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The SCA rejects SARS's restrictive interpretation of 'similar finance charges'

In previous editions of Synopsis, we examined SARS's then Draft Interpretation Note on 'similar finance charges' and questioned whether a finance charge, such as a raising fee, must itself qualify as 'interest' as defined in section 24J(1) of the Income Tax Act[1] ('the Act') before it may be deductible under section 24J(2). We revisited that analysis after SARS finalised its guidance in Interpretation Note 142 ('IN 142') and examined its narrow interpretation of 'similar finance charges'.[2] In both of those editions,[3] we also questioned whether financing charges that fall outside the ambit of section 24J may nevertheless be of a revenue nature and deductible under section 11(*a*).

This follow-up article considers the judgment of the Supreme Court of Appeal ('SCA') in Commissioner for the South African Revenue Service v Cornucopia Trust[4] ('Cornucopia'), delivered on 7 September 2026. The majority dismissed SARS's appeal and held that the particular raising fees were 'similar finance charges' within paragraph (*a*) of the definition of 'interest' in section 24J(1), and were consequently deductible under section 24J(2).[5]

The outcome supports the concern we expressed in our January 2025 and February 2026 articles that SARS's interpretation risks requiring a finance charge to be virtually identical to interest, whilst the disjunctive term 'or' necessarily contemplates a qualifying charge that is not itself conventional interest. Although the result may be favourable to taxpayers in the context of section 24J, the broader characterisation of certain raising fees as 'interest' as defined may have consequences under other provisions of the Act. Those consequences are not necessarily favourable and will need to be considered case by case, having regard to the relevant financing arrangements.

1 58 of 1962, as amended.
2 Interpretation Note 142, 'Meaning of similar finance charges', dated 12 December 2025.
3 Also see March 2022 Synopsis 'The revenue (as opposed to capital) nature of 'other finance' charges – a plausible argument', pp 2–7.
4 (469/2025) [2026] ZASCA 116 (7 September 2026).
5 Cornucopia paras 1 and 51–52.

Background to the dispute

Cornucopia Trust ('Cornucopia') conducted a property investment and leasing business in Bloemfontein. It acquired two commercial property precincts and obtained financing and refinancing from entities in the Sanlam group, including a three-year R115 million facility for the Absa precinct, an 11-year R295 million facility for the Life Health precinct, later refinancing facilities, and a R150 million addendum to the Life facility.

All of the financing and refinancing arrangements attracted raising fees, generally equal to 2% of the relevant facility amount. The fees were regulated in separate fee letters and payable to Sanlam Capital Markets ('SCM') as facility agent, and payment was a precondition for drawing on the facility. Importantly, SCM was not the lender under every facility.

Cornucopia claimed portions of the fees in its 2019 and 2020 returns under section 24J, spreading each deduction over the duration of the relevant facility under the yield-to-maturity principle. SARS disallowed the deductions on the basis that the raising fees did not constitute 'similar finance charges' within the definition of 'interest' in section 24J(1) and were not deductible under section 11(*a*). The Tax Court upheld Cornucopia's appeal. Before the SCA, Cornucopia no longer persisted with its section 11(*a*) argument, leaving the sole issue as the meaning of 'similar finance charges'.

Meaning of 'interest'

The majority began with the ordinary character of interest. In Westminster Bank Ltd v Riches,[6] interest was described as compensation for the creditor's deprivation of money. In its ordinary sense, interest is essentially consideration for the use of money. In Commissioner for Inland Revenue v Lever Bros and Another,[7] the 'supply of credit' was described as the service performed by the lender in return for interest. The majority also considered Commissioner for Inland Revenue v Genn & Co (Pty) Ltd,[8] in which commission and interest together formed one consideration for the use of money for the period of the loans.

The majority adopted a functional approach to the analysis. Interest, the Court held, reflects the time value of money and the lender's forbearance, but these are not its only characteristics. Interest is the functional cost of credit, in other words, what it costs the lender to provide credit, together with a margin, and it may include compensation for credit risk. The proper enquiry therefore concerns the substance and function of the charge rather than its contractual label.

Importantly, the majority did not hold that every component of the broad economic 'cost of credit' is interest. Rather, the Court used the concept to identify the relevant characteristics against which similarity must be assessed whilst separately excluding charges that merely remunerate labour or services incidental to arranging the loan.

Meaning of 'finance charges'

Paragraph (*a*) of the definition of 'interest' in section 24J(1) refers to 'interest or similar finance charges'. The majority regarded 'or' as disjunctive, so that a finance charge must be something other than conventional interest whilst retaining a relevant 'kinship link' with interest. The Court described a finance charge as a fee for a service or the provision of a facility, namely making credit available. On that basis, raising fees, like interest, may constitute consideration for the provision of credit.[9]

The Court held that the disjunctive wording is important and that if the similarity test required the charge to reproduce every defining incident of conventional interest, the phrase 'similar finance charges' would do little work. The statutory enquiry therefore requires relevant resemblance, not identity.

Meaning of 'similar'

Before 19 January 2017, paragraph (*a*) of the definition of 'interest' in section 24J(1) referred to 'interest or **related** finance charges'. The Tax Laws Amendment Act 15 of 2016 substituted the word 'similar' for 'related', and the Explanatory Memorandum stated that the amendment clarified that the provision applies to finance charges 'of the same kind or nature'.

6 [1947] 1 All ER 469. Lord Wright described interest as follows '… the 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 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 the deprivation**.' (our emphasis)

7 1946 AD 441. Watermeyer CJ stated 'In the case of a loan of money, the lender gives the money to the borrower, who in return incurs an obligation to repay the same amount of money at some future time and, if the loan is one which bears interest, he also incurs an obligation to pay that interest. . . As a rule, the lender either gives credit to the borrower or transfers to him certain rights of obtaining credit which had previously belonged to the lender, and this supply of credit is the service which the lender performs for the borrower, in return for which the borrower pays him interest. . . Although, colloquially, one speaks of a debt carrying interest, or interest on a debt, as though interest were a sort of growth sprouting from the debt, the language used means no more than that the borrower pays interest, if that is the agreement between the borrower and lender, as consideration for the benefits allowed to him by the lender.'

8 1955 (3) SA 293 (A).

9 Cornucopia para 39.

The pre-2016 term 'related' was considered in Commissioner, SARS v South African Custodial Services (Pty) Ltd[10] ('Custodial Services'). In that case, a wide range of charges (guarantee fees, financial advisory fees, margin fees, commitment fees, legal fees, and administration fees) were found to be 'related finance charges' because of their close connection to the obtaining of the loans and the furtherance of the taxpayer's project.

Both judgments in Cornucopia accepted that 'similar' imposes a narrower test than 'related' and that the purpose of the 2016 amendment was to narrow the Custodial Services connectivity test. A charge is accordingly no longer included merely because it is connected with obtaining or implementing finance.

Cornucopia accepted that the amendment narrowed the definition but maintained that raising fees were not intended to be excluded. SARS, by contrast, interpreted 'similar finance charges' narrowly in IN 142, requiring that the finance charge must resemble interest in kind, nature, or character by constituting consideration for the use of money. On this basis, SARS viewed the raising fees as remuneration for arranging the loans; the cost of raising capital, rather than consideration for the use of money.

The majority nevertheless rejected a test that would confine the provision to conventional interest or 'disguised interest'. When pressed to illustrate what charges would satisfy its threshold, SARS offered substitute margins (an alternative profit spread if the reference rate becomes disrupted) and default interest. The majority observed that default interest is simply interest at a higher rate and that neither example constitutes a clear illustration of recognisable finance charges that would be similar to interest without actually falling within the definition of interest. The purpose of the 2016 amendment, the majority held, was not to reduce 'similar finance charges' to an empty category but to excise ancillary charges (legal fees, financial advisory fees, and other fees incidental to the loan) from the section 24J deduction.

The majority's reasoning supports our longstanding concern that SARS's interpretation of 'similar finance charges' is too restrictive. In our February 2026 Synopsis, we questioned whether IN 142 effectively elevated 'similarity' to 'sameness', giving rise to a paradoxical position: a finance charge cannot be required to be identical to interest whilst simultaneously being something other than interest. The judgment does not reinstate the former relatedness test, but it does require a higher, functional resemblance rather than virtual identity.

A well-established principle of statutory interpretation is that statutory wording should not be treated as superfluous.[11] SARS's interpretation of 'similar finance charges', as expressed in IN 142, risks leaving the phrase with little practical content.

Application of 'similar finance charges' to the facts

On the evidence, the majority held that the fees and interest formed the necessary and indivisible consideration for the provision of the facilities. Credit would not have been granted without payment of the raising fees, the fees were proportionate to the facility amounts, and the uncontested evidence linked the fees to the interest pricing, cost of funding, and facility period.

The fees therefore did more than remunerate work performed in arranging the loans. They formed part of the overall price of credit and compensated for the risk and cost of making funding available. Their once-off and upfront character did not preclude similarity, particularly as the definition expressly contemplates amounts payable as a lump sum or in unequal instalments.

It is important not to treat the majority's conclusion as establishing a standalone 'indispensability' test. Legal fees, advisory fees, and security-registration costs may also be practically indispensable to a financing transaction without performing a function similar to interest. The stronger enquiry, as the majority's analysis makes clear, is therefore whether the fee forms part of the economic return for extending credit rather than remuneration for identifiable labour or a discrete service. This will depend on the facts of each case and the nature of the charge in question, viewed in light of the facts.



10 [2012] 2 All SA 237 (SCA); 2012 (1) SA 522 (SCA).

11 See National Credit Regulator v Opperman and others [2013] JOL 29746 (CC). Also see Wellworths Bazaars Ltd v Chandler's Ltd and Another 1947 (2) SA 37 (A) at 43.

The distinction drawn

The majority drew a practical distinction between two categories of raising fees:

- Raising fees charged merely for the efforts associated with obtaining the loan would be 'related' fees; but
- Raising fees that are strictly linked to the procurement of the loan, both in amount and objective, and compensate the lender for the risk and cost involved in being deprived of its money, fall within 'similar'.

