduction are now determined under section 24J itself. The Explanatory Memorandum accompanying the introduction of section 24J stated the following:

'The proposed section 24J will in broad terms be dealing with **interest on instruments which can generally be described as interest-bearing arrangements....All amounts defined as interest will be spread** over the period from the date a taxpayer acquired (whether on issue or transfer from another person) an instrument until the date of disposal or maturity thereof'. (our emphasis)

The Explanatory Memorandum further stated the following with regard to the definition of accrual amount:

'The accrual amount is **one of the most important definitions** of the proposed section 24J, **as it represents the amount of interest determined** after the integrated application of the various concepts defined in the section, **which is finally deemed to have been incurred** or accrued during a relevant year of assessment.' (our emphasis)

The Explanatory Memorandum suggests that all amounts falling within the definition of interest should be spread in accordance with section 24J. However, this position appears to be contradicted elsewhere in the Explanatory Memorandum, where it is stated; that the accrual amount represents the interest ultimately deemed to have been incurred. Given this apparent inconsistency, which interpretation should prevail when construing section 24J(2)?

In having regard to the well-known principles of statutory interpretation as set out in *University of Johannesburg v Auckland Park Theological Seminary and Another*⁷, the Constitutional Court noted the following:⁸

'This approach to interpretation requires that "from the outset one considers the context and the language together, with neither predominating over the other". In *Chisuse*, although speaking in the context of statutory interpretation, this Court held that this "now settled" approach to interpretation, is a "unitary" exercise. **This means that interpretation is to be approached holistically: simultaneously considering the text, context and purpose.** The approach in *Endumeni* "updated" the previous position, which was that context could be resorted to if there was ambiguity or lack of clarity in the text. **The Supreme Court of Appeal has explicitly pointed out in cases subsequent to *Endumeni* that context and purpose must be taken**

into account as a matter of course, whether or not the words used in the contract are ambiguous. A court interpreting a contract has to, from the onset, consider the contract's factual matrix, its purpose, the circumstances leading up to its conclusion, and the knowledge at the time of those who negotiated and produced the contract.' (our emphasis)

To reiterate, section 24J(2), insofar as relevant, provides that '[w]here any person is the issuer in relation to an instrument during any year of assessment, **such person shall for the purposes of this Act be deemed to have incurred an amount of interest during such year of assessment, which is equal to – (a) the sum of all accrual amounts...**' When section 24J(2) is read in context, having regard to the section as a whole and the Explanatory Memorandum that accompanied its enactment, it is clear that the accrual amount – not the amount of interest as defined – is the amount to be deducted. This interpretation aligns with SARS' position in IN 142. Had the legislature intended for the defined amount of interest to be deducted, the provision would simply have stated as much. The language of section 24J(2), read in the context of section 24J and the wider Act, is clear and unambiguous.

This naturally raises the question: What, then, is the purpose of the definition of 'interest' in section 24J?

Leaving aside the requirements relating to 'trade' and 'in the production of the income' under section 24J(2), for that provision to apply, a person must be an issuer in relation to an instrument. In simple terms, an issuer is the

debtor under the loan. For present purposes, 'instrument' is defined in section 24J(1) as:

'(c) any **interest-bearing** arrangement or debt' (our emphasis)

The term 'interest-bearing arrangement or debt' is not defined for the purposes of section 24J. However, on its ordinary grammatical meaning, the phrase refers to an arrangement or debt that bears interest. In *Commissioner for Inland Revenue v Genn & Co (Pty) Ltd*⁹, it was held that interest is a payment made for the use of money, equivalent to rent.

In our view, the sole purpose of the definition of 'interest' under section 24J is to determine whether an 'instrument' exists – this being one of the prerequisites for section 24J(2) to apply. This does not mean that all amounts payable under a loan agreement must qualify as interest; rather, provided at least one such amount meets the definition of interest, an instrument will exist.

The question of whether charges or fees are deductible under section 24J turns on the definition of 'accrual amount' that section 24J(2) deems the taxpayer to have incurred. As noted above, section 24J(2) deems an amount of interest equal to either (i) the sum of all accrual amounts relating to accrual periods falling, in whole or in part, within the relevant year of assessment in respect of the instrument; or (ii) an amount determined in accordance with an alternative method for that year of assessment in respect of the instrument.

⁷ [2021] ZACC 13; 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 (CC).

⁸ At 65–66.

⁹ 1955 (3) SA 293 (AD).

In essence, the alternative method represents the accounting calculation of interest. Certain requirements must be satisfied before a taxpayer may choose this method. For present purposes, we do not address the alternative method further, as our focus is on the accrual amount.

The term 'accrual amount' is defined in section 24J(1) and, in relation to an accrual period, is calculated as the yield-to-maturity multiplied by the adjusted initial amount in respect of the instrument. The adjusted initial amount is, in simple terms, the outstanding balance of the loan for tax purposes.

'Yield-to-maturity' is defined in section 24J(1) as the rate of compound interest per accrual period at which the present value of **all amounts payable or receivable in terms of an instrument** during the term of the instrument equals the initial amount. Notably, all amounts payable or receivable under the instrument must be included in this calculation. The effect is that the yield-to-maturity represents the internal rate of return on the instrument, taking into account all amounts payable or receivable under it, and serves as the effective interest rate applied to the instrument when determining the amount of interest for tax purposes. Provided an amount is payable or receivable under the instrument, it is included in the yield-to-maturity calculation, irrespective of whether that amount constitutes 'interest' as defined.

It follows from the definition of yield-to-maturity that where other finance charges are payable or receivable under an interest-bearing debt (i.e., the loan), those charges will be

taken into account in determining the yield-to-maturity. Consequently, such charges will form part of the accrual amounts deductible under section 24J(2).

Contradictions in SARS approach?

For the reasons set out above, we respectfully disagree with the view expressed in IN 142 that raising fees must first qualify as 'interest' as defined before they may be deducted under section 24J(2). This qualification has no bearing on whether such fees fall to be deducted under that provision. Rather, **these charges or fees need only be payable or receivable under the instrument to form part of the accrual amount deemed to have been incurred** and thus deductible under section 24J(2).

Curiously, SARS appears to contradict itself in IN 142, acknowledging this very point as follows:¹⁰

'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.' (our emphasis)

Yet SARS proceeds to conclude that:¹¹

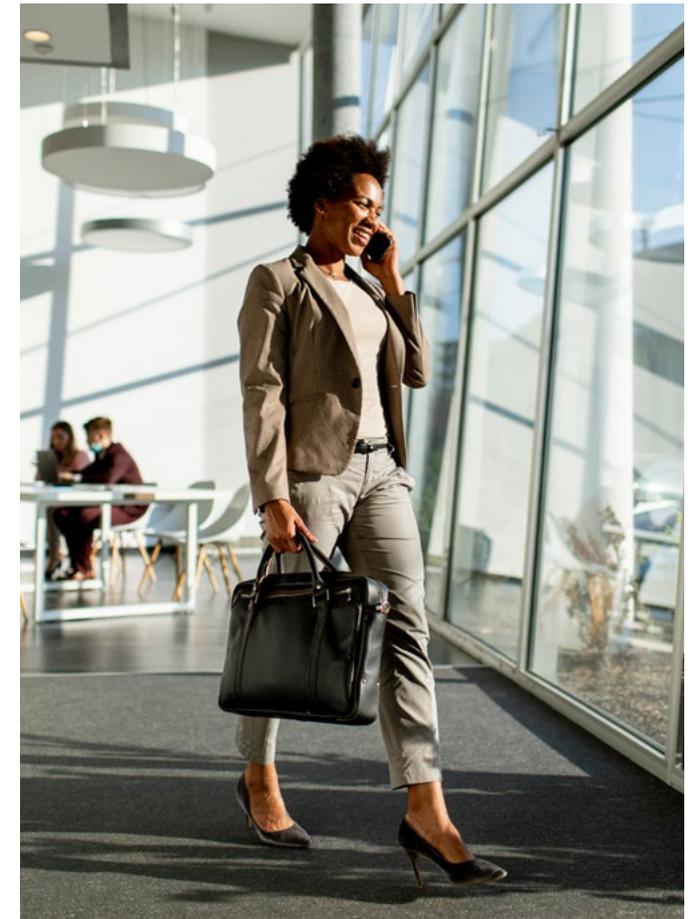
'An amount that is payable in terms of, in respect of, or in connection with a financial arrangement is not automatically interest for purposes of section 24J. **The amount must meet the definition of "interest" in section 24J(1) to be interest for the purposes of section 24J.**'

SARS' analysis in respect of raising fees is accordingly somewhat puzzling. SARS initially refers to deemed amounts calculated under section 24J, as opposed to amounts falling within the definition of 'interest', yet

¹⁰ Page 3 of IN 142.

