REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA
(HELD AT KWAZULU-NATAL LOCAL DIVISION, DURBAN)

Case numbers: **IT 77406 & IT 77357**

(1) REPORTABLE: **YES** / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: **YES** / ~~NO~~
(3) REVISED.

24 August 2026
DATE

SIGNATURE

In the matter between:

COMPANY EG **APPELLANT**

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

and

In the matter between:

COMPANY LS **APPELLANT**

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

J U D G M E N T

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 24 August 2026.

SIWENDU J:

Introduction

[1] This appeal concerns the additional assessments of the appellants made by the Commissioner for the South African Revenue Service ("SARS") for the 2023 year, more particularly, the proper income tax treatment of rental income derived from the properties of the appellants, Company LS Investments Shareblock (Pty) Ltd ("Company LS") and Company EG Investments Shareblock (Pty) Ltd ("Company EG"). The appellants are collectively referred to as either "the companies" or "the appellants" and/or "the taxpayers". Both appeals raise substantially the same issues of fact and law and were heard together.

[2] The appellants were originally incorporated as ordinary private companies during 1994 and 1995 respectively. During 1997, a special resolution was adopted to convert them into share block companies, thus registering them as share block companies under the Share Blocks Control Act 59 of 1980 ("SBCA").

[3] The respective memoranda of association record the appellants' principal object as that of ownership of immovable property and the operation of a share block scheme. Company LS is the registered owner of several commercial properties situated in Ladybrand, Harrismith, Virginia, Stilfontein and De Aar, amongst others. Company EG is the registered owner of the property known as 0X0 Wooden Street, Pietermaritzburg, from which the Wooden Square Shopping Centre is situated. The properties are utilised exclusively for commercial purposes and are let to third-party commercial tenants under written lease agreements concluded between the commercial tenants and the appellants.

[4] Prior to the 2023 year of assessment, SARS had consistently issued assessments reflecting a NIL taxable income in respect of both appellants. Following verification of the appellants' 2023 tax returns, SARS disallowed certain deductions, concluding that the rental income received was taxable in the hands of the appellants.

[5] SARS issued the appellant with additional assessments of their income for the 2023 year of assessment, in terms of section 99(2)(*a*), alternatively section 99(2)(*b*), of the Tax Administration Act 28 of 2011 ("the TAA"), on the basis that there had been a misrepresentation or non-disclosure of material facts. SARS further levied interest in terms of section 89*quat*(2) of the Income Tax Act 58 of 1962 ("the ITA").

[6] The tax dispute concerns whether rental income generated from commercial properties constituted "gross income" as defined in section 1 of the ITA,[1] which accrued to, or was received by the appellants, or whether the rental income accrued to the shareholders of the respective share block companies.

[7] The appeal proceeded on a stated case, based on documentary evidence discovered by the parties. No oral evidence was led. The court is accordingly required to determine the issues based on the agreed documentary record, the authenticity and admissibility of which are not in dispute, and to draw the appropriate legal conclusions from those agreed facts.

Common cause facts

[8] The following facts are common cause; namely that: The appellants are duly incorporated share block companies as contemplated in the SBCA, which regulates the operations of share block schemes.[2] During the 2023 year of assessment, they were the registered owners of the immovable properties forming the subject of the respective share block schemes. The properties were utilised exclusively for commercial purposes and were let to third-party commercial tenants. The written lease agreements were:

(a) Concluded directly with the appellants;

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1 According to s 1 of the ITA, " **'income'** means the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II"; " **'Gross income'**, in relation to any year or period of assessment, means—

(i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or

(ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within the Republic, during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described…";

For the definition of **"received by"** see *Lategan v Commissioner for Inland Revenue* 1926 CPD 203 (*Lategan*) at 209; for the definition of **"accrued to"** see *Geldenhuys v Commissioner for Inland Revenue* 1947 (3) SA 256 (C) at 266; *Commissioner for Inland Revenue v People's Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A) an unconditional legal entitlement.

2 " **'Share block scheme'** means any scheme in terms of which a share, in any manner whatsoever, confers a right to or an interest in the use of immovable property."

(b) The tenants granted suretyship in favour of the appellants to secure their obligation under the lease agreements; and

(c) The tenants paid the appellants, who issued the tenants with the relevant tax invoices, accounted for Value Added Tax ("VAT") on the rental received and received the rental income.

[9] The 2023 income tax returns disclosed amongst others, rental income of approximately R12,3 million in the case of Company LS and approximately R7,7 million in the case of Company EG. The appellants claimed deductions for repairs, maintenance and for amounts described as "distributions" to share block holders resulting in a Nil taxable income.