These are to be distinguished from ancillary charges such as legal fees and financial advisory fees, which are incidental to the loan and compensate not for the provision of credit but for the labour of arranging it.

Alternative revenue in nature argument under section 11(*a*)

Cornucopia did not persist with its section 11(*a*) argument before the SCA, and the majority accordingly made no finding on the alternative deduction. The dissent observed that there was a 'substantial basis' for treating the fees as capital because they funded the acquisition and refinancing of immovable property, citing New State Areas Ltd v CIR[12] and George Forest Timber Co Ltd v CIR,[13] but expressly declined to decide the point.

Our March 2022, January 2025, and February 2026 articles identified a plausible contrary argument. The capital character of the loan or the asset financed does not necessarily determine the character of the finance charge. Drawing on the judgment in ITC 1124,[14] approved by Grosskopf JA in Burgess v CIR,[15] we observed that although the loan liability incurred to acquire capital assets may itself be of a capital nature, it does not follow that the interest—or, by analogy, other finance charges—must share that character. The critical question is whether the charge improves, augments, or preserves the capital asset financed. If not, it cannot be capital in nature.

We further noted that the Explanatory Memorandum accompanying the 2004 amendments to section 24J stated that 'interest should always be treated on revenue account', a policy intention expressly acknowledged by SARS in IN 142. We questioned whether the same principle and policy rationale could be applied to other finance charges, particularly periodic charges akin to interest, on the basis that such charges do not ordinarily improve, augment, or preserve capital assets. The section 11(*a*) position should therefore remain framed as a plausible, fact-dependent argument to be considered in light of the relevant facts and circumstances of the financing arrangements, rather than a settled fallback, and section 23(*g*) and, where relevant, section 23H must also be considered.

Our view on the operation of section 24J

Whilst this interpretation was not advanced by either party before the SCA and the judgment accordingly does not engage with it, we have consistently maintained in previous Synopsis editions[16] that the classification of each finance charge as 'interest' as defined in section 24J(1) should not determine whether it is taken into account and deductible under section 24J(2). Contrary to the views expressed by SARS in IN 142, and contrary to the approach adopted by both the Tax Court in Taxpayer Trust v CSARS[17] and the SCA in Cornucopia, our position remains as follows.

Without repeating the detailed reasons, we summarise the key aspects of our position:

1. Section 24J(2) does not state that an amount must first constitute 'interest' as defined before such amount falls to be deducted. Instead, it provides that if a person is an issuer in relation to an instrument, that person is 'deemed to have incurred an amount of interest' equal to the sum of all accrual amounts or an amount determined in accordance with an alternative method.

2. In our view, the purpose of the 'interest' definition in section 24J is to establish whether an 'instrument' exists—this being one of the prerequisites for section 24J(2) to apply. An 'instrument' includes 'any interest-bearing arrangement or debt'. Provided at least one amount payable under the arrangement meets the definition of 'interest', there will be an instrument; it does not follow that every amount payable under the loan agreement must independently qualify as 'interest'.

3. Whether finance charges are deductible under section 24J(2) turns on the definition of 'accrual amount'. This amount is determined by multiplying the yield-to-maturity by the adjusted initial amount. Critically, the definition of 'yield-to-maturity' refers to the rate at which the present value of all amounts payable

12 14 SATC 155.
13 1924 AD 516.
14 [1968] 31 SATC 53(T).
15 [1993] 55 SATC 185 (A).
16 See January 2025 and February 2026 Synopsis Articles.
17 (IT 76795) [2025] ZATC 1.

or receivable in terms of the instrument during its term equals its initial amount. Provided a fee or charge is payable in terms of the relevant instrument, it is included in the yield-to-maturity calculation—regardless of whether that amount independently constitutes 'interest' or a 'similar finance charge'.

4 Accordingly, raising fees and other charges need only be payable or receivable in terms of the instrument to form part of the accrual amounts deemed to have been incurred under section 24J(2). The classification of such charges as 'interest' or 'similar finance charges' is, in our respectful submission, irrelevant to their deductibility under that provision.

Cornucopia neither accepts nor rejects this interpretation. The sole issue before the SCA was whether the raising fees were finance charges similar to interest,[18] and the judgment should therefore not be cited as authority for our broader construction of section 24J(2). That construction remains arguable, subject to an important qualification: the fee must be payable or receivable under the same instrument.

Where, as in Cornucopia, the fee is regulated by a separate fee letter and is payable to a facility agent that is not always the lender, the concern raised in our March 2025 Synopsis remains material. Section 24J(7) contemplates multiple holders in relation to one income instrument, but does not remove the need to identify the relevant instrument and determine its yield-to-maturity. Contractual interdependence, the parties' rights and obligations, and the practical ability to calculate a yield-to-maturity must therefore be considered.

The dissenting judgment

The dissent, delivered by Matojane JA, accepted that 'similar' does not require identity, but characterised the raising fees as the cost of procuring capital rather than the price of its retention over time. On this analysis, the distinction is between:

Interest	A raising fee
A return payable to the lender, referable to the outstanding capital and to the period for which the advance remains outstanding.	A charge not referable to time or to the outstanding balance, payable once, in advance, as consideration for the service of arranging or sourcing the facility.

The dissent drew support from two internal indications in the Act. First, paragraph 20(2)(*a*) of the Eighth Schedule excludes from base cost 'borrowing costs, including interest as contemplated in section 24J, raising fees, bond registration costs or bond cancellation costs'. The separate enumeration of interest and raising fees, the dissent reasoned, indicated that the legislature regarded the two as distinct for tax purposes.

The majority dismissed this argument, holding that the separate enumeration underscored similarity rather than dissimilarity. The phrase 'including … raising fees' may reflect a non-exhaustive clarificatory list of components of 'borrowing costs', rather than indicating that each component is inherently dissimilar to interest for all statutory purposes.

Second, the dissent pointed to section 8FA. 'Hybrid interest' includes interest where the amount is not determined with reference to a specified rate or to the time value of money; it is deemed to be a dividend in specie and excluded from the section 24J deduction. If an amount expressly called interest is excluded from section 24J precisely because it lacks temporal and principal-referable character, the dissent reasoned, it is incongruous to admit as 'similar' a raising fee that is likewise untethered from the outstanding balance and from time.

The majority did not directly address the section 8FA point in the judgment, but observed that, on the uncontested evidence, the raising fees in Cornucopia were linked to the interest rate charged and to the facility period. The majority's functional analysis therefore found, on the facts, a linkage to the time value of money.

The dissent also noted that the raising fee was payable to SCM as facility agent, even in transactions where SCM advanced none of the loan money. A payment made to a third-party agent as consideration for arranging the facility, rather than to the lender as consideration for extending credit, is not a charge similar to interest. The majority did not regard this as determinative. SCM was a member of the Sanlam group, and on the evidence the fee was a component of the overall return for the provision of credit.

Impact on other provisions of the Act

The finding that the particular raising fees in Cornucopia constituted 'similar finance charges' is helpful to a taxpayer seeking a deduction under section 24J. It should not, however, be viewed as an unqualified taxpayer-favourable outcome in every context. Once a raising fee is characterised as 'interest' as defined in section 24J, that characterisation may have to be carried through other provisions of the Act that use, or are built around, the section 24J concept of interest. Those provisions include, in particular, sections 8F and 8FA, section 9(2)(*b*), section 11G, section 12E, section 19,

18 Cornucopia paras 2 and 32.

section 23G, sections 23M and 23N, section 24JA, Part IVB dealing with withholding tax on interest, and paragraph 20(2)(*a*) of the Eighth Schedule.

The most obvious example is the withholding tax on interest. Section 9(2)(*b*) treats interest as defined in section 24J as being from a source within South Africa ('SA') where it is attributable to an amount incurred by a resident, subject to the permanent establishment exclusion, or where it is received or accrues in respect of the utilisation or application in SA of funds or credit obtained under an interest-bearing arrangement. Part IVB then levies withholding tax on interest paid to or for the benefit of a foreign person, subject to the exemptions and any applicable treaty relief. It follows that, where an SA borrower pays a raising fee to a non-resident lender or arranger and that fee is properly characterised as a similar finance charge under paragraph (*a*) of the section 24J definition, the withholding tax position will need to be considered. The same characterisation that assists the borrower in claiming a deduction may therefore create a withholding obligation, or at least a compliance question, on payment of the fee.

Sections 23M and 23N are also potentially affected. Section 23M limits deductions for interest incurred on debts owed to persons that are not subject to tax in SA in circumstances involving controlling relationships and related funding structures, while section 23N limits interest deductions in respect of certain reorganisation and acquisition transactions. Section 23M contains its own definition of 'interest', but that definition includes interest as defined in section 24J, and section 23N defines 'interest' as interest as defined in section 24J. Where a raising fee is treated as section 24J interest, the fee may therefore form part of the interest amount that is tested under these limitation rules. In a leveraged acquisition, group funding, or cross-border related-party funding structure, the section 24J conclusion may accordingly improve the initial deductibility position but reduce or defer the practical benefit of that deduction because the fee is brought within an interest limitation calculation.

The same point arises, although often in more specialised circumstances, under other provisions. Sections 8F and 8FA define interest by reference to section 24J and can recharacterise interest on hybrid debt instruments, or hybrid interest, as a dividend in specie and deny the interest deduction. Section 11G uses the section 24J definition for the deduction of non-trade interest expenditure incurred in producing taxable interest income. Section 12E includes interest contemplated in section 24J in the investment income concept relevant to small business corporations. Section 23G limits the consequences of certain sale-and-leaseback arrangements by reference to amounts constituting interest as contemplated in section 24J. The capital gains tax rules similarly engage with the section 24J definition. Paragraph 20(1)(*g*) of the Eighth Schedule permits one-third of section 24J interest incurred to acquire an asset to be included in base cost, but this concession does not extend to interest contemplated in section 24O on money borrowed to acquire listed shares or participatory interests in collective investment schemes. Paragraph 20(2)(*a*) of the Eighth Schedule, by contrast, excludes from base cost borrowing costs, including section 24J interest and raising fees, other than those permitted under paragraph 20(1)(*g*). The debt benefit rules in section 19 also draw a distinction where a compromised debt consists of or represents interest as defined in section 24J. These provisions do not all operate in the same way, but they illustrate why the section 24J characterisation should not be considered only through the lens of the immediate deduction.