¹¹ *Id.*

concludes that amounts must meet the definition of interest to be deductible under section 24J. Adding to this inconsistency, IN 142 acknowledges, on more than one occasion, the importance of reading the definition of 'similar finance charges' in the context of section 24J as a whole and having regard to its purpose, yet, with respect, appears to misconstrue that very purpose.



Practically, what actually constitutes 'similar finance charges'?

As demonstrated above, SARS adopts a notably restrictive interpretation of 'similar finance charges' under paragraph (a) of the definition of 'interest' in section 24J(1). According to IN 142, a finance charge will only qualify as a 'similar finance charge' if **it is of the same kind, nature, or character as interest** – that is, it must constitute compensation for the use of money. SARS emphasises that there must be 'almost no difference in character' between the finance charge and interest for it to qualify (emphasis added). In SARS' view, the term is not intended as a catch-all for costs associated with a financial arrangement; rather, it must be interpreted narrowly, consistent with the 2016 legislative amendment that replaced the word 'related' with 'similar'.

This approach gives rise to a somewhat paradoxical position: **SARS requires a finance charge to be virtually identical to interest, whilst simultaneously not constituting interest itself.** Compounding this difficulty, IN 142 does not provide any concrete examples of charges that would satisfy this exacting standard. SARS expressly confirms that raising fees, monthly service fees, administration fees, and similar charges do not qualify as 'similar finance charges' because they relate to the acquisition or administration of capital rather than compensation for its use. Given that SARS offers no illustration of a finance charge that would meet the threshold, whilst simultaneously excluding the most common forms of finance charges, it remains unclear what practical scope, if any, the concept of 'similar

finance charges' retains under this interpretation. A well-established principle of statutory interpretation is that every word must be given meaning. Words in legislation should not be treated as tautologous or superfluous.¹² As stated in *Wellworths Bazaars Ltd v Chandler's Ltd and Another*¹³, a court should be slow to conclude that words in a statute are tautologous or superfluous.

Presumably (although IN 142 does not address this point), since SARS considers that raising fees, monthly service fees, administration fees, and similar charges do not constitute 'interest' as defined in section 24J, such amounts should not be subject to the limitations imposed by sections 23M and 23N, nor to other provisions of the Act that apply to 'interest as defined in section 24J', such as sections 8F and 8FA.

Taxpayer Trust vs CSARS¹⁴

In the recent tax court judgment of *Taxpayer Trust vs CSARS*, the court considered whether raising fees fall within the meaning of 'similar finance charges' as used in the definition of 'interest' in section 24J(1).

¹² *National Credit Regulator v Opperman and others* [2013] JOL 29746 (CC).

¹³ 1947 (2) SA 37 (A) at 43.

¹⁴ *IT 76795* [2025] ZATC 1 (13 January 2025).



Please refer to the **March 2025 edition** of Synopsis for a more detailed discussion of this judgment.¹⁵ For present purposes, it suffices to note that the Tax Court ultimately held, on the facts before it, that the raising fees in question did qualify as 'similar finance charges' and consequently constituted 'interest' as defined in section 24J(1), rendering them deductible under section 24J. The Tax Court thus adopted a broad interpretation of 'similar finance charges'.

¹⁵ It should be noted that Tax Court cases are not binding on other taxpayers and are of persuasive value only. The Tax Court's finding stands in contrast to the view expressed by SARS in IN 142, where SARS takes the position that a raising fee is generally not a 'similar finance charge' and would therefore not constitute 'interest' as defined in section 24J(1)(a).



Notably, in the final version of IN 142, SARS specifically references this case (a reference not included in the draft interpretation note) and indicates that it intends to appeal the decision as follows:¹⁶

'In a recent tax court case, 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.'

Whether the appeal will proceed and, if so, whether an appellate court will uphold SARS' contrary interpretation remains to be seen.

¹⁶ At page 11.

Even if SARS is correct – can other finance charges be of a revenue nature?

A further question arising from IN 142 is whether finance charges such as raising fees could be capital in nature. This question is relevant in the context of the deductibility of finance charges that are not payable under the interest-bearing arrangement and therefore do not qualify for deduction under section 24J.

IN 142 states in this regard that:¹⁷

'To determine whether finance charges...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.'

Having outlined the general principles distinguishing capital from revenue expenditure as established in case law, IN 142 concludes¹⁸ as follows:

'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...are deductible under section 11(a).'

Section 11(a) of the Act does not define the term 'capital', nor does any definitive test exist for determining whether expenditure is of a revenue or capital nature. Case law therefore serves as the primary source of guidance on what constitutes capital expenditure, with the courts having developed various tests to distinguish between

¹⁷ *Id.*

¹⁸ At page 12.

the two categories. In *New State Areas Ltd v CIR*¹⁹, Watermeyer CJ, having considered a number of South African and English authorities, observed²⁰ that:

'The conclusion to be drawn from all of these cases seems to be that the true nature of each transaction must be inquired into in order to determine whether the expenditure attached to it is capital or revenue expenditure. **Its true nature is a matter of fact and the purpose of the expenditure is an important factor; if it is incurred for the purpose of acquiring a capital asset for the business it is capital expenditure even if it is paid in annual instalments; it is in truth no more than part of the cost incidental to the performance of the income producing operations, as distinguished from the equipment of the income producing machine, then it is a revenue expenditure even if it is paid in a lump sum.**' (our emphasis)

The 'capital nature' test will first be applied to interest, **the rationale for which will become apparent in the concluding paragraph**, in order to determine whether the 'not of a capital nature' requirement would pose an obstacle were the expenditure in question to be interest²¹, before considering how it applies to other finance charges.

In relation to interest incurred, what purpose is relevant for these purposes? Is Watermeyer CJ referring to the purpose of the loan or the purpose of the interest itself? Does interest have a purpose separate from that of the loan? Interest is ordinarily compensation paid to a creditor for permitting the debtor the use of the creditor's funds – is this not the sole purpose of interest? How, then, could the incurral of interest result in the creation, preservation, or acquisition of a capital asset? The answer, in our view, is that it cannot.

¹⁹ 14 SATC 155.

²⁰ At 170.

²¹ To the extent that section 24J(12) applies, interest incurred falls to be deducted under section 11(a) read with section 23 of the Act, which would require the interest not to be of a capital nature; this aspect is therefore also relevant.

In *Genn*²², Schreiner J.A noted the following:

'There might of course be the further question whether or not, because of its association with the fixed capital into which the loan is turned, interest on such a loan may not properly be said to be expenditure of a capital nature.' (our emphasis)

Further, the court in this case seems to have suggested tacitly that interest can be of a capital nature. However, in *ITC 1124*²³, Trollip J (as President of the Transvaal Income Tax Special Court), relying on the *Genn* case, held the following, which was approved²⁴ by E M Grosskopf JA in *Burgess v CIR*²⁵:

'Undoubtedly the loan liability incurred by the appellant company for acquiring and retaining the shareholdings in the said two private companies was of a capital nature, for it enabled the appellant company to acquire capital assets in the form of the shares and the possible enduring advantage of a constant supply of timber to the saw-milling company. But it does not necessarily follow that the interest paid on the loan must also be of a capital nature ... in the present case, the interest paid was the recurrent or periodical charge or 'rental' payable for the continued use by the appellant company of the money lent to it. Such interest was not intended or calculated to, nor did it in fact improve, augment or preserve those aforementioned capital assets, or form part of or add to the cost of acquiring them or enhance their value. Consequently, we do not think that in the circumstances of this case the interest was so closely identified'. (our emphasis)

Trollip J plainly did not have regard to the purpose of the loan when determining whether the interest itself was of a capital or revenue nature. The essential point made was that, when examining the interest in isolation, one must consider whether the interest improves, augments, or

preserves the capital assets funded by the loan. If the answer is in the negative, the interest cannot be capital in nature.

This interpretation is supported by the judgment in *Australian National Hotels Limited v FC of T*²⁶, where Bowen CJ and Burchett J said (at ATC 4633; ATR 1582):

'... If the capital is raised by loan, an investment of the borrowed moneys in a business will ordinarily remain an investment of capital, and the same consequences will follow. But there is a special feature of loan capital, which flows from the ephemeral nature of a loan. The cost of securing and retaining the use of the capital sum for the business, that is to say, the interest payable in respect of the loan, will be a revenue item. It creates no enduring advantage, but on the contrary is a periodic outgoing related to the continuance of the use by the business of the borrowed capital during the term of the loan ... Rent,... and interest are both periodic payments for the use, but not the permanent acquisition, of a capital item.' (our emphasis)

The Australian case cited above, whilst carrying only persuasive authority in South Africa, reinforces the proposition that interest must be assessed independently of the purpose for which the borrowed funds were applied. Significantly, interest does not give rise to an enduring advantage.