[10] After the submission of the 2023 income tax returns, SARS notified both taxpayers on 13 November 2023 and on 1 February 2024, respectively, that their returns either did not correspond with information in its possession or had been selected for verification. SARS requested additional information concerning, amongst other matters:

(a) The nature of the income received;

(b) The deductions and allowances claimed;

(c) Distributions made to share block holders; and

(d) An explanation of certain entries reflected in the annual financial statements.

[11] SARS required an explanation from Company LS regarding:

(a) The deductions claimed in respect of distributions to share block holders;

(b) Whether the income of approximately R12,3 million constituted exempt levy income or taxable rental income;

(c) Whether rental was collected on behalf of a partnership notwithstanding the absence of immovable property reflected in the balance sheet;

(d) The claim for repairs and maintenance expenditure when the property was not reflected in the annual financial statements;

(e) The treatment of dividends paid, including the absence of a DTR02 declaration and supporting resolutions; and

(f) The treatment of an interest-free loan reflected under "Other Financial Assets" for purposes of section 64E(4) of the ITA.[3]

[12] In relation to Company EG, SARS sought a detailed explanation concerning:

(a) The repairs and maintenance expenditure of R2 493 509, and the nature of the expenditure;

(b) The apparent absence of immovable property reflected in the financial statements, the basis upon which the expenditure was deductible;

(c) Explanations concerning an interest-free loan of R11 457 978 reflected under "Other Financial Assets" and enquired why no dividend in *specie* had been declared in terms of section 64E(4) of the ITA; and

(d) An explanation why Company EG claimed the distribution to share block holders amounting to R4 507 955 as an allowance, since the income was not levy income, but rental income, insurance claim proceeds and interest received and the section of the ITA the allowance was based on.

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3 "**64E Levy of tax**— (4)(*a*) Where, during any year of assessment, any amount is owing to a company by—

(i) a person that is—
(*aa*) not a company;
(*bb*) a resident; and
(*cc*) a connected person in relation to that company; or

(ii) a person that is—
(*aa*) not a company;
(*bb*) a resident; and
(*cc*) a connected person in relation to a person contemplated in subparagraph (i),

in respect of a debt, that company must, for the purposes of this Part, be deemed to have paid a dividend to the person contemplated in subparagraph (i), if that debt arises by virtue of any share held directly or indirectly in that company by a person contemplated in subparagraph (i)."

[13] SARS subsequently issued Company LS with a notice of adjustment in which it disallowed the repairs and maintenance deduction claimed under sections 11(*d*)[4] and 23(*g*) of the ITA, in the amount of R111 509. SARS further disallowed the claimed deduction in respect of distributions to share block holders, resulting in an adjustment of R12 298 206, and raised a deemed dividend in *specie* in terms of section 64E(4) of the ITA in respect of an interest-free loan to Company LS Partnership, resulting in a further adjustment of R155 452. SARS thereafter issued an ITA34C reflecting an additional assessment of R3 432 867.

[14] In respect of Company EG, SARS's notice of adjustment disallowed the repairs and maintenance deduction in the amount of R2 493 509 and the claimed deduction relating to distributions to share block holders in the amount of R4 507 955. SARS further raised a deemed dividend in *specie* in terms of section 64E(4) of the ITA in relation to an interest-free loan to Company EG Partnership, resulting in a further adjustment of R150 162. SARS issued an ITA34C reflecting an additional assessment of R2 407 677. Thus, SARS concluded that the rental income constituted taxable income in the hands of the appellants.

[15] The appellants objected to the additional assessments on the grounds that:

(a) The companies are registered as share block companies;

(b) Sections 10(1)(*e*) and 10(1)(*e*)(i)(*bb*) of the ITA state that a share block is exempt from income tax; and

(c) The profit was distributed to all share block holders who paid tax "on their share of the profit in their entity".

[16] The outcome of the objection was that SARS partially allowed it. Company LS's tax liability was reduced to R2 830 697, while Company EG's tax liability was reduced to R1 575 543. Although the objections were partially upheld, SARS disallowed the amounts described in the tax returns as "distributions to share block holders", resulting in the present appeals.

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[4] Section 11 of the ITA states that: "For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived—

…

(*d*) expenditure actually incurred during the year of assessment on repairs of property occupied for the purpose of trade or in respect of which income is receivable, including any expenditure so incurred on the treatment against attack by beetles of any timber forming part of such property and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade;."

[17] The appellants rely on IT3(b) tax certificates for 2023 reflecting the distribution of R9 871 376 in respect of Company LS and R4 507 955 in respect of Company EG to demonstrate that a direct distribution to share block holders during the relevant year of assessment.