Practical observations

Cornucopia is therefore a fact-driven judgment with consequences that extend beyond the immediate section 24J deduction. The majority emphasised that whether a raising fee qualifies as a 'similar finance charge' depends on the particular circumstances, and it is not possible to determine the question in the abstract. The core enquiry remains functional: does the fee form part of the economic return for extending credit, or does it merely remunerate identifiable labour and services? Once that characterisation is made, however, the analysis should not stop at section 24J. The taxpayer should also consider whether the same characterisation affects withholding tax, interest limitation provisions, hybrid debt rules, or other provisions that incorporate the section 24J concept of interest.

The following observations may assist practitioners in evaluating raising fees in future transactions and in testing the collateral consequences of that characterisation:

- A fee that is indispensable to the extension of credit, proportionate to the capital, and, on the evidence, linked to the overall pricing and facility period is more likely to be similar to interest for section 24J purposes than a fee tied to identifiable tasks performed in arranging the loan.
- The payment of the fee to a facility agent or arranger rather than to the lender may be relevant where the evidence does not establish a group relationship, a commercial allocation of returns, or an equivalent linkage between the fee and the extension of credit.
- Fees that are payable in full irrespective of whether the facility is utilised, that remain payable after early settlement, and that bear no relation to the term of the loan may fall closer to the dissent's characterisation of a cost of procuring capital rather than a return for extending it.
- Where the fee does qualify as section 24J interest, the same conclusion should be tested under the other provisions of the Act that use that concept. In practice, this means considering, among other things, whether a cross-border payment gives rise to withholding tax on interest, whether the amount is brought within sections 23M or 23N, and whether any equity-like or hybrid features in the relevant instrument could trigger sections 8F or 8FA. A favourable section 24J deduction analysis may therefore be only one part of the overall tax analysis.

The judgment also does not decide our alternative interpretation of section 24J(2). Where a fee is payable under the same interest-bearing instrument, there remains an argument, in our view, that it enters the yield-to-maturity calculation, regardless of whether it independently constitutes interest as defined. Where the fee is payable under a separate agreement or to a different entity, it remains necessary to determine whether the arrangements constitute one instrument or two.

If section 24J does not apply, the section 11(*a*) fallback remains fact-sensitive and may fail where the fee is closely identified with establishing or enlarging the income-producing structure. Careful characterisation, supported by the financing documents and contemporaneous evidence, remains essential both for the deduction analysis and for identifying any further consequences elsewhere in the Act.



Conclusion

The SCA's judgment in Cornucopia is a significant development for taxpayers, rejecting SARS's restrictive reading of 'similar finance charges' and confirming that raising fees may, on appropriate facts, qualify for deduction under section 24J. The judgment will therefore be welcomed in the section 24J context. It should not, however, be read as producing only favourable consequences for taxpayers, because the same characterisation may affect other provisions of the Act that incorporate the section 24J concept of interest.

The judgment does not hold that all raising fees are 'similar finance charges'. The result depends on the particular facts, and the dissent's reasoning may apply to fees that have none of the temporal or capital-referable characteristics identified by the majority.

Given the technical complexity of section 24J and the divergent views between the majority and the dissent, taxpayers incurring raising fees or other finance charges should obtain specific advice on the deductibility of those charges, the applicable yield-to-maturity calculations, and the possible consequences under the withholding tax, interest limitation, hybrid debt, and other provisions that refer to section 24J interest.

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The 'tainted elements' requirement under the GAAR

Observations on Company AF (Pty) Ltd and Others v CSARS

Introduction

In two previous articles, 'The tax benefit enquiry under the GAAR' (July 2026 Synopsis) and 'The sole or main purpose test under the GAAR' (August 2026 Synopsis), we considered the Tax Court's treatment of the first two substantive requirements of the general anti-avoidance rule ('GAAR') in Company AF (Pty) Ltd and Others v Commissioner for the South African Revenue Service[1] ('Company AF'). The first article dealt with the identification of the tax benefit by reference to the transaction stripped of its avoidance features, and the second discussed the court's distinction between the purpose of doing the deal and the purpose of giving it the form it took, an aspect of the judgment that we suggested may be doctrinally unsound. This article completes the series by turning to the last of the requirements in section 80A of the Income Tax Act[2] ('the Act'), namely, that the avoidance arrangement must display at least one of the so-called 'tainted elements'.

To recap the facts very briefly: seven corporate shareholders in RASS Investments (Pty) Ltd ('RASS'), a company that developed and leased self-storage facilities, disposed of their entire interest in RASS to SRIA Investments (Pty) Ltd ('SRIA'), a wholly owned subsidiary of ANCIENT Ltd ('ANCIENT'). Rather than selling their shares for full value, they implemented a composite transaction of four interconditional steps. RASS declared a pre-closing distribution of R274 666 901, payable only once the subscription amount had been received. SRIA subscribed for new RASS shares for R280 325 530, which gave it 99.99% of RASS. RASS used the subscription proceeds to pay the distribution and certain severance obligations, and the

1 (IT 76725; IT 76750; IT 76751; IT 76752; IT 76753; IT 76754; IT 76755) [2026] ZATC 6 (3 July 2026).
2 58 of 1962.

shareholders then sold their original, by then nominal, shares to SRIA for R1 000. The shareholders treated the distribution as a dividend exempt from normal tax under section 10(1)(*k*)(i), with the result that no material capital gains tax ('CGT') was payable.

The South African Revenue Service ('SARS') applied the GAAR to the composite transaction, disregarded the dividend and subscription steps, and assessed the shareholders to CGT as though they had sold their shares for full value.[3] The court upheld the assessments on the merits, although it remitted the understatement penalties and set aside and remitted the provisional tax penalties.

On the tainted elements, the court found that four were present: abnormality, lack of commercial substance, the creation of rights or obligations that would not normally be created between persons dealing at arm's length, and the misuse or abuse of the provisions of the Act.

The judgment is important at this stage of the enquiry for two reasons. **First**, the court treated the tainted-elements requirement as a distinct and independent enquiry, not to be conflated with the tax benefit or sole or main purpose tests. **Second**, the court's reasoning on each tainted element suggests, in our view, that a taxpayer who has failed the tax benefit requirement and the sole or main purpose test is likely to find that the tainted-elements requirement is also satisfied, even though the court did not expressly say as much and was careful to ground each element independently.



Overview of the tainted elements under the GAAR

The tainted elements are set out in section 80A, which provides that an avoidance arrangement is an impermissible avoidance arrangement only if its sole or main purpose was to obtain a tax benefit and it also displays at least one of the elements listed in paragraphs (*a*) to (*c*) of that section. The elements are grouped by the context in which the arrangement is entered into or carried out, and only one of them needs to be established, although SARS will frequently allege several.

Section 80A(*a*) applies in the context of business and contains two elements. The first, commonly referred to as abnormality, is present where the arrangement was entered into or carried out by means or in a manner that would not normally be employed for bona fide business purposes, other than obtaining a tax benefit. The second is present where the arrangement lacks commercial substance, in whole or in part, a concept that is given content by section 80C.

In broad terms, section 80C provides that an arrangement lacks commercial substance if it would produce a significant tax benefit for a party but has no significant effect on that party's business risks or net cash flows apart from the effect of the tax benefit itself. Section 80C(2) then lists, on a non-exhaustive basis, characteristics that indicate a lack of commercial substance. These are a legal substance or effect of the arrangement as a whole that is inconsistent with, or differs significantly from, the legal form of its individual steps, the presence of round-trip financing (as described in section 80D), an accommodating or tax-indifferent party (as described in section 80E), or elements that have the effect of offsetting or cancelling each other.

Section 80A(*b*) is the counterpart of the abnormality element for arrangements entered into in a context other than business. It is satisfied where the arrangement was entered into or carried out by means or in a manner that would not normally be employed for a bona fide purpose, other than obtaining a tax benefit. Because the arrangement in Company AF was plainly entered into in a business context, this element did not arise for decision.

Section 80A(*c*) applies in any context, whether business or otherwise, and also contains two elements. The first is present where the arrangement has created rights or obligations that would not normally be created between persons dealing at arm's length. The second is present where the arrangement would result, directly or indirectly, in the misuse or abuse of the provisions of the Act, including the provisions of Part IIA itself ('the GAAR'). Of the five elements, the court found four to be present: abnormality and lack of commercial substance under section 80A(*a*), and both of the elements in section 80A(*c*).

3 At paras [2] – [4] and [44] – [46].



A distinct enquiry

What the structure is, not why it was chosen

The court described the GAAR enquiry as sequential. One asks whether there is an arrangement, whether it results in a tax benefit, whether its sole or main purpose was to obtain that benefit, and whether it displays at least one tainted element. SARS bears the onus of proving the existence of the arrangement, the tax benefit, and the tainted elements. Importantly, once the existence of the arrangement and the tax benefit (that is, an avoidance arrangement) have been established, section 80G(1) raises the rebuttable presumption as to purpose. The court added that:

> "[t]he four requirements are cumulative and distinct. A finding on one is not a finding on another, though the same facts may bear on more than one."[4]

The court gave the above general statement specific content in two passages. At the end of its discussion of the objective character of the purpose enquiry, the court observed:

> "The purpose enquiry asks why this structure was chosen. The tainted element enquiry that follows asks what the structure is."[5]

When the court then turned to the tainted elements, the court said that the enquiry:

> "is distinct from the purpose enquiry. It asks what the arrangement is, judged by the statutory indicia, and I decide it on the Court's own analysis of the transaction, using the expert evidence only as background to ordinary commercial practice."[6]

The distinction between why a structure was chosen and what the structure is offers a useful way of understanding the relationship between the two requirements, and it is consistent with the statutory design. Section 80A is framed so that purpose and the tainted elements are separate and cumulative conditions. An arrangement whose sole or main purpose is to obtain a tax benefit, but which is entered into by normal means, has commercial substance, creates only arm's-length rights and obligations, and does not misuse or abuse any provision of the Act, is not an impermissible avoidance arrangement.