RC Williams²⁷ stated the following with regard to the capital nature of interest:

'If the argument of SARS were to gain acceptance by the courts, the implications for taxpayers nationwide would be little short of "cataclysmic". Almost every capital project is financed wholly or largely with borrowed funds and if the interest is not tax deductible, many of



these capital projects would be still born... it is difficult to see how the payment of interest can ever improve or augment the capital assets of the borrower any more than the payment of rent by a lessee can ever augment or improve the leased premises ... rent and interest are examples par excellence of the "fruit" (revenue) as opposed to the "tree" (capital), seen from the point of view of both incomings and outgoings.' (our emphasis)

In *ITC 1604*,²⁸ the taxpayer entered into a series of agreements pursuant to which he acquired a 49 per cent stake in a close corporation, in which he was also to be employed as managing director. The stake was acquired partly with cash and partly by means of an interest-bearing loan. The court held that the interest incurred was of a revenue nature, on the basis that the acquisition of the stake in the close corporation was closely connected to the earning of income by way of an increased salary and substantial bonus. Importantly, it was observed that whilst the loan liability incurred in acquiring the stake was

²² Supra.

²³ [1968] 31 SATC 53(T).

²⁴ Even though in that case E M Grosskopf JA was of the view that the asset concerned (i.e., insurance policy) was not of a capital nature.

²⁵ [1993] 55 SATC 185(A).

²⁶ 88 ATC 4627; (1988) 19 ATR 1575.

²⁷ Can expenditure on interest be 'of a capital nature' and on that ground be non-deductible for income tax purposes? (1997) South African Law Journal 641 at 643 as stated in Income Tax in South Africa Cases & Materials RC Williams 4th edition at pg. 478.

²⁸ [1995] 58 SATC 263.

of a capital nature, the interest incurred did not improve, augment, or preserve the value of the corporation or the stake acquired, nor did it add to the cost of acquiring or enhancing the value of that stake.

In this instance, the court appears to have separated the purpose for which the funds were borrowed from the assessment of whether the underlying interest incurred was of a capital or revenue nature. In effect, notwithstanding that the purpose of the loan was to acquire a capital asset, the interest was nonetheless held to be of a revenue nature. Regrettably, however, the case law on this point is not uniform, and in other cases the purpose for which the money was borrowed has been held to be determinative of the purpose of the interest incurred thereon.²⁹

At the time section 24J was amended to provide that the deductibility of interest and the timing of such deduction are to be determined with reference to the provisions of section 24J read with section 23(g), the Explanatory Memorandum accompanying the amendment stated the following:

'...interest should always be treated on revenue account.

This would bring the tax treatment of interest in line with the treatment of exchange differences, **which is not subject to the capital nature test.**' (our emphasis)

No reason was given as to why interest should invariably be treated on revenue account. It is, however, evident that the policy intention is for interest to be treated on revenue

account rather than capital account, irrespective of the purpose for which the funds were borrowed.

This is expressly acknowledged by SARS in IN 142, where it states that:³⁰

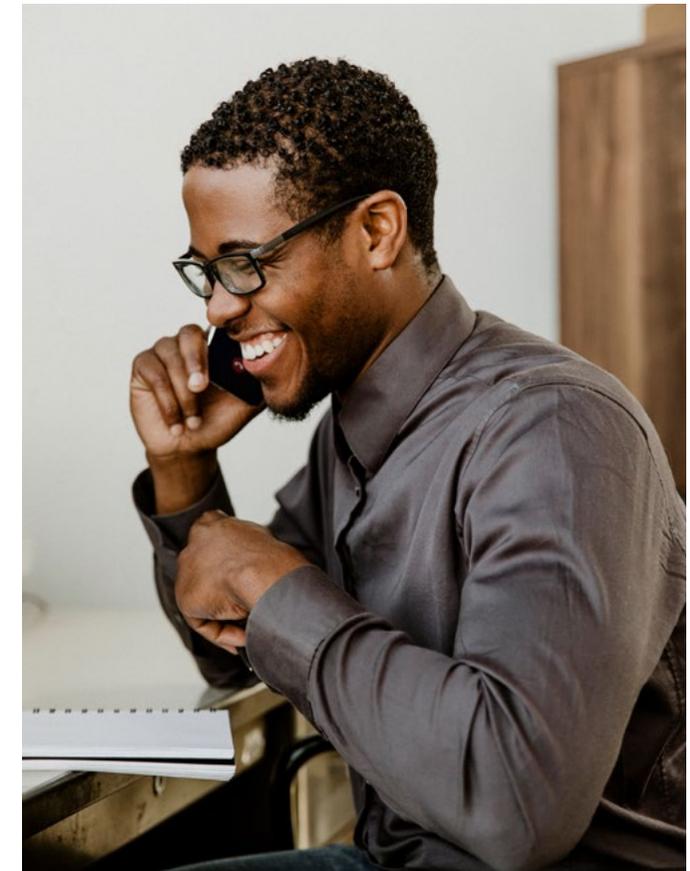
'Before 2004 there were different views regarding whether interest was always of a revenue nature or whether, depending on the facts of a specific case, it was of a capital nature. To provide certainty on the tax treatment of interest **and to introduce the principle that interest should be, and going 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.' (our emphasis)

This gives rise to the question whether it may be contended that other finance charges are of a revenue nature for purposes of claiming a deduction under section 11(a). Should the purpose for which the funds were borrowed be taken into account when assessing whether other finance charges are of a capital or revenue nature? In the context of interest, it would appear that this may not be the case. In certain instances, other finance charges take the form of periodic payments akin to interest. Could the same principle and policy intention be applied on the basis that such finance charges do not improve, augment, or preserve capital assets?

Having regard to the policy intention and the authorities considered above, there may be a compelling argument that other finance charges (or at least a significant proportion thereof) do not improve or preserve any capital

assets, particularly when the purpose for which the funds were borrowed is disregarded in undertaking that assessment.

Each finance charge must, however, be evaluated on its own merits, and it remains important for clients to obtain specific advice in the context of their particular facts and circumstances.



²⁹ See, for example, *ITC* 1126 [1968] 31 SATC 111(T) and *ITC* 882 (1959) 23 SATC 239 (T) (the latter case is referred to by SARS in IN 142).

³⁰ At page 7.

Key conclusions

This article calls into question SARS' interpretation of section 24J and advances an alternative view as to the purpose of the definition of 'interest' within that provision. In particular, it is contended that the definition serves only to establish the existence of an 'instrument' rather than to determine whether each finance charge qualifies for deductibility under section 24J(2) in the hands of the borrower.

We have emphasised that section 24J(2) **deems** an amount of interest to have been incurred by the taxpayer, which amount may not necessarily constitute 'interest' as defined. It is this deemed amount that ought to be deductible, provided all other requirements are met. Accordingly, it is our view that SARS' interpretation, which requires various finance charges to satisfy the definition of interest before they may be deducted under section 24J(2), is incorrect.

Furthermore, having regard to case law and policy considerations, there is a tenable argument that finance charges falling outside the ambit of section 24J(2) may nevertheless be of a revenue nature and thus deductible under section 11(a), given that such charges do not ordinarily enhance or preserve capital assets. That said, each finance charge must be assessed on its own facts and circumstances.

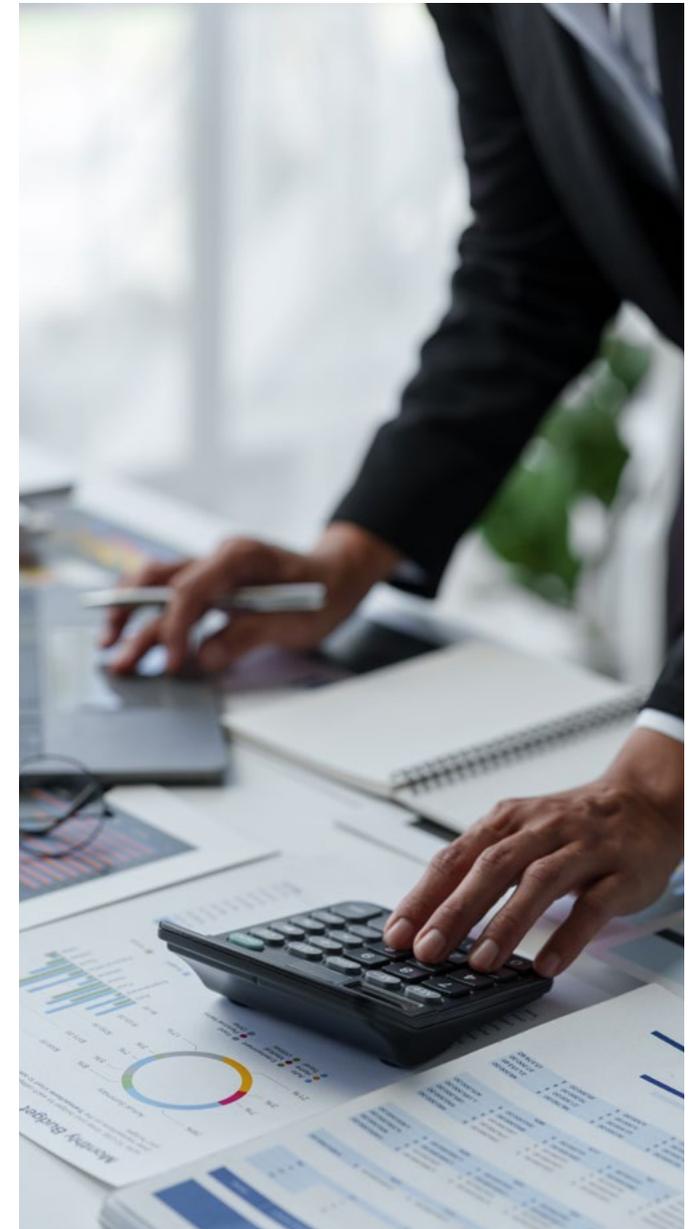
Taxpayers are encouraged to seek professional guidance on the deductibility of interest and other fees or finance charges arising from debt obligations, as well as on the application of the various concepts within this notably complex provision, particularly in light of the heightened likelihood of scrutiny from SARS.