Grounds of appeal

[18] In this appeal, the appellants claim that SARS fundamentally misconceived the legal nature of a share block company established under the SBCA. They contend that, although the immovable properties are registered in the names of the respective companies, the economic entitlement to the rental income generated from those properties' vests in the individual shareholders by virtue of the statutory share block scheme and the Use Agreements concluded pursuant thereto.

[19] Their case rests on five interrelated contentions:

(a) First, they contend that the Use Agreements confer upon shareholders the "real right" to the use and enjoyment of the relevant properties together with the economic benefits arising from those rights, including the rental generated from tenants occupying the premises;

(b) Secondly, the companies merely received rental in a representative capacity and acted as conduits or agents for their shareholders. In adopting this approach, the companies never became beneficially entitled to the rental income;

(c) Thirdly, the shareholders, and not the companies, are the persons to whom the rental income accrues for purposes of the definition of "gross income" in section 1 of the ITA;

(d) Fourthly, the accounting treatment reflected in the financial statements does not determine the proper tax consequences, which must instead be determined according to the parties' legal rights and obligations; and

(e) Finally, they contend that SARS's approach results in the same rental income being subjected to tax twice: once in the hands of the shareholders and again in the hands of the companies (the double taxation).

SARS's opposition

[20] SARS challenges the appellants' characterisation of the rental income. It contends that as registered owners of the properties and parties to the lease agreements, the appellants acquired the enforceable contractual right to receive the rental and accordingly received the income for purposes of the definition of "gross income" in section 1 of the ITA. Accordingly, the rental accrued to, and was received by, the appellants within the meaning of the definition of "gross income".

[21] SARS disputes the appellants' reliance on agency, cession, usufruct, and/or accounting treatment, and maintains that none of those considerations displaces the fundamental proposition that the appellants, as owners of the properties and parties to the lease agreements, acquired the contractual right to receive the rental income and that such income accordingly accrued to them for purposes of the ITA. It contends that:

(a) The subsequent distribution of rental income to share block holders in accordance with the internal arrangements of the share block scheme does not alter the tax character of the income at the point when it accrued to the companies or the incidence of taxation. The tax consequences fall to be determined when the income accrues to, or is received by, the appellants; and

(b) The SBCA does not exempt share block companies from liability for income tax on rental derived from third-party commercial tenants. Properly construed, section 10(1)(*e*) of the ITA distinguishes between levy income received by a qualifying share block company, which enjoys statutory exemption, and other income, including rental and interest, which remains taxable in the ordinary course, but with the *proviso* of a limited exemption.

[22] Accordingly, SARS seeks an order dismissing both appeals, confirming the additional assessments and awarding costs in terms of section 130 of the TAA on the basis that the grounds of appeal are unreasonable.

Points *in limine*

[23] Before the hearing, the appellants delivered a notice of intention to raise two preliminary points which must be determined first. The first point involves a procedural objection about the lawfulness of the verification process undertaken by SARS (the verification complaint) and the second point concerns the application of the *contra fiscum* rule (*contra fiscum* rule complaint).

[24] The appellants' complaint is that SARS exceeded the permissible ambit of a verification contemplated in section 40 of the TAA, and under the guise of a verification, conducted what was in substance an audit contemplated in section 42 of the TAA without complying with the procedural safeguards prescribed by that provision. The underlying premise is that a verification and an audit are distinct statutory processes attracting different procedural obligations. They submit that a verification is directed at confirming or validating information furnished by a taxpayer, whereas an audit entails an independent investigation into the correctness and completeness of the taxpayer's affairs.

[25] With regard to the second point concerning the application of the *contra fiscum* rule, the appellants contend that SARS adopted inconsistent and conflicting approaches to the taxation of the appellants and related share block entities in relation to the treatment of rental income. Furthermore, the appellants argue that SARS adopted an inconsistent tax approach for the appellants and other related share block companies and treated the same income differently in different assessments. It is said that the way the appellants have been taxed results in double taxation. To the extent that there is uncertainty regarding the proper interpretation of the relevant provisions of the ITA, such uncertainty should be resolved in favour of the taxpayer.

[26] SARS objects to the raising and determination of both points *in limine* at this stage of the proceedings and contends that the appellants are precluded on procedural grounds from introducing new grounds of appeal. Neither of the points raised formed part of the appellants' objection or their Tax Court rule (TCR) 32 statement of grounds of appeal. The issues on appeal are circumscribed by TCR 32 and 34. SARS further contends that permitting the points to be raised would occasion prejudice because they were not foreshadowed in the pleadings.