Equally, an arrangement that exhibits one or more tainted elements escapes the GAAR if its sole or main purpose was not to obtain a tax benefit. The tainted elements therefore serve as an objective filter that separates tax-motivated arrangements the legislature is prepared to tolerate from those it is not. If the tainted elements were treated as no more than evidence of purpose, or if a finding on purpose were treated as carrying the tainted elements with it, that filter would fall away and the GAAR would become, in substance, a purpose test alone.

SARS cannot rely on the presumption in section 80G(1), or on a finding that the presumption has not been rebutted, to establish a tainted element. The tainted elements must be proved by SARS on their own footing.

On the reading of section 80G(1) set out above, that order is not in itself objectionable, since the presumption is engaged once the tax benefit is established. Nothing appears to have turned on the order in which the issues were addressed, as the court made independent findings on each element. However, once a court has concluded that a mechanism had only a fiscal function and was adopted for that reason, it should not treat the tainted elements as following automatically. SARS's proof of the tainted elements must be assessed independently of the purpose enquiry.

The distinction also has a less obvious dimension. The abnormality elements in section 80A(*a*)(i) and (*b*) are framed by reference to means or a manner that would not normally be employed for bona fide business purposes, or a bona fide purpose, "other than obtaining a tax benefit". The language of purpose is therefore not entirely absent from the tainted elements. The court's approach shows how the overlap is to be managed. The question under section 80A(*a*)(i) is not why the taxpayer chose the means it employed, but whether means of that kind are normally employed for bona fide non-tax purposes. That is an objective enquiry into commercial practice, measured against what arm's-length parties pursuing a bona fide business purpose would do, and it does not depend on the motives of the parties to the particular arrangement.

4 At para [66].
5 At para [83].
6 At para [92].

The double-counting objection

The appellants contended that SARS relied on a single feature, namely the closed circle of funds with a nil net effect on RASS, to make out several tainted elements, and that this amounted to impermissible double-counting. The court held in this regard that "[t]he premise is partly right and the conclusion wrong". The same primary facts may answer more than one of the statutory indicia, because the indicia are directed at different defects. Abnormality addresses the manner and means of the arrangement, lack of commercial substance addresses its economic effect on business risk and net cash flow apart from tax, and the arm's-length element addresses the rights and obligations the arrangement creates.[7]

That answer is, in principle, correct. The tainted elements are alternatives, and the Act requires only one of them. There is no rule that the facts relied upon for one must be different from those relied upon for another, and it would be surprising if a structure whose defining feature is circularity did not attract more than one of the indicia. The court went further, however, and observed:

"That one set of facts engages all three is what one would expect of an arrangement whose only operative feature is fiscal, since such a feature will at once be an abnormal manner, lack economic effect, and create rights an arm's-length party would not."[8]

The premise that the mechanism's "only operative feature is fiscal" is, in substance, the conclusion the court reached in identifying the tax benefit and in determining purpose. The court nevertheless stated that each element was independently grounded, and its analysis of each element largely bears that out. The value of the observation lies rather in what it says about the relationship between the GAAR requirements in a case such as this. A characterisation of the mechanism as having no commercial operation, once made, does a great deal of work across all four requirements, as discussed further below.



Abnormality

The court described the abnormality enquiry as objective. The question was whether the means or manner of the arrangement would not normally be employed for bona fide business purposes other than obtaining a tax benefit.[9]

The most useful part of the court's reasoning is its distinction between the arrangement in issue and the ordinary pre-sale dividend. The court accepted that dividend declarations and share subscriptions are each commonplace and that pre-sale distributions are a familiar feature of commercial life. A seller may legitimately declare a dividend of genuine accumulated profits before a sale, so that retained earnings are extracted by those who earned them rather than passing to the buyer in the price. What distinguished the present arrangement was that the distribution was not of value that RASS had generated and retained. RASS had never paid a dividend, had applied its profits to development, and had no distributable cash to fund a dividend of R274 million. The dividend was funded, rand for rand, by the acquirer's simultaneous subscription, and the emptied shares were then sold for a nominal sum. The court put the contrast as follows:

> "A genuine pre-sale dividend moves the company's own accumulated value to its owners and leaves the company correspondingly poorer. The buyer pays a price reduced by what was taken out. This mechanism did the opposite. It left RASS exactly as valuable as before."[10]

The court concluded that "[a] combination of steps whose mutual effect on the company is nil, but which transforms the fiscal character of what the sellers receive, is not a manner normally employed for bona fide business purposes other than obtaining a tax benefit."

This is an important clarification for practitioners, and it should be read together with the observation in the July Synopsis that the judgment does not establish a broad anti-dividend principle; in other words, the court did not suggest that a pre-sale dividend is inherently abnormal. Its finding turned on the source of the value distributed and the effect of

7 At para [93].
8 At para [93].
9 At para [94]. The court also referred, in the same paragraph, to whether the rights or obligations created would not normally be created between persons dealing at arm's length. That is the separate element in section 80A(*c*)(i), which the court addressed in its own right.
10 At para [95].

the combined steps on the company. A dividend funded from the company's own accumulated profits or cash resources, which reduces the value of the company and therefore the price, is on a different footing from a dividend funded by the purchaser's own subscription, which leaves the company's value unchanged and serves only to change the character of what the sellers receive.

SARS's expert, Professor Wainer, testified that the combination of a full-value dividend funded by an acquirer's subscription and followed by a nominal disposal of the remnant shares was abnormal in a commercial context and that he had encountered it only in tax-avoidance schemes. His evidence was not contradicted. The court nonetheless declined to treat it as determinative and held that whether the arrangement was abnormal was a matter for the court, decided on the structure's own features. The expert evidence was accepted only so far as it confirmed what those features already indicated about ordinary commercial practice: "It supplies context, not the answer."[11]

The court also gave short shrift to the evidence of the appellants' lay witnesses that such structures were "common", holding that lay impression cannot displace the objective assessment. It further rejected the argument that the later enactment of the anti-dividend-stripping rules in section 22B and paragraph 43A of the Eighth Schedule assisted the appellants, observing "[t]hat the legislature thought specific intervention necessary shows that such transactions were occurring and were regarded as objectionable, not that they were normal."[12]

Two practical consequences follow. **First**, taxpayers cannot establish normality simply by showing that a particular technique is widely used in the market. Prevalence and normality are not the same thing, and a structure that is common only among tax-motivated transactions does not thereby become one that is normally employed for bona fide business purposes. **Second**, because the court decided the question on its own analysis of the structure, the evidential contest on abnormality is likely to be won or lost on the transaction documents and the flow of funds rather than on competing expert opinions about market practice.



Lack of commercial substance

Section 80C(1) provides that an avoidance arrangement lacks commercial substance if it would result in a significant tax benefit for a party but does not have a significant effect on either the business risks or the net cash flows of that party, apart from any effect attributable to the tax benefit. The court emphasised that this element is directed at economic effect and stated expressly that it decided the issue on that basis and not on the manner of the arrangement.[13]

The appellants argued that their risk profile had changed significantly, because they had exchanged illiquid shares for cash. The court accepted that this was so, but held that the change was "attributable to the disposal itself, not to the mechanism by which the disposal was dressed". A direct sale of the shares for R274.666 million would have produced exactly the same change in the appellants' risk and cash position, and the dividend-and-subscription mechanism added nothing to that change and subtracted nothing from it. The court concluded:

"Where the only difference between doing the thing directly and doing it through the mechanism is the tax result, the mechanism has no significant effect on business risk or net cash flow apart from the tax benefit."[14]

The court also relied on section 80C(2)(*b*)(iii), which identifies as indicative of a lack of commercial substance the presence of elements that have the effect of offsetting or cancelling each other. The dividend created a liability in RASS of about R274.666 million, the subscription created an asset of approximately R280.325 million, and the liability was settled out of the asset, so that the net effect on RASS was nil.

11 At paras [96]–[97].
12 At para [98].
13 At para [100].
14 At para [102].

The court regarded this as a clear instance of the statutory indicator.[15] It then held that the composite transaction lacked commercial substance "not because the manner was unusual, but because the mechanism made no difference to risk or cash flow that the underlying sale did not already make."[16]

A simple illustration based on the figures in the judgment shows the court's reasoning. Under the structure actually implemented, each shareholder surrendered its entire interest in RASS and received its share of R274.666 million in cash, funded by SRIA. Under a direct sale, each shareholder would likewise have surrendered its entire interest in RASS and received its share of R274.666 million in cash, funded by SRIA. The risk surrendered and the cash received are identical in both cases. The only variable that changes is the character of the receipt in the shareholder's hands, which is an exempt dividend in the first case and proceeds on the disposal of shares, subject to CGT, in the second. That difference is precisely the tax benefit, and section 80C(1) requires it to be excluded in measuring the effect of the arrangement.

The court's analysis raises a point that it did not address expressly. Viewed as a whole, the composite transaction plainly had a significant effect on the business risks and net cash flows of the appellants, who achieved a complete exit and a full cash realisation of their investment. The court's conclusion that the composite transaction lacked commercial substance rested on isolating the effect of the dividend and subscription steps from the effect of the disposal.

It is worth pointing out that the arrangement attacked by SARS, and which was before the court, was the composite arrangement as a whole and not merely the dividend and subscription steps. On a plain reading, section 80C(1) asks whether the avoidance arrangement has a significant effect on business risks or net cash flows, and the composite arrangement clearly had such an effect. The court's approach may nevertheless find support in the wording of section 80A(*a*)(ii), which refers to an arrangement that lacks commercial substance "in whole or in part". On that basis, a lack of commercial substance in one part of a composite arrangement may be enough to taint the arrangement as a whole, even where the arrangement viewed in its entirety does have commercial substance.