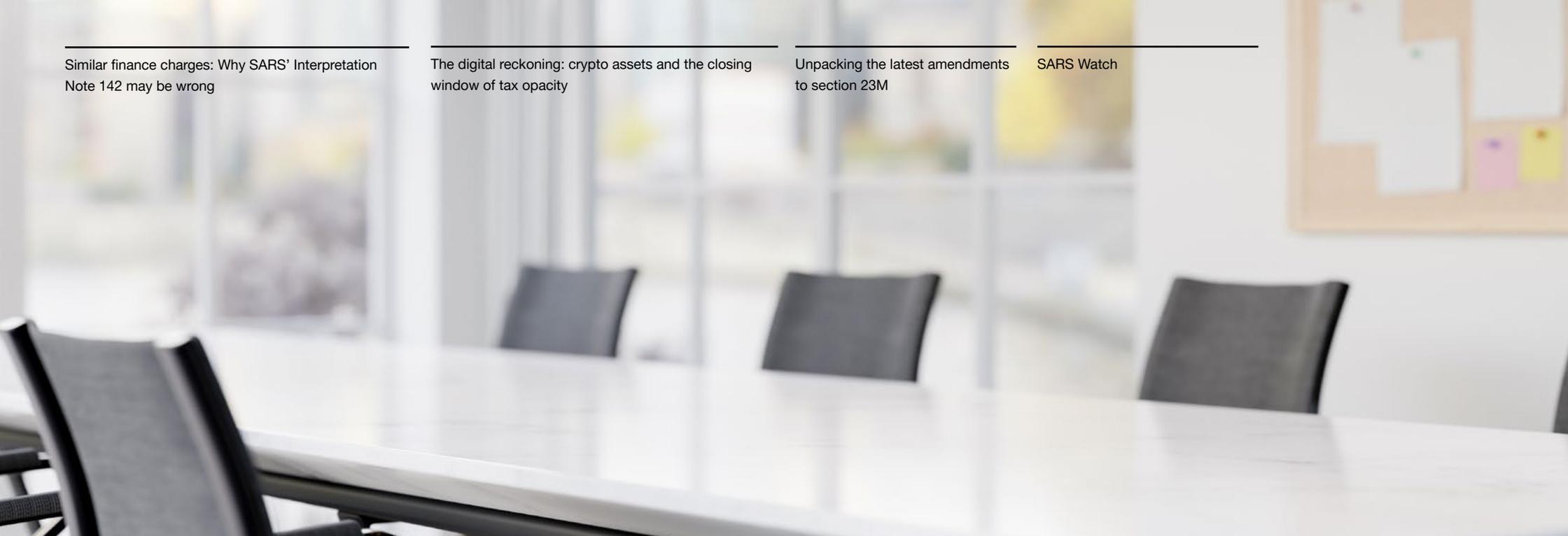


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The digital reckoning: crypto assets and the closing window of tax opacity

With the Crypto-Asset Reporting Framework ('CARF') having taken effect on 1 March 2026, a pivotal moment has arrived for taxpayers, advisors, and enterprises that hold or transact in digital assets. The long-held perception that cryptocurrency transactions operate beyond regulatory scrutiny is rapidly eroding, and those who have not yet reconciled their tax affairs with the established position of the South African Revenue Service ('SARS') face meaningful consequences.

The regulatory landscape: a decade in the making

South Africa's journey toward comprehensive crypto-asset oversight began in 2014. That year, National Treasury collaborated with the South African Reserve Bank, the Financial Sector Conduct Authority, SARS, and the

Financial Intelligence Centre to publish a cautionary notice highlighting the risks inherent in these nascent digital instruments. Four years later, SARS formalised its position through a media statement on cryptocurrency taxation, supplemented by a frequently asked questions document that underwent revision in 2021. Throughout this evolution, one principle has remained unwavering: conventional income tax rules govern crypto-asset transactions.

The legislative shift from 'cryptocurrency' to 'crypto asset' in the 2021 Taxation Laws Amendment Bill marked the establishment of consistent terminology across South Africa's regulatory architecture. Crypto assets are now defined as 'a digital representation of value that is not issued by a central bank, but is traded, transferred and stored electronically by natural and legal persons for the

purpose of payment, investment and other forms of utility, and applies cryptography techniques in the underlying technology'. This terminological precision has substantive tax ramifications that warrant careful attention from tax practitioners and taxpayers alike.

The question of revenue versus capital

Perhaps no question generates more uncertainty in this domain than whether proceeds from crypto-asset disposals constitute revenue or capital. SARS has firmly declined to recognise crypto assets as currency, treating it instead as either a capital asset or trading stock. The applicable tax regime, capital gains tax ('CGT') or income tax, hinges on the nature of each transaction.

Individual taxpayers whose crypto disposals qualify as capital transactions benefit from an annual R50,000 exclusion. Beyond this threshold, only 40% of the gain attracts tax at the individual's marginal rate, capping the effective rate at 18%. Where gains bear a revenue character, however, the full profit falls within the income tax net, exposing taxpayers to marginal rates between 18% and 45%. On substantial holdings, the gap between these two treatments can result in significant tax differences, making the investor-versus-trader distinction a matter of considerable financial consequence.

Notably, SARS has refrained from publishing definitive criteria for distinguishing investors from traders, compelling taxpayers to navigate this terrain using principles distilled from judicial precedent. Courts and commentators typically examine the taxpayer's acquisition

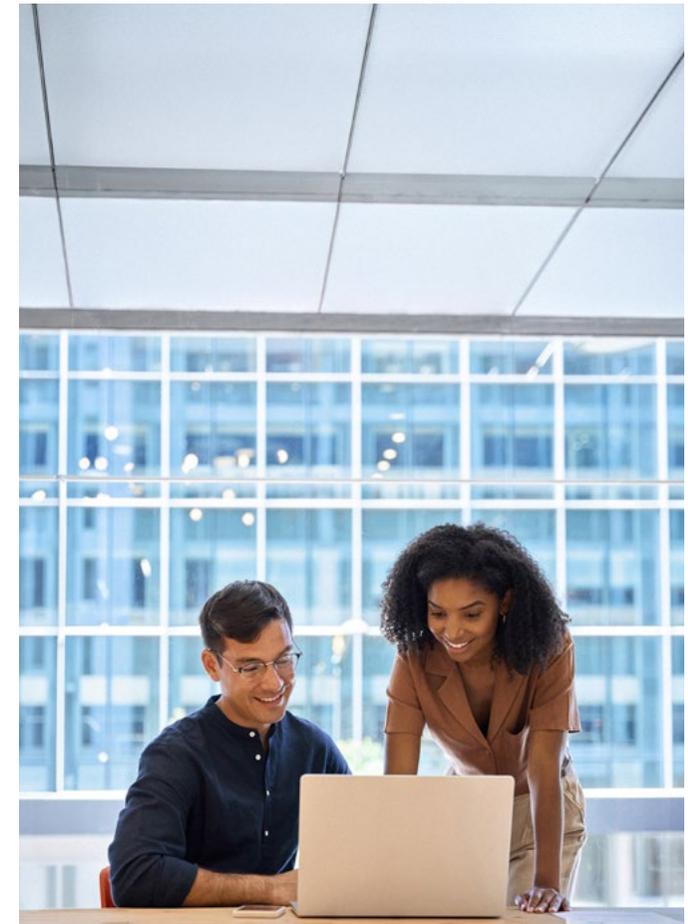
motive, the holding period, transaction frequency, and whether the conduct evidences a systematic profit-making endeavour. Crucially, the onus of demonstrating that proceeds are capital rather than revenue falls squarely on the taxpayer. In this context, it is important to note that, unlike equity shares, crypto assets do not benefit from the deemed capital treatment afforded by section 9C of the Income Tax Act. As a result, even relatively long-term holdings of crypto assets may still be susceptible to revenue treatment, depending on the surrounding facts and circumstances.