[27] SARS seeks a dismissal of the points raised on the basis that they lack merit should the court consider them. It disputes that it conducted an audit within the meaning of section 42 of the TAA. It contends that the verification undertaken was based upon information disclosed in the appellants' tax returns and the supporting documentation furnished by them. The additional enquiries were directed at clarifying the nature of the income received, the deductions claimed and the statutory basis relied upon by the appellants, and verifying information disclosed in the returns, which fell squarely within the powers conferred by section 40 of the TAA. It contends the matter could only be resolved by leading oral evidence, which the appellants failed to do.

[28] In so far as the *contra fiscum* rule is concerned, SARS submits that it finds no application in the present case because it is an aid to statutory interpretation where genuine ambiguity exists. SARS is not obliged to perpetuate an incorrect interpretation of the law merely because a different approach may previously have been adopted.

Whether the court should entertain the points *in limine*?

[29] The basis for SARS's objection is that the preliminary points were not raised in the appellants' objection to the assessments and do not form part of their statements of grounds of appeal. TCR 32(3)[5] precludes an appellant from introducing a new ground of appeal unless it constitutes a ground of objection against a part or amount of the disputed assessment not previously objected to under TCR 7.[6] TCR 34[7] further provides that the issues on appeal are those contained in the statement of the grounds of assessment and opposing the appeal, read with the statement of grounds of appeal and any reply.

[30] The appellants do not dispute that the points *in limine* were not expressly raised in their objection or in their rule 32 statement. They contend, however, that the points arise from the agreed documentary record and concern questions of law arising from facts already before the court. They submit that they do not introduce a new factual basis for the appeal but raise different legal consequences flowing from the same factual matrix. They further rely on the fact that their intention to raise preliminary points had been intimated at the pre-trial conference. The minute records, however, that neither party, at that stage, intended to take a preliminary point.

[31] The starting point is the decision of the Supreme Court of Appeal (the SCA) in *Commissioner, South African Revenue Service v Free State Development Corporation.*[8] There, the SCA recognised that a taxpayer is not necessarily precluded from advancing a different legal argument where it is founded upon the same factual matrix. The enquiry is one of substance rather than form. The court must therefore determine whether the substance of the appellants' original objection and grounds of appeal sufficiently covered or foreshadowed the points now sought to be advanced.

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5 "The appellant may include in the statement a new ground of appeal unless it constitutes a ground of objection against a part or amount of the disputed assessment not objected to under rule 7."

6 "**Objection against assessment**
(1) A taxpayer who may object to an assessment under section 104 of the Act, must deliver a notice of objection within 80 days after—
(*a*) delivery of a notice under rule 6(4) or the reasons requested under rule 6; or
(*b*) where the taxpayer has not requested reasons, the date of assessment…"

7 "The issues in an appeal to the tax court will be those contained in the statement of the grounds of assessment and opposing the appeal read with the statement of the grounds of appeal and, if any, the reply to the grounds of appeal."

8 *Commissioner, South African Revenue Service v Free State Development Corporation* [2023] ZASCA 84; 2024 (2) SA 282 (SCA) (*Free State Development*) para 41.

[32] The fact that a new argument involves no new evidence is not, however, dispositive. The appellant's right to appeal against an assessment or decision is conferred by section 107(1) of the TAA and must be exercised in accordance with the TAA and the TCR.[9] As held by the SCA in *Baseline Civil Contractors* (*Pty*) *Ltd v The Commissioner for the South African Revenue Service*,[10] the statements in terms of TCR 31, 32 and 33 constitute the pleadings in the Tax Court and the issues for the decision are those that are traversed in such statements. Therefore, the tax dispute resolution process prescribed by the TAA and the TCR serves to define the issues between the parties and to prevent prejudice occasioned by a party changing its case at a late stage. The question is accordingly whether the points *in limine* are properly issues arising from the existing statements and record, or whether they constitute new grounds of objection to the assessments.

[33] An appeal to the court is predicated on a decision by the Commissioner. There has been no such decision on the points sought to be raised. The appellants' objection to the assessments was founded on the exemption in section 10(1)(*e*) of the ITA. The appellants subsequently changed the bases of their complaint, and the freshly raised preliminary points do not feature in the statement of grounds of appeal. They were raised belatedly on the eve of the hearing.

[34] When assessed, the preliminary points do not merely advance a different legal argument; they introduce a fresh procedural challenge to the way SARS arrived at the assessments and freshly allege an inconsistency in applying the ITA which does not form the basis of their objection to the assessment or the grounds of appeal. The decision in *Free State Development Corporation* does not support the appellants. It is impermissible for the appellants to keep some points in reserve, and for those points to be raised at a later stage of the tax dispute resolution process, thus making up its case as it evolves through the regulated tax dispute resolution mechanisms.