The judgment does not, however, frame its reasoning in those terms. It instead measures the composite transaction against a hypothetical direct sale, which is arguably closer to asking whether the arrangement was carried out by abnormal means than to the economic-effect test that section 80C(1) sets out. The conclusion the court reached may well be correct on the facts, particularly given the offsetting elements identified under section 80C(2)(*b*)(iii). Even so, taxpayers and advisers should be cautious about treating the route by which the court reached that conclusion as settling how section 80C applies to composite arrangements, and it remains to be seen whether later courts will base similar findings on the "in part" wording instead.

Rights or obligations not at arm's length

The court's treatment of section 80A(*c*)(i) was brief. It held that it is enough that the arrangement created rights or obligations that would not normally be created between persons dealing at arm's length, and that the transaction as a whole need not be shown to be non-arm's-length. Arm's-length parties do not, in the ordinary course, structure a takeover by having the target declare a dividend equal to its entire value, funded by the acquirer's subscription at the same value, followed by the sale of the emptied shares for a nominal sum. The court identified the offending rights and obligations as follows:

> "The acquirer was bound to fund a dividend it would never receive, and the sellers were to be paid the company's whole value otherwise than as the price of their shares."[17]

Importantly, on the facts, ANCIENT was an independent acquirer, and the rights and obligations in question were in fact created between persons who were dealing at arm's length in every ordinary sense. The answer therefore lies in the normative character of the test, which asks what rights and obligations would "normally" be created between such persons, rather than which rights and obligations the particular parties agreed to or whether they were dealing at arm's length. The court's earlier finding that ANCIENT's acceptance of the chosen form was "a willingness to accommodate the sellers' tax structuring, not an independent commercial preference of its own"[18] explains why the agreement of an independent counterparty did not, on these facts, normalise the structure. The practical implication is that the presence of an unconnected counterparty does not of itself answer section 80A(*c*)(i). Where that counterparty is indifferent to the form of the transaction and merely accommodates the other side's tax planning, its agreement says little about what arm's-length parties would normally do.

15 At para [103]. The difference between the two amounts reflects the R5 658 629 included in the subscription price to fund severance payments to Mr Van der Hof and his son: see para [44].

16 At para [104].

17 At paras [105]–[106].

18 At para [80].



Misuse or abuse of the dividend exemption

With respect to the court's analysis of section 80A(*c*)(ii), the court accepted that the dividend was, in formal terms, a dividend, and that section 10(1)(*k*)(i) does not on its face contain a source or anti-stripping qualification. The question was therefore "not whether the words of the exemption were literally satisfied, which they were, but whether the purpose of the exemption was defeated by the use to which it was put", and that enquiry was purposive.[19]

The court identified the purpose of section 10(1)(*k*)(i) from the structure of the Act. Company tax is imposed at the level of the company that derives the income, and the exemption prevents the same corporate profits from being taxed repeatedly as they pass up a chain of resident companies, leaving the shareholder-level charge to be collected through the dividends tax when value leaves the corporate chain. The court concluded that "[i]t is a provision for the integrity of company-to-company distribution, not a mechanism for converting the proceeds of a disposal into a receipt that escapes tax altogether."[20]

The appellants advanced a textual argument that the court considered must be met directly. They argued that the bulk of the distribution had been funded by the subscription proceeds, which constituted contributed tax capital in RASS's hands rather than accumulated profits, so that the rationale of relieving the double taxation of profits did not apply and no abuse of it could be made out. The court rejected the argument on three grounds.

First, only R599 of the distribution was a return of contributed tax capital, and the appellants could not claim the exemption for the remaining R274 666 302 as a dividend while resisting the abuse enquiry by recharacterising the same amount as something other than a dividend.

Second, if a distribution funded by a contemporaneous capital injection from the acquirer could qualify as an exempt inter-company dividend, the exemption could be used to extract the entire value of any target free of tax on every sale, which "would turn a cascade-relief provision into a disposal-relief provision it was never meant to be".

Third, and decisively, the abuse did not depend on identifying the source of the funds: "The flaw is functional, not one of accounting."[21]

The court then explained what it understood by misuse or abuse:

> "It is not the mere exploitation of a gap or an ambiguity, and not the lawful selection of a less-taxed route among genuine alternatives, but the deployment of a relieving provision in a manner that defeats the object for which Parliament conferred it."[22]

The court was careful not to rely on the later enactment of section 22B and paragraph 43A of the Eighth Schedule, accepting the appellants' point that a subsequent targeted rule may equally indicate that the prior law was thought to leave a gap. Its finding rested on the purpose of section 10(1)(*k*)(i) as it stood and on the use to which the appellants put it.

This reasoning carries several implications. **The first** is that compliance with the literal terms of a relieving provision is not an answer to section 80A(*c*)(ii). That conclusion is inherent in the GAAR, because the misuse or abuse element would be redundant if literal compliance were sufficient, but the judgment demonstrates how the purposive enquiry is carried out in practice. **The second** is that the court's formulation preserves room for legitimate tax planning. By distinguishing the deployment of a relieving provision against its object from both the exploitation of a gap or ambiguity and the selection of a less-taxed route among genuine alternatives, the court left the choice principle intact at this stage of the analysis, at least in principle.

That formulation raises a question, however, that connects with the concerns expressed in the August Synopsis. Whether a taxpayer has selected "a less-taxed route among genuine alternatives" or has deployed a relieving provision against its object depends on how the alternatives are framed.

19 At para [108].
20 At para [109].
21 At para [110].
22 At para [111].

The court's view, as expressed in its purpose analysis, was that the dividend-and-subscription mechanism was not an alternative means of effecting a sale but a step grafted onto the sale. If one accepts the contrary view that the mechanism was, within the arrangement actually concluded, the means by which the value of the investment was realised, the line between the two categories becomes considerably harder to draw. The court's answer, that the flaw was functional rather than one of accounting, may be persuasive on these facts, as the dividend served to deliver acquisition consideration rather than to distribute corporate profits within a group. It is less clear how the formulation would apply to a pre-sale dividend funded partly from the company's own reserves and partly from external funding, or to a distribution that has a genuine non-tax function in a reorganisation.

With respect to the source of the purpose the court attributed to section 10(1)(*k*)(i), the court derived that purpose from the structure of the Act rather than from extrinsic materials, and the purpose it identified was uncontroversial.

Why a taxpayer who fails the earlier requirements is likely to fail this one

Importantly, as mentioned, a finding of a tax benefit and a failure to rebut the presumption as to purpose do not automatically lead to a finding that a tainted element is present. The court's express findings were that more than one tainted element was present and that each was "established independently of the others and on the distinct statutory footing identified above".[23] What follows is therefore our commentary on the practical implications of the judgment rather than a description of what the court decided.

With that qualification, the judgment shows why, on facts of this kind, a taxpayer who has failed the tax benefit requirement and the sole or main purpose test will in all likelihood also fail the tainted-elements requirement (although there may be some factual exceptions, and each case would need to be considered in light of its relevant facts and circumstances). At the tax benefit stage, the comparator was the arrangement that was in fact implemented, "shorn of the features whose only operation is fiscal", which in this case was a straightforward sale of the shares for full value.[24] At the purpose stage, the court asked whether the mechanism would have been chosen absent the tax benefit, and concluded that everything else it achieved could have been achieved more simply by a sale.[25] At the tainted-elements stage, the same comparator reappeared. Lack of commercial substance was established because a direct sale would have produced exactly the same effect on risk and cash flow, abnormality was established because the closed circle of funds left RASS's value unchanged in a way that a genuine pre-sale dividend does not, and the arm's-length finding rested on the proposition that the circuitous route answered no commercial need that a straightforward sale would not have met.

With respect to a lack of commercial substance, section 80C(1) asks whether an arrangement that would result in a significant tax benefit has a significant effect on business risk or net cash flow "apart from any effect attributable to the tax benefit". Where the tax benefit has been identified by stripping out features whose only operation is fiscal, the features stripped out will, almost by definition, be features that have no significant effect on risk or cash flow, apart from the tax benefit. A taxpayer who has lost the comparator argument at the tax benefit stage may therefore find it difficult to argue that the same features have commercial substance. Similarly, a finding at the purpose stage that a mechanism has no discernible function other than a fiscal one may be difficult to reconcile with a contention that the mechanism is normally employed for bona fide business purposes other than obtaining a tax benefit.

The converse is equally important: the objective material that the court identified as capable of rebutting the presumption as to purpose, namely proof that the structure was required by an independent third party for its own non-fiscal reasons, or that the feature said to be fiscal served a substantial commercial function that an ordinary transaction would not have served,[26] is the same material that would tend to defeat the abnormality and commercial substance elements. A taxpayer who is able to demonstrate a genuine incremental commercial function for the impugned steps will be well placed on several requirements at once, while a taxpayer who cannot do so is likely to fail on all of them. The evidence should therefore be prepared on a unified basis, directed at what the impugned steps achieved commercially that the ordinary transaction would not have achieved, rather than separately for each statutory requirement.

Two caveats should be made. **First**, the misuse or abuse element does not follow from the earlier findings in the same way, as it depends on identifying the purpose of the specific provision relied upon and showing that the arrangement defeated that purpose, which is an enquiry into the relationship between the arrangement and the Act rather than into the commercial character of the arrangement. A tax-driven step that relies on a provision in a manner consistent with its object would not constitute misuse or abuse, even if it

23 At para [112].

24 At para [73]; see also paras [77] – [78].

25 At paras [85] – [86].

26 At para [84].

lacked commercial substance. **Second**, the facts of Company AF reflect the stark features of the arrangement in question, in particular the purchaser-funded dividend, the nil net effect on RASS, and the nominal sale price. Where the impugned steps have some genuine commercial operation, the tainted-elements enquiry may well yield a different answer from the purpose enquiry, and the independence of the requirements will then be of real consequence.