Corporate considerations

Companies disposing of crypto assets on capital account face an 80% inclusion rate, which, when combined with the 27% corporate tax rate, produces an effective CGT rate of 21.6%. Entities engaged in mining, trading, or dealing activities bear tax at the standard 27% corporate rate on their revenue gains.

Merchants who accept crypto assets as payment must recognise revenue at the prevailing rand value when tokens are received. Where crypto assets change hands in exchange for goods or services, ordinary barter principles govern the transaction. While these rules appear straightforward in principle, their application grows complicated given the notorious volatility of digital asset prices and the practical difficulty of pinpointing fair market value at any given moment.

Taxpayers may also be entitled to claim expenses associated with crypto-asset receipts or accruals as deductions, provided that such expenditure meets the requirements of the general deduction provisions of the Income Tax Act. This includes the requirements that the expenditure must be incurred in the production of the taxpayer's income and for purposes of their trade.



Exchange control considerations

Exchange control considerations remain an area of legal and regulatory uncertainty in South Africa. In May 2025, the High Court held that crypto assets do not constitute 'currency' or 'capital' for purposes of the Exchange Control Regulations, with the effect that crypto-asset transfers fall outside the existing exchange control framework. However, the South African Reserve Bank has appealed the decision, and the judgment has been suspended pending the outcome of that appeal.

We highlight however that the 2026 Budget Review has confirmed a decisive policy shift. It was announced that amendments to the Exchange Control Regulations under the Currency and Exchanges Act will be published to expressly include crypto assets in the capital flows management framework. Once the amendments take effect, crypto asset transactions with cross-border elements will be subject to the exchange control framework similar to foreign currency and other capital

flows. As a result, taxpayers and businesses should proceed with caution when transferring crypto assets cross-border. While crypto assets are not recognised as legal tender and the exchange control position is in flux, future legislative or regulatory intervention may yet reassert control over cross-border crypto-asset flows.

The CARF revolution: automatic exchange of information

Published in Government Gazette No. 53735 on 28 November 2025, the draft CARF regulations signal South Africa's determination to align with international tax transparency standards as championed by the Organisation for Economic Co-operation and Development ('OECD'). Now operative, these rules will oblige crypto-asset service providers with a South African nexus to furnish SARS with granular data: user identities; each acquisition, disposal and transfer executed during the tax year; and the rand equivalent of every transaction and wallet-to-wallet movements.

The reporting obligation introduced by CARF applies specifically to reporting crypto-asset service providers ('RCASPs') with a South African nexus. This includes crypto-asset exchanges, brokers, dealers, and custodial wallet providers that are tax-resident in South Africa, incorporated locally, centrally managed from South Africa or that maintain a regular place of business in the Republic. The framework is deliberately designed to prevent the circumvention of reporting through offshore structuring or the use of foreign platforms.

CARF requires RCASPs to conduct due diligence on crypto-asset users, including the collection and validation of tax residence and taxpayer identification information, and to report all in-scope transactions. These include exchanges between crypto assets and fiat currency, crypto-to-crypto exchanges, retail payment transactions, and transfers of crypto assets, including transfers to unhosted or self-custodied wallets. The expanded reporting framework is also likely to increase tax authority visibility over crypto-related receipts such as staking rewards and airdrops. Although the precise tax nature of such receipts may be debated, SARS is likely to regard them as revenue in nature, and enhanced third-party reporting under CARF may make it increasingly difficult for taxpayers to omit or mischaracterise these amounts for tax purposes.

Although CARF takes effect from 1 March 2026, the first reporting period will run from 1 March 2026 to 28 February 2027. Information reported for this period is available to SARS for matching against 2026/27 tax returns, materially increasing the likelihood of discrepancies being detected where crypto-asset activity has not been accurately disclosed in returns. It is possible that SARS may also use the data provided by South African RCASPs to prepopulate tax returns for some categories of crypto-asset transactions, notably staking rewards and airdrops.



The jurisdictional sweep is intentionally wide, ensnaring providers that are tax-resident, incorporated, or centrally managed in South Africa, as well as those maintaining a regular place of business locally. Armed with this data, SARS will engage in automatic information exchange with jurisdictions in which the taxpayer holds tax residence. Parallel amendments to the Common Reporting Standard ('CRS') expand the transparency net beyond direct crypto-asset transactions. While CARF targets transaction-level crypto activity, the revised CRS brings within scope indirect exposure to crypto assets through derivatives, investment vehicles, electronic money products, and central bank digital currencies. These changes ensure that crypto-related value cannot escape reporting merely because it is held through traditional financial intermediaries rather than directly on-chain. These revisions expand the definition of financial assets to include relevant crypto assets and bring within scope entities that hold specified electronic money products or central bank digital currencies for the benefit of customers.

In practice, SARS will not rely on CARF data in isolation. Reported crypto-asset information will be matched against bank flows, CRS financial account data, and disclosures in income tax returns. Discrepancies between third-party data and self-assessed tax positions are likely to trigger automated queries, audits, and assessments, particularly in respect of taxpayers with historic crypto-asset activity that has not been fully disclosed.

The stakes are considerable. Taxpayers who remain non-compliant expose themselves to penalties and, in serious cases, criminal prosecution.

Practical steps for taxpayers

Following CARF's commencement, taxpayers with exposure to crypto assets, whether through current holdings or historical transactions, would be well served by the following practical measures:

- Foremost is rigorous documentation. SARS requires retention of records for at least five years, encompassing transaction dates and types, contemporaneous rand valuations, wallet addresses, fees paid, and counterparty information where ascertainable.
- Equally pressing is the opportunity presented by the voluntary disclosure programme ('VDP'). Taxpayers with undisclosed crypto activity should give serious thought to regularising their position as soon as possible following CARF's implementation. The VDP permits taxpayers to come forward with previously unreported income while avoiding the punitive consequences that ordinarily accompany non-disclosure – a preferential outcome by any measure.
- Beyond disclosure, the characterisation of each transaction as revenue or capital demands careful professional analysis. Given the absence of prescriptive rules, taxpayers should be ready to defend their position by reference to documented intention, surrounding circumstances, and relevant judicial authority.
- Finally, those within the provisional tax system must remain alert to how realised crypto gains intersect with payment deadlines, as underpayment penalties could compound the overall tax burden.



Compliance, enforcement and the role of intermediaries

The enforcement of crypto-asset tax obligations presents distinctive challenges. There may be a risk that self-assessment alone may be insufficient to eradicate tax evasion in the context of reporting taxable crypto income. The decentralised, borderless, and pseudonymous features of crypto assets mean that the responsibility to declare taxable crypto income rests exclusively with the taxpayer, who is often the sole possessor of the relevant tax information.

Critically, however, the blockchain ecosystem retains intermediaries at its 'external gates', the interfaces between the crypto world and traditional financial systems. The most important intermediaries include custodial wallet providers, crypto exchanges, brokers and dealers, and operators of crypto ATMs. These intermediaries can be compelled to collect relevant tax information and share it with revenue authorities, dramatically improving compliance rates.

The location of crypto intermediaries is highly relevant. Given that many South African users of crypto assets rely on major international exchanges headquartered outside the country, SARS must depend on international exchange-of-information procedures to obtain relevant taxpayer data. The CARF framework addresses precisely this challenge by establishing multilateral competent authority agreements for the automatic exchange of crypto-related information between participating jurisdictions.

The new crypto compliance reality

Any lingering belief that crypto assets inhabit a tax-free zone has always been misplaced. Since 2018, SARS has maintained unequivocally that standard income tax principles extend to crypto-asset dealings. CARF does not create new taxes on crypto assets. It changes visibility. From 2026 onwards, SARS receives structured, transaction-level crypto data from local and foreign service providers and will automatically exchange that information with other tax authorities.

The draft regulations leave little room for ambiguity. Participants in the crypto economy should expect heightened oversight and unprecedented cross-border information sharing, underscoring the imperative for accurate reporting and full compliance. The narrowing window to address past omissions carries both peril and

promise. Proactive engagement with the VDP may spare taxpayers the penalties and interest¹ and prosecution risks that will confront the recalcitrant.

The need for regularisation of tax compliance in relation to crypto assets is unmistakable and should take place now, before the inaugural CARF data exchanges begin.

These considerations are equally relevant to taxpayers and businesses contemplating entry into the crypto-asset arena for the first time, as well as those considering the issuance of new tokens, coins, or crypto-based products. The regulatory, tax, and reporting environment in which such initiatives will operate is fundamentally different from that which prevailed even a few years ago. Business models, token economics, and governance structures that may once have appeared tax-efficient or low-visibility must now be assessed against a landscape of enhanced transparency, third-party reporting, and cross-border information exchange. Taxpayers would be well advised to move decisively toward full compliance in light of the automated transparency that now fundamentally reshapes SARS' enforcement reach.