[35] Even if the verification complaint were to be entertained, it is necessary to determine whether the complaint is legally capable of disposing of the assessments in an appeal to this Court. I therefore consider the substance of the verification complaint, in the alternative.

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9 Section 107(1) of the TAA states that: "After delivery of the notice of the decision referred to in section 106(4), a taxpayer objecting to an assessment or "decision" may appeal against the assessment or 'decision' to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the 'rules'."

10 *Baseline Civil Contractors (Pty) Ltd v The Commissioner for the South African Revenue Service* [2026] ZASCA 20 para 10.

The verification complaint

[36] The appellants rely on the decision in *Forge Packaging* (*Pty*) *Ltd v Commissioner for the South African Revenue Service*,[11] which aptly observed that the TAA does not define either "verification" or "audit", and as the appellants argue, the two concepts are not synonymous. As the appellants contend, a "verification" entails a process by which information furnished by the taxpayer is checked or confirmed, whereas an "audit" involves a more extensive investigation into the taxpayer's affairs.

[37] Two related factual questions arise which require a proper characterisation of SARS's inquiries before determining whether there was a procedural irregularity which warrants the Court to set the additional assessment aside. These are whether on the agreed facts:

(a) SARS conducted a verification or an audit; and

(b) The enquiries by SARS constituted a verification or assumed the character of an audit.

[38] The appellants' factual foundation rests on verification notices, SARS's requests for further information, the taxpayers' responses and the subsequent additional assessments. Other than the documents, there is no evidence of the factual context in which the enquiries were made. The appellants do not seek to call on new evidence other than the record before the court.

[39] I agree that the features of the inquiries extended beyond requests for supporting documentation and exhibited a greater level of interrogation of the tax returns. As pointed by the SCA in *GB Mining and Exploration SA* (*Pty*) *Ltd v Commissioner, South African Revenue Service*[12] in terms of regulation A2 of the regulations issued under s 107 of the ITA[13] any return must "be accompanied by all such balance sheets, trading accounts, profit and loss accounts and other accounts of whatever nature, as are necessary to support the information contained in the return". There is no evidence whether the returns were indeed accompanied by all information required.

[40] When viewed in the context of the information supplied in the tax return, the enquiries were directed at understanding the basis of the tax returns. The court is satisfied in respect of the information before it that the conflicting representations by the appellants in their tax returns required an extensive verification of the information presented. The inquiries were necessary to determine the nature of the income received, the deductions claimed and the

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[11] *Forge Packaging (Pty) Ltd v Commissioner for the South African Revenue Service* [2022] ZAWCHC 119 (*Forge Packaging*).

[12] *GB Mining and Exploration SA (Pty) Ltd v Commissioner for the South African Revenue Service* [2014] ZASCA 29; 2015 (4) SA 605 (SCA) (*GB Mining*) para 29.

[13] GN R105, *GG* 1011, 22 January 1965.

statutory provisions relied upon. The requests for additional information and the call for explanation fell squarely within the powers conferred by section 40 of the TAA, to understand and "verify" the correctness of the returns submitted by the appellants. I am unable to conclude that the verification "crossed the line" to an audit without more evidence to substantiate such a claim. The first point in limine therefore fails on that basis.

Whether an alleged procedural irregularity would vitiate the assessments

[41] Even if it is assumed, in favour of the appellants, that the enquiries undertaken by SARS were an "audit" rather than a "verification", the question remains whether such procedural irregularity vitiates the additional assessments and thus constitutes a ground upon which the Tax Court may set them aside in the exercise of its appellate jurisdiction.

[42] The appellants relied on *Forge Packaging*, which was decided in review proceedings before the High Court. The taxpayer sought to review and set aside the assessment based on SARS's alleged non-compliance with the procedural requirements of sections 42 and 106(5) of the TAA.

[43] In my view, the nature and scope of this Court's jurisdiction are relevant to the first point *in limine*. That the Tax Court is a specialised statutory tribunal and its jurisdiction is conferred by the TAA read with the TCR to determine disputes concerning the correctness of tax assessments and decisions of the Commissioner comes into play.[14]

[44] In the *Commissioner for the South African Revenue Service v Poulter*,[15] the SCA held that the Tax Court is not a High Court contemplated in s 166(*e*) of the Constitution. The SCA did not disturb the finding by the Full Court in *Poulter v Commissioner, South African Revenue Service*[16] that the Tax Court does not exercise the High Court's review jurisdiction over the lawfulness of administrative action, but functioned as a court of revision, empowered to reconsider the Commissioner's assessment on its merits and, where appropriate, to substitute it with its own decision.[17]

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[14] *Lion Match Company (Pty) Ltd v Commissioner for the South African Revenue Service* [2018] ZASCA 36 para 6; *Metcash Trading Ltd v Commissioner, South African Revenue Service and Another* [2000] ZACC 21; 2001 (1) SA 1109 (CC) paras 47 and 55.