It is also worth reflecting on the concerns expressed in the August Synopsis. The principal criticism made there was that the court, in applying the purpose test, considered not only the purpose of the arrangement but also its form, and thereby effectively overrode the choice principle. The tainted-elements enquiry is, by contrast, expressly concerned with form and effect. Much of the court's reasoning on purpose, in particular the conclusion that the dividend-and-subscription mechanism added nothing to the commercial result, arguably belongs more naturally in an analysis of what the structure is than in an analysis of why the arrangement was entered into. Read in that way, the court's reasoning has its firmest footing in the tainted-elements part of the judgment, and the difficulty identified in the August Synopsis lies less in the court's assessment of the mechanism than in the stage of the enquiry at which that assessment was deployed.

The takeaway

The tainted-elements analysis in Company AF confirms that the requirement is distinct from, and independent of, the sole or main purpose test. The court's formulation, that the purpose enquiry asks why the structure was chosen while the tainted-elements enquiry asks what the structure is, captures the distinction well and is consistent with the cumulative design of section 80A and the allocation of the onus under section 80G(1). SARS must establish a tainted element on its own footing, and the presumption as to purpose cannot be used to do so.

On the individual elements, the judgment provides useful guidance. A pre-sale dividend is not abnormal as such, but a dividend funded by the purchaser that leaves the company's value unchanged is likely to be on similar facts. Lack of commercial substance is assessed by asking whether the impugned steps changed business risk or cash flow beyond what the underlying commercial transaction already achieved. The agreement of an independent counterparty does not establish that rights and obligations are those that arm's-length parties would normally create, where the counterparty merely accommodates the other side's tax planning. Misuse or abuse is a purposive enquiry, and literal compliance with a relieving provision is no answer where the provision is deployed against its object.

For taxpayers and advisers, the practical message is that, on facts such as these, the GAAR requirements tend to stand or fall together, because the same comparator and the same assessment of the commercial function of the impugned steps run through each of them. That is a matter of practical consequence rather than legal principle, and the court was right to insist that each element be independently established. The judgment of a Tax Court is not binding precedent, and it remains to be seen whether the matter will be taken on appeal, a likely scenario given the criticism the judgment has faced.

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The price of a promise

Transfer pricing implications of financial guarantees

A financial guarantee is a commitment by one party to stand behind another's obligations. In transfer pricing, this raises a complex question: when does this promise have real economic value, and who has the right to benefit from it?

For multinational enterprises ('MNEs'), intra-group financial guarantees have become indispensable tools for accessing capital markets, securing favourable financing terms, and optimising group-wide treasury functions.

The value of a financial guarantee depends on who is making it and what the recipient would have achieved without it. A guarantee from a financially solvent parent and/ or other connected persons may reduce borrowing costs or enable loan terms that would otherwise be unattainable. But if the subsidiary could have achieved the same outcome on its own, does the parent's promise add anything of substance?

This distinction between a promise that delivers genuine benefit and one that merely formalises what already exists lies at the heart of transfer pricing for financial guarantees. Tax authorities worldwide have asked and continue to ask: **should the guarantor be compensated and, if so, how much?**

If the answer is yes, an arm's length fee should be charged and properly documented. If the answer is no, any fee charged might not be deductible at arm's length and may expose the MNE to transfer pricing adjustments, penalties, and potential double taxation. Guarantees that fail the so-called 'benefit' test may be disregarded for pricing purposes, with the transaction analysed as if no fee-bearing guarantee existed. A separate and potentially larger risk concerns the underlying third-party loan. Where a guarantee enabled the borrower to borrow more, or on better terms, than it could have obtained on a standalone basis, tax authorities may conclude that part of the debt is, in substance, attributable to

the guarantor. This can lead to the debt quantum or interest rate being reset to what the borrower could have achieved on a standalone basis, with a corresponding disallowance of interest.

This article examines the transfer pricing treatment of intra-group financial guarantees, drawing on landmark cases from multiple jurisdictions (Canada, India, Australia, the UK, and Italy) to evaluate how courts and tax authorities worldwide have grappled with this fundamental question. We focus particularly on the South African context, where Interpretation Note 127 ('the Note') of the South African Revenue Service ('SARS') has brought clearer application of the Chapter X guidance in the OECD's Transfer Pricing Guidelines ('TPGs') on financial transactions.

Until February 2020, there was no well-established global framework for intra-group financial guarantees. Tax practitioners and courts relied heavily on landmark cases such as General Electric Capital Canada[1] ('GE Capital Canada'). The release of Chapter X of the OECD TPGs, "Transfer Pricing Aspects of Financial Transactions", in February 2020 marked a watershed moment, providing the first OECD guidance on intra-group financial transactions, including treasury functions, intra-group loans, cash pooling, hedging, captive insurance, and financial guarantees.

The arm's length principle, the international cornerstone of transfer pricing, requires that transactions between related parties mirror those between independent entities negotiating at arm's length in competitive markets. Yet applying this principle to financial guarantees presents unique challenges that have divided tax authorities and courts globally.

Within the MNE context, a parent or holding company ('the Guarantor') provides a guarantee to a third-party lender on behalf of a subsidiary seeking financing ('the Guaranteed Party', or 'borrower'). This commitment ensures the Guarantor will meet specified financial obligations should the subsidiary default.



The critical distinction between implicit support and explicit guarantees

Understanding the distinction between implicit support and explicit guarantees is essential, as it determines whether any arm's length fee is justified.

Implicit support through the 'free' group halo

Every subsidiary of a large multinational inherently benefits from its group association. Lenders perceive lower risk when dealing with entities backed by substantial parent companies, even absent any legal commitment. This 'group halo effect' is implicit support: the incidental, non-contractual creditworthiness enhancement that flows automatically from group membership.

1. The crucial point is that implicit support is not legally enforceable. Should the subsidiary default, no lender can pursue the parent based solely on group affiliation. Consequently, the OECD TPGs are clear: seeking to charge a standalone arm's length fee for implicit support is not justifiable. This passive, incidental benefit cannot form the basis of an intercompany charge.
2. Explicit support (the contractual commitment) differs fundamentally. Here, a group entity (typically the parent) provides a legally enforceable guarantee to the third-party lender. If the borrower defaults, the lender has contractual recourse against the guarantor. This legal commitment represents genuine risk assumption, and where it provides incremental benefit beyond implicit support, an arm's length fee is appropriate.
3. The critical analytical challenge: When pricing an explicit guarantee, one must isolate the incremental benefit, that is, the improvement in creditworthiness beyond what implicit support already provides. Overlapping these benefits, or failing to distinguish them, lies at the heart of most guarantee-fee disputes.

1 Canada v. General Electric Capital Canada Inc., 2010 FCA 344.

Global cases that have shaped the debate

The treatment of financial guarantees has been tested in courts across multiple continents, offering valuable guidance on how to demonstrate (or disprove) that a guarantee provides genuine arm's length benefit.



Canada

General Electric Capital Canada Inc. v. The Queen (2010)

The GE Capital Canada decision remains the leading example of taxpayer success in a guarantee-fee dispute. General Electric Capital Canada Inc. ('GECC') paid an annual fee of 1% of the principal amount to its AAA-rated parent, General Electric Capital Corporation ('GECUS'), for guarantees supporting GECC's commercial paper and debt issuances.

The Canada Revenue Agency argued that implicit group support already gave GECC a credit standing equivalent to its parent, so the explicit guarantee added nothing and no fee was warranted. The courts disagreed. The Tax Court (2009), upheld by the Federal Court of Appeal (2010), accepted that implicit support must be taken into account, but found that even after doing so, GECC's credit rating remained well below its parent's AAA rating. The explicit guarantee therefore delivered quantifiable benefits beyond implicit support, in the form of borrowing costs that, even after paying the 1% fee, left GECC better off than any realistic alternative.

The key lesson here was that GECC succeeded because evidence and transfer pricing documentation supported both the economic rationale and the arm's length level of the fee. The case's recognition of implicit support is widely regarded as having informed the OECD's Chapter X guidance.

India

Micro Ink and subsequent rulings: a divided approach

In Micro Ink Private Limited v. ACIT[2], the Income Tax Appellate Tribunal held that where a parent provides a corporate guarantee for its subsidiary's loan, no guarantee commission is warranted if the subsidiary could have obtained the loan independently.

The reasoning is that where a guarantee provides no incremental benefit (the borrower would have obtained the same loan terms regardless), or is provided as a shareholder activity to protect the parent's own investment, no service has been rendered that justifies a fee. Indian jurisprudence is, however, not uniform. In Everest Kanto Cylinders Limited[3], for example, the Bombay High Court upheld a guarantee commission of 0.5%, and tribunals have frequently imputed commissions in the range of 0.5% to 1%. Other rulings, including Asian Paints Limited[4], turned on whether a corporate guarantee is an 'international transaction' at all, particularly for periods before the 2012 retrospective amendment to section 92B of the Income Tax Act.

Indian authorities focus sharply on whether the borrower needed the guarantee to obtain financing and on how the guarantee is characterised. Where the borrower's own creditworthiness (including implicit support) sufficed, the case for a fee is weak; where a fee is charged, a commission of roughly 0.5% has often been treated as a practical benchmark.

2 [2013] 144 ITD 610 (Ahd).
3 CIT v Everest Kanto Cylinder Ltd. (2015) 378 ITR 57 (Bom).
4 Commissioner of Income-tax v. Asian Paints (India) Ltd [2016] 388 ISR 453 (Bom).

Australia

Chevron Australia Holdings (2017): the substance imperative

While primarily a case about intercompany loan pricing, Chevron Australia Holdings Pty Ltd v Commissioner of Taxation[5] established principles directly applicable to guarantees. The Court held that, when assessing arm's length terms for intra-group financing, one cannot ignore the borrower's position as a member of the group, including implicit support and the likelihood that an independent lender would require a parent guarantee.

The Commissioner successfully argued that pricing the loan by reference to Chevron Australia's standalone credit rating, ignoring its group membership, was artificial. The Court agreed that, in reality, an independent borrower in Chevron Australia's position would have sought to borrow at the lowest cost, including by obtaining a parent guarantee. This reasoning cuts both ways for guarantees: it supports recognising implicit support (reducing the value of explicit guarantees) while demanding realistic analysis of actual market conditions.