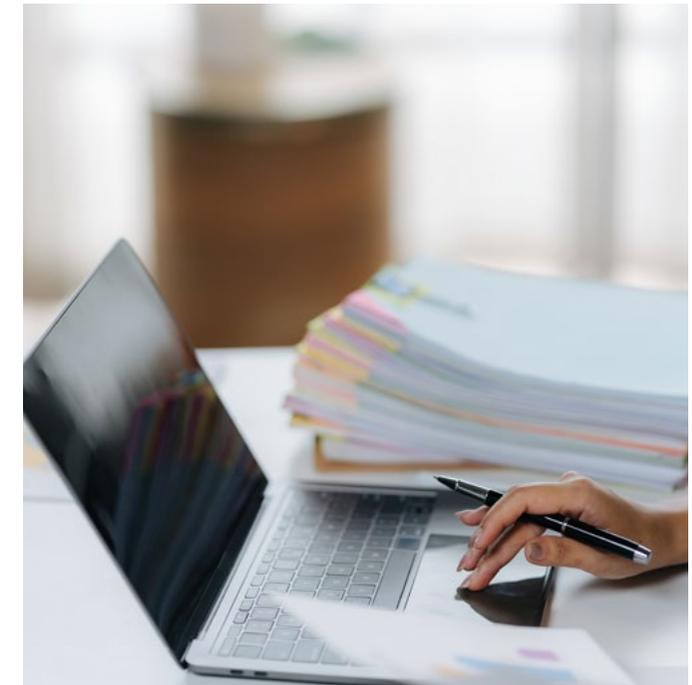
¹ Budget 2026 proposed an amendment effective from 1 March 2026 to allow taxpayers to apply for the remission of interest in respect of the defaults disclosed in terms of a VDP.



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Unpacking the latest amendments to section 23M

The 2025 Taxation Laws Amendment Bill ('2025 TLAB') introduces amendments to section 23M aimed at refining and clarifying the meaning of 'interest' to enhance certainty in its application. These amendments should be welcomed by taxpayers, as they address several uncertainties – mainly arising from the broader 'interest' definition – that taxpayers have grappled with when applying section 23M.

In this article, we consider the key amendments to section 23M, as introduced by the 2025 TLAB, and their implications for taxpayers.

Key amendments to section 23M

Amendments to subsection 1 – definition of 'adjusted taxable income'

The primary change in the adjusted taxable income definition is to distinguish between the references to section 24J interest and the broader concept of interest, with the intention of narrowing the applicability of the latter (broader) concept.

First, the references to interest in paragraphs (a)(i) and (b)(i) of the adjusted taxable income definition have been amended to refer to **'interest contemplated in section 24J'**. Previously, these references pointed to the broader interest definition in section 23M(1).

Second, new paragraphs (a)(iv) and (b)(v) have been inserted into the definition of adjusted taxable income. These provisions bring into the calculation interest other than interest contemplated in section 24J, but only such interest as has accrued or been incurred in respect of debt referred to in subsection (3).

These new paragraphs thus require the taxpayer to interpret the phrase **'debt referred to in subsection (3)'**. Vexingly, however, subsection (3) sets the deductible interest limitation in respect of all **'debts owed as contemplated in subsection (2)'**. Accordingly, the **'debt referred to in subsection (3)'** is the debt contemplated in subsection (2) – namely, debt falling within the scope of section 23M and whose interest is therefore subject to the limitation determined under subsection (3). From a drafting perspective, it would have been clearer if new paragraphs (a)(iv) and (b)(v) referred directly to debts contemplated in subsection (2) rather than to subsection (3), as such a reference leads back to subsection (2).

Notwithstanding this, the effect of the amendments to the adjusted taxable income definition is to simplify the calculation, as taxpayers no longer need to adjust for 'non-section 24J' interest arising on debts *outside* the scope of section 23M. As stated in the Draft Explanatory

Memorandum on the Draft Taxation Laws Amendment Bill, 2025 ('Draft EM'), there is no policy rationale for including these amounts in this calculation.

Amendments to subsection (2) – in-scope debt

Subsection (2) identifies which debt is within the scope of section 23M. To be in scope, the debt must satisfy both of the following conditions: (i) the debtor and the creditor are in a controlling relationship; and (ii) there is no taxable interest inclusion for the creditor.

The opening words of subsection (2) have been amended by the insertion in bold: **'Where an amount of interest – other than interest contemplated in paragraph (c) of the definition of 'interest' in subsection (1) – is incurred by a debtor during a year of assessment in respect of a debt owed to ...'**.

Paragraph (c) of the definition of 'interest' in subsection (1) refers to foreign exchange differences taken into account (in determining taxable income) in terms of section 24I(3) and (10A). Those amounts are now disregarded when determining the application of section 23M to a debt. The effect of this amendment is significant, as it excludes from the scope of section 23M debts that give rise only to foreign exchange differences, with the implication that any foreign exchange losses on those debts will not be subject to the limitation.



The remaining references to 'interest' in subsection (2) now also exclude foreign exchange differences, whether expressly or by necessary implication, except for the reference to interest immediately after paragraph (ii), which retains the broader interest definition in subsection (1). Accordingly, if a debt is within the scope of section 23M, all interest thereon – including foreign exchange differences – form part of the section 23M limitation calculation. Put differently, while foreign exchange differences are disregarded when testing whether a debt falls within the scope of section 23M, once a debt is found to be in scope, all interest arising on that debt will form part of the section 23M limitation calculation (with the foreign exchange losses being subject to the limitation).

The amendments to subsection (2) address two longstanding uncertainties in the application of section 23M to foreign exchange differences. The first uncertainty is whether a foreign exchange loss incurred by a South African ('SA') tax resident can be subject to the limitation, given that there is generally no corresponding accrual for the foreign counterparty – a requirement for the application of section 23M. The second uncertainty, assuming a foreign exchange loss may be subject to the limitation in this instance, is whether this extends to foreign exchange losses arising on debts that do not otherwise give rise to interest contemplated in section 24J, such as interest-free loans and trade debts (i.e., trade receivables and trade payables).

This uncertainty stems from the fact that under the 'old' rules, section 23M could apply only where the SA taxpayer

had an outstanding debt that gave rise to interest as contemplated in section 24J, and that interest was not taxed in the hands of the recipient. Consequently, interest-free loans (including loans receivable) and trade debts fell outside the scope of section 23M. Under the 'new' rules, however, a taxpayer may have a 'debt' for purposes of section 23M even where the amount is receivable by them. This is because the term 'debt' is now defined to include any amount in respect of which interest is determined or incurred. Further, due to the broader interest definition in section 23M, debts that do not give rise to interest as contemplated in section 24J could still fall within the scope of section 23M. As a result, interest-free loans (including loans receivable) and trade debts are brought within the scope of section 23M where these amounts give rise to interest in the form of foreign exchange differences. The uncertainty was whether this result was intended by the legislature.

In relation to the first area of uncertainty, the amendments clarify that a foreign exchange loss incurred by a SA tax resident may be subject to the limitation despite there not being a corresponding accrual for the foreign counterparty. This is because foreign exchange differences are now disregarded when determining whether a debt falls within the scope of section 23M and are only brought in the section 23M calculation once the debt is determined to be in scope. This renders the accrual requirement irrelevant in respect of foreign exchange losses.

The amendments also address the second area of uncertainty concerning foreign exchange losses on

interest-free loans and trade debts. They clarify that such foreign exchange losses are only subject to the limitation if the underlying debt gives rise to other interest elements. In the context of loans and trade debts, it would only be the presence of interest contemplated in section 24J that would cause the foreign exchange losses thereon to be subject to the limitation.

It follows that foreign exchange losses on genuinely interest-free loans and trade debts should not be subject to the limitation, as they generally do not give rise to the incurral of interest contemplated in section 24J. That said, we caution against the conclusion that interest-free loans and trade debts are automatically excluded from the scope of section 23M. Rather, taxpayers should carefully analyse the terms of the relevant agreements in



respect of such debts and all amounts payable in terms of such agreements to ensure that none of those amounts constitutes interest as contemplated in section 24J.

Amendments to subsection (3) – limitation formula

The amount of interest that may be deducted in respect of debts within the scope of section 23M is determined by a formula in subsection (3) (the 'limitation formula').

Paragraph (a) of the limitation formula has been amended to refer to **'interest contemplated in section 24J and any other amount of interest in respect of that debt'** received by or accruing to the debtor. The reference to 'that debt' ensures that the consideration of non-section 24J interest is limited to only in-scope debt. Previously, this provision only referred to the broader interest definition in section 23M, without any restriction. In addition, the reference to interest in the words following paragraph (b) of the limitation formula has also been amended to refer to **'interest contemplated in section 24J'**.