[15] *Commissioner for the South African Revenue Service v Poulter* [2026] ZASCA 68 paras 43-46.

[16] *Poulter v Commissioner, South African Revenue Service* 2026 (2) SA 633 (WCC) (*Poulter*) paras 18 and 35-16; the court explained that the Tax Court is a creature of statute established under s 116 of the TAA and exercises the appellate jurisdiction conferred by s 107. It is not one of the superior courts contemplated in s 166 of the Constitution, nor does it possess the inherent powers contemplated in s 173.

[17] Ibid paras 45; 48 and 52-53.

[45] *Forge Packaging,* on which the appellants rely, formed part of multiple appeals before the Constitutional Court in *United Manganese of Kalahari v Commissioner, South African Revenue Service and Four Similar Cases* (*United Manganese*).[18] The Constitutional Court expressly observed that the Tax Court's procedures are directed at ventilating the merits of assessments, rather than determining review grounds.[19] The Tax Court does not have jurisdiction to conduct PAJA or legality reviews.[20] It cautioned that the Tax Court should not be understood as exercising review powers "through the back door" under the guise of a tax appeal.[21]

[46] The appellants' complaint is not directed at the substantive correctness of the additional assessments but at the procedure followed by SARS in arriving at them. The alleged procedural irregularity is not one which this Court, exercising its appellate jurisdiction under the TAA, is empowered to determine by setting aside the additional assessments. For the reasons stated, the first point *in limine* must accordingly fail.

The second point *in limine*

[47] Turning to the *contra fiscum* rule, on the basis that SARS adopted an inconsistent approach to the taxation of the appellants and related share block companies. They contend that, in previous years and in relation to Company NN Share Block (Pty) Ltd, SARS accepted that the rental income accrued to the share block holders rather than the company. They submit that this inconsistent treatment creates uncertainty as to the proper interpretation of the ITA and exposes the same income to possible double taxation. To the extent that the relevant provisions are ambiguous, they contend that the ambiguity must be resolved in favour of the taxpayer.

[48] The *contra fiscum* rule is a rule of statutory interpretation. As explained by the SCA in *Telkom SA SOC Ltd v Commissioner, South African Revenue Service*,[22] where there is genuine ambiguity in a statutory provision imposing a fiscal burden, the ambiguity should be resolved in favour of the taxpayer. The rule does not arise merely because SARS may

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18 *United Manganese of Kalahari v Commissioner, South African Revenue Service and Four Similar Cases* [2025] ZACC 2; 2026 (2) SA 227 (CC) (*United Manganese of Kalahari*).

19 Ibid paras 94-96.

20 Ibid paras 47-49.

21 Ibid para 95.

22 *Telkom SA SOC Ltd v Commissioner, South African Revenue Service* [2020] ZASCA 19; 2020 (4) SA 480 (SCA) at paras 18-19 states that: "Where there is doubt as to the meaning of a statutory provision which imposes a burden, it is well established that the doubt is to be resolved by construing the provision in a way which is more favourable to the subject, provided of course the provision is reasonably capable of that construction….But, where any uncertainty in a statutory provision can be resolved by an examination of the language used in its context, there is no rule of interpretation which requires that effect be given to a construction which is found not to be the correct one merely because that construction would be less onerous on the subject."

previously have adopted a different interpretation or assessed another taxpayer differently. Where the meaning of the legislation can be determined by applying the ordinary principles of statutory interpretation, the rule has no application.

[49] In its essence, the complaint is principally directed at SARS's implementation of the ITA rather than at any ambiguity in the language of the ITA itself. Whether SARS previously adopted a different approach in assessing the appellants or another taxpayer does not determine the proper interpretation of the statute. Nor does it broaden the scope of the *contra fiscum* rule.

[50] The previous assessments do not, however, determine the proper legal construction of the ITA, nor bind SARS to perpetuate an interpretation which it now contends is incorrect. As will be seen in due course, the issue before the court is not whether SARS has acted consistently in previous years, but whether, on a proper interpretation of the relevant provisions of the ITA and the SBCA, the additional assessments issued for the 2023 year of assessment are correct. The appellants' reliance on the *contra fiscum* rule is accordingly misplaced.[23] The second point *in limine* therefore cannot succeed.

