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Commissioner for the South African Revenue Service v Cornucopia Trust (469/2025) [2026] ZASCA: Deductibility of “raising fees” in terms of section 24J of the Income Tax Act

The Supreme Court of Appeal (SCA) in *Commissioner for the South African Revenue Service v Cornucopia Trust (469/2025) [2026] ZASCA* considered whether loan “raising fees” qualify as “interest” in the form of “similar finance charges” under section 24J(1)(a) of the Income Tax Act 58 of 1962 (**the Act**).

Background facts and the SCA’s finding

The taxpayer, Cornucopia Trust, was a South African property investment/leasing trust which obtained finance facilities over its investment properties. The finance facility attracted “raising fees” which were determined as 2% of the facility amount. The raising fees were payable as an advance condition to utilise the relevant facility, payable in two instalments (50% on signature of the facility and 50% on the earlier of 31 March 2012 or when the mortgage bond was registered over the relevant property).

The taxpayer claimed such raising fees as deductible interest, across the relevant facility periods, on the basis that they constituted “similar finance charges” in terms of section 24J of the Act. SARS disallowed the deductions, arguing the fees were costs of obtaining capital rather than the cost of using capital and therefore these fees did not constitute similar finance charges.

The majority held that the raising fees constituted “similar finance charges” as defined, as the raising fee had a direct link towards the use of the underlying capital. In this regard the court held that:

- If interest is considered compensation for the time value of money and risk taken on by the lender, then raising fees may similarly be paid in compensation for the deprivation of use of the money and to mitigate the risk of non-payment;
- As the raising fee in this case was determined as a percentage of a short-term facility, and was an advance condition for use of the facility they would be considered “inextricably linked”;
- Therefore, the raising fees constitute necessary consideration, in the form of early compensation for the use of the loan and is of similar function to interest and therefore would constitute “similar finance charges” in terms of section 24J.

Impact of the decision on deductibility of raising fees

Although the majority accepted that the 2016 amendments to section 24J (in which “related finance charges” was amended to “similar finance charges”) represented a narrowing of scope, it still held that a substance over form approach must be taken in determining whether any particular expense constitutes “similar finance charges.” This functional characterization includes what the charge is for, rather than the label given to a charge in a contract.

Therefore, in determining whether raising fees fall within section 24J “similar finance charges,” taxpayers and lenders should consider whether the raising fees are considered “inextricably linked” to the underlying finance obtained; which may be indicated by:

- Whether the raising fee is an advance condition for use of the facility (i.e., credit would not be granted absent the fee); and/or
- Whether the raising see is determined with reference the facility amount (e.g., percentage-based)

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Kind regards

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