Thus, similar to the amendments to the adjusted taxable income definition, the amendments to the limitation formula simplify this calculation, as taxpayers no longer need to adjust for 'non-section 24J' interest arising from debts outside the scope of section 23M. As stated in the EM, there is no policy rationale for including these amounts in this calculation.

Amendments to subsection (6) – carve-out

Subsection 6 provides two carve-outs from the application of section 23M. The first, in paragraph (a), applies where the ultimate lending institution¹ has no controlling relationship with the debtor and the interest payable does not exceed the official rate of interest plus 100 basis points. Where the requirements of paragraph (a) are met, a debt that would otherwise have been in scope is excluded from the scope of section 23M, and none of the interest thereon is subject to the limitation. The second, in paragraph (b), applies to interest on a linked unit where the creditor is a long-term insurer, a pension fund, or a provident fund. Where the requirements of paragraph (b) are met, the interest in question is not subject to the limitation.

The carve-out in paragraph (a) has been amended as follows:

- By inserting in its opening words the phrase **'in respect of which interest contemplated in section 24J is incurred'**. Although the interest rate cap in paragraph (a)(ii) already presupposed debt that gives rise to interest contemplated in section 24J, this clarification is welcomed, as it removes any uncertainty.
- Paragraph (a)(i) has been substantively amended to refer to funding obtained by the creditor **'directly or indirectly'** from a lending institution. The effect of this amendment is to expand the carve-out to

¹ A "lending institution" is a (SA) bank or a foreign bank that is comparable to a (SA) bank.



cover instances where the creditor obtained the funds indirectly from a lending institution. Prior to the amendment, the carve-out in paragraph (a) could only apply where the creditor obtained the funds directly from a lending institution.

Effective date of the amendments

Despite some of the amendments to section 23M being described in the EM as clarifications rather than substantive amendments, the effective date of all of the amendments is 1 January 2026.²

We note that, at the time of writing, the 2025 TLAB had not yet been promulgated into law. Notwithstanding the absence of promulgation, taxpayers would be prudent to proceed on the basis that the amendments will apply as intended from the specified effective date, i.e. the date of promulgation of the TLAB.

² Applicable in respect of years of assessment commencing on or after that date.

Key takeaways

The changes to section 23M should be welcomed by taxpayers, as they simplify the adjusted taxable income and limitation formula calculations. These calculations will now only include interest contemplated in section 24J and other interest elements to the extent that such interest arises from in-scope debt.

Going forward, debt that gives rise only to foreign exchange losses will be excluded from the scope of section 23M, and the foreign exchange losses thereon not subject to the limitation. This should result in foreign exchange losses on genuinely interest-free loans (including loans receivable) and trade debts not being subject to the limitation – an area that was problematic for taxpayers in the past. That said, we caution against the conclusion that interest-free loans and trade debts are automatically excluded from the scope of section 23M. Rather, taxpayers should carefully analyse the terms of the relevant agreements in respect of such debts and all amounts payable in terms of such agreements to ensure that none of those amounts constitutes interest as contemplated in section 24J.

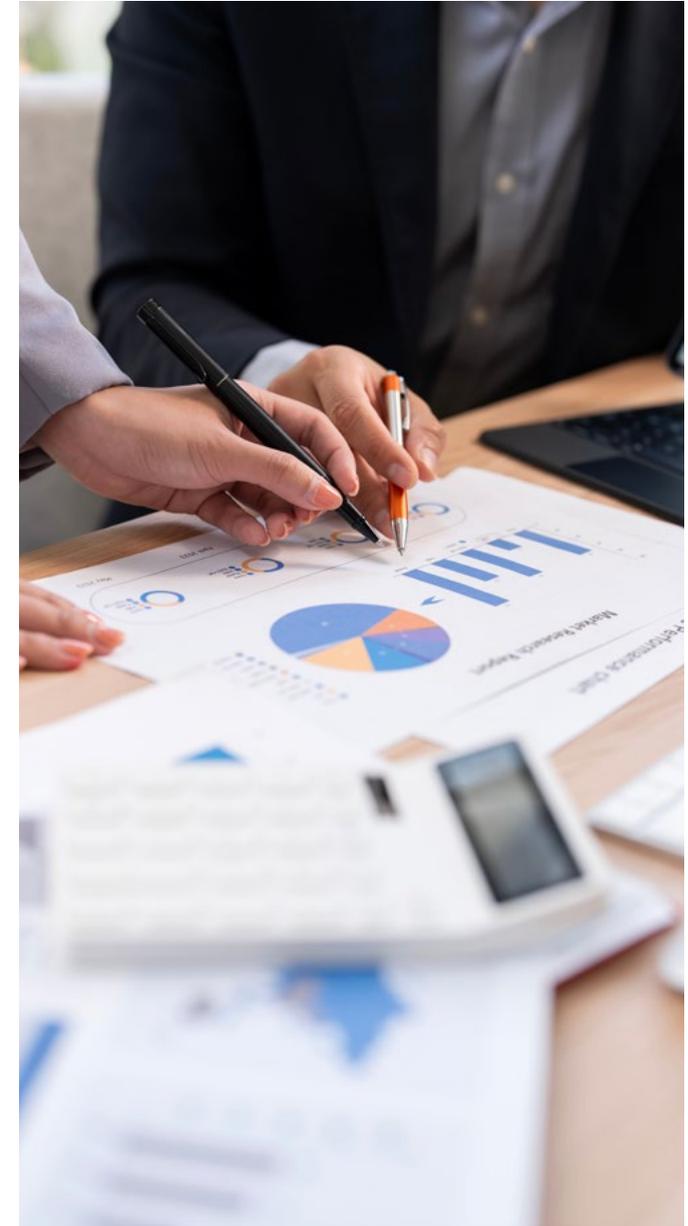


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We gratefully acknowledge the contributions of Simangaliso Manyumwa to this article.



SARS WATCH

SARS Watch 26 January 2026 – 25 February 2026

Budget 2026

25 February 2026

The Finance Minister delivered his Budget Speech on 25 February 2026 and the Budget Review document (Budget 2026) was published at this time.

Budget 2026 withdraws the previously signalled R20 billion of unspecified tax increases pencilled into Budget 2025 and instead provides broad inflationary relief to taxpayers for the first time since 2023. Adjustments to personal income tax brackets, rebates, medical tax credits, and various thresholds aim to support households, small businesses and savings. Significant reforms are also proposed across corporate tax, environmental taxes, VAT, customs and excise, and several administrative frameworks.

Legislation

25 February 2026

2026 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill

The 2026 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill was tabled by the Minister of Finance

25 February 2026	Income tax notices 2026	<p>The income tax notices, scheduled for publication in the <i>Government Gazette</i>, relate to –</p> <ul style="list-style-type: none"> determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(a)(ii) (daily allowance); determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(c)(ii) (overnight allowance); and fixing the rate per kilometre in respect of motor vehicles – section 8(1)(b)(ii) and (iii).
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Customs and excise

25 February 2026	Tariff codes 2026	Taxation Proposals as tabled by the Minister of Finance in his Budget Review 2026
25 February 2026	Facility codes updates	<p>The facility codes used in Box 30 on the Goods Declaration has been updated to include details of the container depot for Independent Warehousing Solutions (Pty) Ltd, located in Port Elizabeth.</p> <p>This addition enables Customs to transmit electronic messages communicating the status of the consignment to these facilities.</p>
20 February 2026	Tariff amendments	Publication details for tariff amendments notice R7143 as published in <i>Government Gazette</i> 54173 of 20 February 2026 made available.
19 February 2026	Publication of excise payment and submission dates	Excise payment and submission dates for 2026/2027 were published.
9, 16 and 23 February 2026	Customs weekly list of unentered goods	The state provides state warehouses for the safekeeping of goods. These are managed by Customs. The purpose of this list of unentered goods is to notify the importer, exporter, and any other person that has an interest in the goods that the goods have been taken into the State warehouse, and if they remain unentered they will be disposed of in accordance with the provisions of the Customs & Excise Act.
13 February 2026	Tariff amendments	Publication details of tariff amendment notices R7114 and R7115, as published in <i>Government Gazette</i> 54108 of 13 February 2026, made available.
13 February 2026	Diesel refund	Effective from 1 April 2026, primary sector claimants operating onland will be entitled to claim a refund on 100% of eligible diesel used in qualifying farming, forestry, and mining activities. This amendment streamlines the administration of the Diesel Refund Scheme. To ease the transition, the new rate, which will be effectively applied as from the April 2026 return, will reflect only from the calendar month when this VAT return must be submitted, i.e., May 2026.