[51] To the extent that the points *in limine* are relied upon to dispose of the appeals without consideration of the merits, the Constitutional Court's observation in *Spilhaus Property Holdings* (*Pty*) *Ltd and Others v Mobile Telephone Networks* (*Pty*) *Ltd and Another*,[24] stated that where reasonably possible, an appellate court should determine all the issues before it rather than dispose of a matter solely on a preliminary point, particularly where a further appeal may follow, is apposite. I accordingly consider the merits of the appeals.

The merits

[52] The appellants advanced several interrelated arguments founded upon the SBCA, the Articles of Association and the Use Agreement arrangements (the statutory instruments) governing the share block schemes, as well as the ITA and SARS's previous assessments. The tax appeal turns on whether:

(a) The rental income in question accrued to the appellants for purposes of the definition of "gross income" in section 1 of the ITA; and, if so,

(b) Whether the amounts are taxable in the appellants' hands.

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[23] This basic principle of tax law is underscored by s 143(1) of the TAA, which provides that SARS has a duty "to assess and collect tax according to the laws enacted by Parliament and not to forgo a tax which is properly chargeable and payable".

[24] *Spilhaus Property Holdings (Pty) Ltd and Others v Mobile Telephone Networks (Pty) Ltd and Another* [2019] ZACC 16; 2019 (4) SA 406 (CC) para 44.

[53] The enquiry is whether:

(a) The rental received by the appellants was for their own benefit, or merely on behalf of the share block holders. To whom did the right to claim payment for the rental accrue when the tenants became liable under the lease agreements accrue; and

(b) The appellants implemented and operated the scheme in accordance with the statutory framework governing share block companies.

[54] Those questions must be answered by reference to the statutory arrangements governing the share block scheme and the contractual arrangements concluded to establish whether the appellants conducted themselves in a manner consistent with the legal structure.

The applicable statutory framework and relevant agreements

[55] The ITA does not define the expressions "received by" or "accrued to" appearing in the definition of "gross income" in section 1. Their meaning has been developed through judicial interpretation.

[56] *Geldenhuys v Commissioner for Inland Revenue*,[25] held that an amount is "received" for purposes of the definition of gross income only where it is received by the taxpayer on its own behalf and for its own benefit. Furthermore, in *Commissioner for Inland Revenue v Genn and Co* (*Pty*) *Ltd*,[26] the court held that monies received merely as an agent, trustee or intermediary on behalf of another do not constitute receipts for the purposes of gross income.

[57] In *Lategan*,[27] the court held that an amount accrues when the taxpayer acquires a right to claim payment or otherwise becomes entitled to it. That principle was further developed by the Appellate Division in *Commissioner for Inland Revenue v People's Stores* (*Walvis Bay*) (*Pty*) *Ltd*,[28] where it was explained that the word "amount" in the definition of gross income is not confined to money actually received but extends to every form of property having a monetary value, including debts and rights of action. Such an amount accrues when the taxpayer acquires an unconditional right to claim it.

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[25] *Geldenhuys v Commissioner for Inland Revenue* 1947 (3) SA 256 (C) at 265-266.
[26] *Commissioner for Inland Revenue v Genn and Co (Pty) Ltd* 1955 (3) SA 293 (A) at 301–302.
[27] *Lategan* at 209-210.
[28] *Commissioner for Inland Revenue v People's Stores (Walvis Bay) (Pty) Ltd* 1990 (2) SA 353 (A) at 363I and 365.

[58] Section 7 of the SBCA regulates the operation of a share block scheme. It provides, in the material part, that the main object of a share block company is to operate a share block scheme in respect of immovable property owned or leased by it. Section 7(2) requires that a member be entitled to the use of “a specified part of the immovable property” on the terms and conditions contained in a Use Agreement concluded between the company and the member. The Use Agreement is accordingly the instrument through which the statutory right of use and occupation of the property is conferred upon a share block holder.

[59] Section 4 of the SBCA contains a deeming provision in terms of which, for the purposes of the Act, a company is presumed to operate a share block scheme if any share in the company confers upon its holder a right to, or an interest in, the use of the immovable property, or any part thereof.

[60] Clause 8.1 of the Articles of Association (Articles) of the appellants prohibits the transfer of shares “except simultaneously with and to the same transferee as a whole of the other shares included in the same block.”

[61] Clause 4.2 of the Use Agreement regulates the holder’s right to let or otherwise part with occupation of the allocated premises. That right is not unfettered. A holder may let the premises only with the consent of the share block company and remains responsible for ensuring that the occupier complies with the terms of the Use Agreement and the management rules governing the use of the premises and the common areas. Significantly, the company retains the right to evict an occupier who breaches those provisions. Nor does the conclusion of a lease absolve the holder of his or her obligations to the company. The share block holder remains contractually liable for any loss or damage occasioned to the company by the occupier's breach of the Use Agreement.