5 [2017] FCAFC 62.

United Kingdom

BlackRock HoldCo 5 LLC v HMRC (2024): hypothetical covenants and real-world lender protections

BlackRock[6] concerned US$4 billion of intra-group loans rather than a guarantee fee, but its reasoning is relevant to the construction of the hypothetical arm's-length transaction. The Court of Appeal rejected the view that the transfer pricing rules prevented covenants from being hypothesised merely because they were absent from the actual loan documentation. It accepted that an independent lender would have required certain covenants, but found that the actual group lender already enjoyed equivalent protection through its controlling shareholding in the relevant group entity. The Court therefore decided the transfer pricing issue in the taxpayer's favour. The interest deduction was nevertheless disallowed under the separate unallowable-purpose rule.

The decision shows that the arm's-length analysis may recognise protections that an independent lender would require and then ask whether the actual lender already had economically equivalent protection through the group relationship. It does not require third-party legal covenants to be replicated mechanically where the relevant protection exists in substance.

6 BlackRock HoldCo 5, LLC v The Commissioners for His Majesty's Revenue and Customs [2024] EWCA Civ 330 ('BlackRock').

Italy

NN Europe S.p.A. v. Revenue Agency (2026): the 'compensatory advantages' defence

In May 2026, Italy's Supreme Court (Corte di Cassazione) delivered a landmark ruling in Revenue Agency v NN Europe S.p.A.[7], providing crucial guidance on when intra-group guarantees fall outside the scope of transfer pricing adjustments altogether.

The case concerned NN Europe S.p.A., an Italian subsidiary that provided security interests (mortgages and pledges) worth approximately €42 million to support a loan from US banks to its American parent company, NN Inc. The Italian Revenue Agency assessed additional taxable income of over €1.3 million for the 2009 and 2010 tax years, applying a 3.13% guarantee fee using the CUP method. The Agency argued that the guarantee was provided without consideration and lacked valid economic reasons.

The Supreme Court upheld the taxpayer's position, articulating a powerful principle: in intra-group transactions, the concepts of 'gratuitousness' and 'economic advantage' must be understood in their proper economic sense. The characterisation shifts from the individual transaction to the overall allocation of assets, taking into account the economic interest intended to be realised, even indirectly through the complex economic transaction. This is the well-established theory of 'compensatory advantages'.

Critically, the Court held that where valid economic reasons justify the transaction, the transfer pricing rules simply do not apply.

7 Order No. 13136/2026.

Drawing on European Court of Justice precedent (Germany v Hornbach-Baumarkt[8], and Romania v Impressa Pizzarotti & C SPA Italia Sucursala Cluj[9]), the Supreme Court emphasised that transfer pricing legislation must allow taxpayers the opportunity to demonstrate "internal commercial reasons within the group" underlying the transaction. In this case, NN Europe established that providing the guarantee secured future revenues, maintained favourable lending spreads, and, crucially, ensured business continuity at a time when the parent company faced liquidity constraints and potential insolvency that would have "inevitably jeopardised the survival of the Italian subsidiary".

The Italian Supreme Court's ruling offers MNEs a potentially powerful defence: where a guarantee (or other intra-group financial support) is justified by valid economic reasons, particularly the parent company's interest in the success of group entities, transfer pricing adjustments may be excluded entirely. However, this defence requires contemporaneous documentation of the commercial rationale and the indirect benefits flowing to the guarantor.



8 ECJ C-382/16.

9 ECJ C-558/19.

The South African framework

South Africa, while not an OECD member, largely follows the OECD TPGs, supplemented by domestic practice notes and interpretation notes. Section 31 of the Income Tax Act[10] applies to "potentially affected transactions" between connected persons and associated enterprises where one party is a non-resident (or a resident with a foreign permanent establishment). The definition of 'transaction' is wide enough to include an operation, scheme, arrangement, or understanding, and therefore captures intra-group financial guarantees in both directions.

In practice, section 31(2) requires a taxpayer to calculate its taxable income as if the terms of an 'affected transaction' had been concluded at arm's length, where the actual terms differ from arm's length terms and result in a tax benefit. In the guarantee context, this means a South African borrower that pays an excessive (or unjustified) guarantee fee to a non-resident guarantor must make the adjustment itself in its tax return; SARS does not have to initiate the adjustment for the obligation to arise. Where a South African company provides a guarantee to a foreign group member for free, or for less than an arm's length fee, section 31(2) can equally require an upward adjustment to its income.

The primary adjustment is followed by a secondary adjustment under section 31(3). Where the taxpayer is a company, the amount of the adjustment is deemed to be a dividend in specie paid to the connected non-resident, for which the South African company itself is liable for dividends tax at 20% (potentially subject to a reduced rate under an applicable treaty). A guarantee-fee adjustment therefore typically results in two layers of cost: the loss of the deduction and dividends tax on the deemed distribution. This is why benefit testing should be completed before the fee is charged and not only after an audit begins.

The Note, issued on 17 January 2023, sets out SARS's approach to pricing intra-group loans and has brought clearer application of Chapter X principles for South African taxpayers. The Note provides guidance on analysing intra-group loans, including the consequences where the quantum of debt, cost of debt, or both deviate from arm's length. On guarantees specifically, it follows the OECD position: implicit support from group membership should be taken into account when assessing the borrower's creditworthiness and is not chargeable, while only an explicit, legally enforceable guarantee that provides benefit beyond implicit support may justify a fee.

10 58 of 1962, as amended.

Interpretation Note 127 also separates two effects of a guarantee. The first is the effect on the cost of debt: the guarantee may lower the interest rate the borrower pays. The second is the effect on the quantum of debt: the guarantee may allow the borrower to borrow more than it could on a standalone basis. Where the guarantee mainly increases debt capacity, SARS is likely to treat the excess borrowing as, in substance, attributable to the guarantor. Interest on that excess may be disallowed, and any guarantee fee relating to it is unlikely to be accepted as deductible.

On audit, SARS can be expected to take the following steps:

(i) ask for the borrower's standalone credit rating, including the effect of implicit support

(ii) compare that rating with the guaranteed terms to test whether the guarantee actually changed the pricing or availability of the loan

(iii) review lender correspondence and term sheets to establish whether the lender required the guarantee or merely obtained it as a matter of course

(iv) test whether the borrower, after paying the fee, is better off than under realistic alternatives.

Taxpayers who cannot produce contemporaneous evidence for each of these steps should expect the fee to be challenged.

The impact of guarantees on South African taxpayers' debt capacity requires case-by-case analysis. A detailed approach to accurately delineating the guaranteed loan transaction includes performing a functional analysis to understand the functions performed, assets employed, and risks assumed by the taxpayer as borrower or lender; and benchmarking against comparable uncontrolled transactions and analysing key financial ratios to validate the controlled transaction terms.

Withholding tax and cross-border guarantee fees

The withholding tax treatment of guarantee fees can materially change the after-tax cost of a guarantee arrangement, and it differs depending on the direction of the payment.

Outbound fees (South African borrower paying a non-resident guarantor): A guarantee fee is generally not 'interest' for purposes of South Africa's 15% withholding tax on interest, because it is paid for assuming credit risk rather than for the use of money. South Africa currently has no general withholding tax on service fees. However, the characterisation should be confirmed in each case, particularly where the fee is built into the loan pricing or paid through the lender. Any portion of the fee adjusted under section 31 becomes a deemed dividend in specie, subject to dividends tax under the secondary adjustment rules.

Inbound fees (South African guarantor receiving fees from foreign group companies): Several African jurisdictions treat guarantee fees as interest, management or service fees, or other income subject to withholding tax. Where foreign tax is withheld, the South African guarantor must consider whether relief is available under the relevant tax treaty and whether a foreign tax credit can be claimed under section 6*quat*. Credit is often limited, so unrelieved withholding tax becomes an absolute cost to the group.

Treaty characterisation: most tax treaties do not deal with guarantee fees expressly. Depending on the treaty and the facts, the fee may fall under the business profits article (generally taxable only in the guarantor's residence state unless there is a permanent establishment), the interest article, or the other income article. The position should be confirmed for each treaty, and the intercompany agreement should support the intended characterisation.





Transfer pricing methodologies for guarantee pricing

The OECD guidelines and practical experience suggest several approaches for determining arm's length guarantee fees:

Comparable uncontrolled price ('CUP') method: The CUP method benchmarks controlled guarantee transactions against comparable independent guarantees, considering risk profiles, terms, and credit ratings. However, its practical application is constrained by the scarcity of publicly available comparable data. A further complexity: independent guarantors' fees often embed regulatory and capital costs that related-party guarantors may not incur, necessitating careful adjustments.

Yield approach method: This method measures the guarantee's benefit by comparing the interest rate the borrower would pay without the guarantee to the rate with it. First, estimate the borrower's standalone borrowing rate, incorporating any implicit support. Then determine the guaranteed rate. The interest spread represents the maximum benefit to the borrower and therefore the upper limit of an arm's length fee; the fee is commonly set within a range between the guarantor's cost of providing the guarantee and this spread. Isolating the spread from implicit group benefits is essential.

Cost approach and expected loss method: These methods quantify the guarantor's additional risk by estimating the expected loss exposure. The analysis considers the probability of borrower default and the likely loss, given default, effectively valuing the guarantee from the guarantor's perspective.

Capital support method: Where the gap between the guarantor's and borrower's credit profiles could alternatively be closed through a capital injection, this method estimates the additional capital the borrower would need to reach the guarantor's credit rating and prices the guarantee by reference to the return on that notional capital. It provides a useful cross-check against other approaches.