13 February 2026	Excise fuel registration	<p>From 3 February 2026, applicants have to complete and submit the DA185 form to apply for or renew their permission to participate in the following activities:</p> <ul style="list-style-type: none">• To possess, control, or use goods consisting of a mixture which includes marked goods as provided for in section 37A(9) and rule 37A.12.• Supply of aviation kerosene or aviation spirit (rebate items 460.05 / 496.00 or 623.11 / 671.01) as provided for in section 37A(9) and rule 37A.13.• Producing goods not capable of use in any engine as provided for in section 37A(4) and rule 37A.11.
12 February 2026	Tariff amendment notices	<p>The tariff amendment notices, scheduled for publication in the <i>Government Gazette</i>, relate to the amendments to –</p> <ul style="list-style-type: none">• Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99, to increase the rate of customs duty on sugar from 436.38c/kg to 483.72c/kg in terms of the existing variable tariff formula (ITAC Minute 10/2025); and• Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90, to reduce the rate of customs duty on wheat and wheaten flour from 85.15c/kg and 127.72c/kg, respectively, to 61.90c/kg and 92.85c/kg, in terms of the existing variable tariff formula (ITAC Minute M09/2025).
12 February 2026	Rule amendment notices	<p>Rule amendment notice R7132, as published in <i>Government Gazette</i> 54129 of 12 February 2026: Amendment to the rules under sections 17 and 120 – State warehouse rent (DAR268)</p>

Binding rulings

6 February 2026	Binding Private Ruling 424	<p>This ruling considers the deductibility of interest incurred in respect of loan funding used to redeem preference shares and settle any current or accumulated preference share dividends.</p>
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Case law In accordance with the date of judgment

24 February 2026	<i>Baseline Civil Contractors (Pty) Ltd vs CSARS</i> (893/2024) [2026] ZASCA 20 (24 February 2026)	<p>Whether on the correct interpretation of Tax Court Rule 32(3) a new ground of appeal in the rule 32 statement is permissible.</p>
9 February 2026	<i>Ferreira v CSARS</i> (2024/067035) [2026] ZAGPPHC 47 (2 February 2026)	<p>Whether SARS, acting under section 9 and section 164 of the TAA, and subject to review under section 6 of PAJA, acted lawfully and fairly when it refused to suspend the taxpayer's obligation to pay the disputed tax debt despite the taxpayer offering substantial security through his TMM shareholding.</p>

9 February 2026	<i>CSARS v Muleya</i> (48495/2020) [2025] ZAGPPHC (29 October 2025)	Whether the respondent is factually insolvent with inability to pay his tax debt – whether the respondent has committed acts of insolvency by dissipating his immovable property to the family trust.
6 February 2026	<i>Multipurpose Distributions v CSARS</i> Case no. 000317/2023	Whether <ol style="list-style-type: none"> the impugned passages are hearsay and inadmissible at this stage of the proceedings; they are scandalous, vexatious or irrelevant within the meaning of Rule 6(15); and even if hearsay, they should nevertheless remain by virtue of statutory discretion in section 3(1)(c) of Act 45 of 1988 or because they are properly responsive to matter introduced by the respondents.

Guides and forms

20 February 2026	SARS: Enhancements to the Transfer Duty Guide	The External Transfer Duty guide has been updated to clarify how tax reference numbers must be completed for both sellers and purchasers, including specific guidance for transactions involving parties married in community of property.
16 February 2026	OECD: implementation of Amount B	<p>New tools to support the implementation of Amount B (updated FAQs and February 2026 version of the pricing automation tool)</p> <p>The Amount B Pricing FAQs have been developed in response to technical questions raised by stakeholders and aim to ensure the consistent application of the simplified and streamlined Amount B approach.</p> <p>The Pricing Automation Tool, which was first released in 2024, helps compute the Amount B return for in-scope distributors requiring minimal data inputs and further optimises the administrative and simplification benefits for both tax administrations and taxpayers. The latest version updates the information required for the application of Amount B in 2026, including sovereign credit ratings data.</p>
16 February 2026	Business requirement specifications: Crypto Asset Reporting Framework (CARF)	Final external BRS for CARF for implementation effective 1 March 2026 has been published.
16 February 2026	Business requirement specifications: Automatic Exchange of Information (AEOI)	The final external BRS for AEIO: CRS & FATCA applicable from 1 March 2026 has been published.
13 February 2026	Business requirement specifications	Global minimum tax - The business requirements specification (BRS) for the Global Anti-Base Erosion (GLOBE) programme has now been published on the GLOBE webpage.
12 February 2026	Business requirement specifications	<p>The BRS – PAYE Employer Reconciliation for 2026 / 2027 is available.</p> <p>What has changed:</p> <ul style="list-style-type: none"> New fields were added to prevent duplicate registrations using the ITREG process. Validation and/or description changes to some existing source codes.

Other publications

17 February 2026	SARS Monthly Tax Digest newsletter	The February issue provides details regarding important upcoming SARS deadlines and the voluntary disclosure programme.
13 February 2026	Air passenger tax	<p>Draft documents for public comment: Draft amendments to rules under sections 47B and 120</p> <p>Rule 47B provides for air passenger tax and related administrative requirements.</p> <p>The proposed amendment provides for the submission of registration applications for agents and operators through eFiling or branch front-end capturing at the Alberton Excise Office.</p> <p>Additionally, the amendment enables the rendering of accounts through eFiling or BFE capturing as well as the submission of passenger manifests, which must include specific fields detailed in the amendments, through eFiling.</p> <p>Due date for comment: 6 March 2026</p>
9 February 2026	Final demand issued for annual income tax returns for trusts	<p>In an effort to increase the compliance levels of trusts, SARS has issued final demands to trusts that did not submit an annual tax return for the 2024 and 2025 years of assessment. In terms of section 210(2) of the Tax Administration Act, SARS will shortly issue the related public notice for the imposition of administrative non-compliance penalties for trusts. It is important that those in receipt of such final demands should take steps to correct the non-filing of their annual income tax returns within the period before administrative penalties are raised. SARS notes that, subsequent to the issuance of the final demand, several trusts have already taken steps towards improving their tax compliance. SARS supports and appreciates these efforts.</p> <p>It is reiterated that all trusts, whether economically active or passive, are required to submit annual income tax returns in accordance with the requirements set out in the public notice. This obligation is an operation of law and is applicable to every registered resident trust (without exception) and certain qualifying non-resident trusts.</p> <p>SARS emphasises that the responsibility for obtaining, maintaining, and updating accurate trust information rests exclusively with the trustees. This includes the initiation of de-registration processes for trusts that meet the applicable criteria. The trustees must undertake these actions for compliance with statutory requirements and adherence to proper governance practices. This will assist SARS to ensure that the trust tax register is up to date.</p> <p>Trustees bear sole responsibility for ensuring that all trust information reflected on the SARS Registration, Amendments and Verification (RAV) system is up to date and properly maintained.</p>
12 February 2026	OECD: BEPS Action 5: jurisdictions make further progress in addressing harmful tax practices and strengthening transparency	The latest peer review results on preferential tax regimes and no or only nominal tax jurisdictions highlight continued progress by jurisdictions worldwide to ensure their tax systems do not enable harmful tax practices and enhance transparency, in line with the BEPS Action 5 minimum standard.

11 February 2026

ATAF: What's next for ATAF members in 2026

ATAF's 2026 Work Plan responds to intensifying fiscal pressures– rising debt, shrinking aid, rapid population growth, illicit flows, and fast-evolving digital business models.

Building on 2025 results, ATAF will prioritise the digital transformation of tax administrations with data-driven compliance, analytics, and modern infrastructure to strengthen efficiency, transparency, and risk management. It will also enhance audit capacity, dispute prevention and resolution, and help translate international tax commitments into practical country-level outcomes, while supporting members on the operational implications of the global minimum tax.

ATAF members will continue engaging in the UN Framework Convention on International Tax Cooperation on taxing rights, dispute prevention, and cross-border services.

4 February 2026

ATAF: ATAF advances African perspectives on VAT and the digital economy

ATAF advanced African perspectives on VAT and the digital economy at the OECD global forum on VAT, where ATAF members presented on crypto assets and cross-border services.

21 January 2026

ATAF: Strengthening Africa's voice in global tax negotiations

ATAF member countries discussed options for advancing a coherent African position at the Fourth Session of the Intergovernmental Negotiating Committee.

The Africa Negotiators Meeting on the United Nations Framework Convention on International Tax Cooperation, which was held in January 2026, brought together African tax administrations to prepare for the February negotiations at the United Nations. The meeting focused on strengthening technical readiness and aligning regional positions ahead of the next phase of discussions.

20 January 2026

ATAF: ATAF contributes African perspectives to global dialogue on tobacco taxation

ATAF participated in a multi-partner tobacco tax meeting at the OECD Conference Centre.

ATAF's participation underscored its ongoing work on health taxes, particularly the key challenges that African countries face in implementing them, and the critical support required to enable governments to achieve both fiscal and public health objectives.



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