Implications when no benefit exists

Where the analysis shows that a guarantee provides no incremental benefit, for example because the borrower could have obtained the same amount and terms on a standalone basis (taking implicit support into account), the implications are significant:

1. Fee disallowance: Any guarantee fee charged may be disallowed as a deduction for the payer, while potentially remaining taxable income for the recipient, creating economic double taxation within the group.
2. Transaction recharacterisation: Recharacterisation of the loan itself goes further than disallowing the fee and should not be assumed in every no-benefit case. As noted above, it is generally limited to cases where the guarantee allowed the borrower to borrow more than an independent lender would have advanced on a standalone basis. In this case, Chapter X of the OECD TPGs (paragraphs 10.164 to 10.166) and Interpretation Note 127 support treating the excess portion as having been borrowed by the guarantor and contributed to the borrower as equity, with interest on that portion at risk of disallowance and a secondary adjustment. Where the guarantee only lowered the interest rate or added nothing, the usual result is that the fee is disallowed or reduced, while the debt is respected.
3. Penalties and interest: Transfer pricing adjustments frequently attract understatement penalties under the Tax Administration Act and interest, significantly increasing the cost of non-compliance. Contemporaneous documentation can be important in mitigating the penalty level.

Key takeaways

Conduct the benefit test: Before implementing any guarantee arrangement, conduct a thorough analysis of whether the guarantee provides genuine incremental benefit. Document the borrower's standalone creditworthiness (including implicit support), available market alternatives, and the quantifiable impact of the explicit guarantee.

Separate implicit from explicit support: Credit analyses should clearly distinguish between implicit group support (non-chargeable) and explicit guarantee benefit (potentially chargeable). The arm's length fee should reflect only the incremental value added by the explicit guarantee.

Build documentation: The GECC case demonstrates that transfer pricing documentation is often the difference between success and failure. Document the economic rationale, pricing methodology, comparable analysis, and net benefit calculation. The calculation should show that, even after paying the guarantee fee, the borrower is better positioned than under available alternatives.

Consider multiple jurisdictions: MNEs must navigate potentially divergent positions across jurisdictions. What succeeds in Canada may fail in India. Coordinated global transfer pricing policies, country-specific risk assessments, and advance pricing agreements, where available, can help manage multi-jurisdictional exposure. South Africa's APA programme currently does not cover financial assistance (including guarantee arrangements), so local certainty depends largely on contemporaneous documentation and, where relevant, mutual agreement procedures under the applicable tax treaty.

Conclusion

Financial guarantees represent one of the most scrutinised areas of transfer pricing globally. The fundamental question (does this guarantee provide genuine economic benefit beyond what group membership already confers?) must be answered comprehensively and documented thoroughly before any intercompany fee is charged.

The GECC approach of demonstrating quantifiable incremental benefit through documentation remains the gold standard for taxpayer success. Yet the Indian experience reminds us that where no benefit exists, no fee is justified. MNEs operating in South Africa and across Africa must navigate these complexities with careful analysis, defensible methodologies, and proactive engagement with evolving regulatory expectations.

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Latest developments

Latest developments 25 September to 26 October 2026

PwC thought leadership		
Various weekly	Global Tax Talk – Tax in 60 seconds with Will Morris.	A PwC on-demand video series that quickly and concisely brings you the global tax policy news you need to know in a format that you can access on the go. Every Monday, the Global Tax Policy leader, Will Morris, provides a 60-second roundup of key perspectives to prepare for the upcoming week. PwC releases news briefings and short interviews with PwC subject matter specialists and global leaders around the world on the issues they see affecting the business community.
	Africa-wide tax policy campaign	In the latest episode of Tax Policy, Our Future: Africa in conversation, PwC South Africa's Kyle Mandy reflects on South Africa's tax policy journey to date. We encourage you to continue to follow the campaign for ongoing insights and discussions.

National legislation

21 October 2026	2026 final tax bills	The final 2026 tax bills have been tabled and made available: • Taxation Laws Amendment Bill (TLAB) • Tax Administration Laws Amendment Bill (TALAB) • Rates and Monetary Amounts and Amendment of Revenue Laws Bill
21 October 2026	National Treasury and SARS response document on the 2026 draft tax bills	The response document on the comments received on the 2026 draft tax bills was made available in connection with the tabling of the final 2026 tax bills.
21 October 2026	Medium-term budget (MTBPS)	National Treasury has published the 2026 MTBPS documents. Key tax and policy matters to note include: • **Temporary fuel-levy relief: From 4 November to 1 December 2026**, the levy is reduced by R3.00 per litre for diesel and R1.50 per litre for petrol. Thereafter, until 5 January 2027, the reductions are R1.50 per litre for diesel and R1.00 per litre for petrol. The stated fiscal cost is R10 billion in foregone revenue. • **National online gambling tax:** Consultations remain under way on the design of the tax, its interaction with the existing regulatory framework, and its implications for provinces. The final design is expected to be announced in the February 2027 budget. • **Crypto assets and exchange controls:** Following comments on the draft capital-flow management regulations, National Treasury intends to reconsider the approach. The revised framework is expected to move away from pre-approvals and place greater emphasis on transaction legitimacy and tax compliance, with a second draft to follow after further consultation. Additional information is available on the National Treasury webpage.

Interpretation

30 September 2026	Interpretation Note (IN) 74 (Issue 4) – Deduction and recoupment of expenditure incurred on repairs	Issue 4 of IN 74 provides guidance on the interpretation and application of section 11(d) of the Income Tax Act, 1962, which allows a deduction for expenditure incurred on repairs for the purposes of trade. The question of whether the cost of repairs deducted under section 11(d) can be recovered or recouped under section 8(4)(a) when the property is sold is also considered. The Note replaces Issue 3.

SARS tables of interest rates

30 September 2026	Table 3 – Rates at which interest-free or low-interest loans are subject to income tax	SARS updated the rates at which interest-free or low-interest loans are subject to income tax on 30 September 2026 in line with the South African Reserve Bank changing the repo rate on 23 September 2026. The updated rates apply from 1 October 2026.

SARS guides

23 October 2026	Guide on Mutual Agreement Procedures (Issue 4)	Issue 4 provides general guidance on the mutual agreement procedure used by competent authorities of contracting jurisdictions to address international tax disputes.
October 2026	Guide for Provisional Tax	The guide was updated to explain SARS engagements under paragraph 19(3), including requests to justify an estimate, the potential increase of an estimate, and the submission of supporting documents through eFiling or the SARS Online Query System (SOQS) within ten business days.
October 2026	SARS Payment Guide	The guide was amended to include Investec Bank as a designated banking institution for global minimum tax foreign payments via SWIFT using the prescribed payment reference number.
30 September 2026	General guides	The following general guides have been made available: • Taxation in South Africa 2026 • Tax Guide for Small Businesses (2025/2026)

Notices

25 September 2026	Public notices	Notice 7958, published in Government Gazette 55438 of 25 September 2026 under section 95(6) of the Tax Administration Act 28 2011, extends to 22 January 2027 the deadline for the specified provisional taxpayers to request a reduced or additional assessment. The extension applies to a provisional taxpayer who has received an automatic assessment under paragraph 3(3) of the notice to submit returns and wishes to request a reduced or additional assessment.

Customs and excise

16 October 2026	Tariff amendments	Publication details for notices R8023, R8024, and R8025, published in Government Gazette 55544, were made available.
9 October 2026	Tariff amendments	Publication details for notice R7991, published in Government Gazette 55506, were made available. The notice relates to anti-dumping duties on certain flat-rolled products of iron.
9 October 2026	Rule amendments	Publication details for notice R7992, published in Government Gazette 55506, were made available. The notice amends rules under sections 64E and 120 relating to client accreditation.
8 October 2026	Draft DA 63 – Application for refund on duty-paid imported goods exported	The proposed amendment clarifies the title of form DA 63 to align it with the drawback and refund provisions under which the form may be used.

Case law

In accordance with the date of judgment

26 October 2026	CSARS v Mkhize and Others (D13795/2024)	The issue was whether the preservation order granted in November 2024 could be varied to permit the curator to sell five properties in Sandton of which Mkhize was the beneficial owner, and to hold the funds realised from the sale in an attorney's trust account pending action proceedings to be brought by SARS to use the funds to set off Mkhize's tax liabilities.
8 October 2026	TEG Asset and Risk Management CC v CSARS (2023-110354) [2026] ZAGPJHC	The issue was whether SARS unlawfully refused to issue reduced assessments under section 93(1)(e)(iii) where the taxpayer alleged that the relevant returns had been fraudulently submitted by an unauthorised person.
2 October 2026	CSARS v Africa Cash and Carry (Crown Mines) (Pty) Ltd and Another (42076/2022) [2026] ZAGPPHC	The issues included whether assessments raised outside the three-year period had prescribed and whether personal liability could arise for the relevant tax debt if it had not prescribed.
4 September 2026	SARSTC IT 76811 (IT) [2026] ZATC JHB	The matter considered whether expenditure satisfied the general deduction formula, including whether it was incurred in the production of income or for the purposes of trade.
13 August 2026	SARSTC VAT 2138 (VAT) [2026] ZATC JHB	The issues were whether the input tax claimed was correctly disallowed and whether the understatement penalties were lawfully and correctly imposed.

Other publications

21 October 2026	South African Reserve Bank	Publication for comment: "Synthetic Financial Centre Initiative". Written comments on the draft framework are invited by close of business on 30 November 2026.
19 October 2026	OECD	Country-by-Country Reporting – Compilation of 2026 Peer Review Reports. The publication compiles the findings of the ninth annual peer review of implementation of the base erosion and profit shifting (BEPS) Action 13 minimum standard.
16 October 2026	OECD	GloBE Information Return (Pillar Two) XML Schema, October 2026: User Guide for Tax Administrations. The revised guide supports the automatic exchange of GloBE Information Return information and reflects the 2026 revisions following the Side-by-Side Package.
15 October 2026	ATAF	Article: "ATAF Convenes African Tax Administrations in Zimbabwe to Strengthen Tax Cooperation". The article reports on the 2026 Continental Exchange of Information Conference and Workshop held from 14 to 16 October 2026.
15 October 2026	OECD	OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (G20 United States, October 2026). The report provides an update on the OECD's tax work and considers how tax policy can support business dynamism and economic growth.
15 October 2026	OECD	Enhancing corporate tax systems to support business dynamism. The report examines how corporate income tax design, compliance costs, loss-offset rules, financing frictions, and competitive distortions may affect business dynamism.



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