Does the implementation of the share block scheme support accrual of the rental income to the appellants or the share block holders?

[62] The overarching premise that income accrued to shareholders and not the appellants is based on the statutory instruments, particularly the Use Agreements concluded in December 1996. The appellants sought to draw a distinction between the operation of a residential share block and a commercial share block. It was contended that all share block holders have the right to occupy and use all areas of the property. In support of that overarching contention, they advanced five related but distinct legal bases upon which it is contended that the rental accrued directly to the share block holders:

(a) Firstly, that the Use Agreements concluded under the SBCA conferred upon shareholders rights analogous to a usufruct, leaving the companies with “bare dominium”;

(b) Secondly, that the rights to receive rental under the lease agreements were ceded to the shareholders;

(c) Thirdly, the single Use Agreement regulated the rights of successive shareholders in perpetuity;

(d) Fourthly, the companies acted merely as agents administering and collecting rental on behalf of the shareholders and therefore never acquired the income beneficially; and

(e) Fifthly, SARS's previous assessments and the IT3(b) certificates demonstrate that the rental income had consistently been treated as taxable in the hands of the share block holders and not the companies.

[63] SARS's case is based on the common cause facts borne out by the title deed and the lease agreements, that the companies: (a) are registered owners of the properties (b) lessors in their own name and (c) are contractually entitled to receive the rental. It contends that these facts and the physical receipt mean that rental income vested in the legal owner, accrued and was received by the companies for the purpose of gross income.

[64] Whether the companies in fact operated and/or implemented the share block in the manner contemplated by the legislation is material to the question of accrual. The operation of a share block company requires consideration in light of the aim of the share block, namely, to manage communal interests in compliance with the statutory provisions in section 7(2).

Were "real rights" accruing to share block holders created, and/or the cession to share block holders established?

[65] It is submitted that the above statutory instruments created "real rights" which vested the rental income in share block holders for the purpose of accrual. It is said the companies retained "bare dominium" over the properties, and any beneficial entitlement to the rental income accrued directly to the holders.

[66] However, given that share block holders acquired shares in the appellants, a share is a moveable incorporeal consisting of a conglomerate of contractual personal rights entitling the holder to an interest in the company, its assets and dividends.[29] Shareholders are not part owners of the enterprise or undertaking in law. The enterprise or undertaking is something different from the shareholding.[30] This principle is not altered by the registration of a share block company.

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[29] *Standard Bank of South Africa Ltd and Another v Ocean Commodities Inc and Others* 1983 (1) SA 276 (A) at 288H.

[30] *Randfontein Estates Ltd v The Master* 1909 TS 978 at 980-982.

[67] Importantly, section 1(*c*) of the SBCA makes plain that a "share" in the share block does not include a right to or an interest in the assets of a company derived from a lease in respect of such assets. As is evident from section 7 of the SBCA, the share in a share block company vests the right of use of a defined unit to a share block holder. Although the right of use relates to a property, it does not vest a holder with a real right as suggested. This submission is inimical to the principles of company law and stands to be rejected.

[68] Furthermore, the appellants rely on the single Use Agreement concluded in 1996 as the basis for the rights which they contend vest income to the share block holders. On a proper construction of section 7(2) of the SBCA, there is a legal requirement to enter into a Use Agreement with each member (share block holder). Thus, every member (share block holder) must have a signed Use Agreement between themselves and the company. In the present cases, there is no individual agreement with each individual share block holder. The evidence does not disclose specified parts of the units allocated to holders or successive holders to which the Use Agreement relates as contemplated in section 7(2) of the SBCA. Accordingly, which portion of the leased property is attributable to an identifiable unit holder or holders is not apparent.

[69] There is, in addition, an inherent legal contradiction between the argument that holders had "real rights" over the properties while, in the same breath, it is submitted they enjoyed a "usufruct" over the same properties, which is a personal right in nature. Although it is conceivable that the right to enjoy the fruits of the usufruct could be sold, let and alienated, a usufruct is inalienable and cannot be transferred from a usufructuary to a third person.[31]

[70] As the registered owner of the property on which Wooden Square Shopping Centre is located, Company EG, had approximately 26 tenants including Farmers Market. The tenants leased properties of varying sizes. Similarly, Company LS's properties in several locations had, in the main, a single tenant, being either Groceries Shops or Others.

[71] When questioned about the proportion of the units allocated to each share block holder as mandated by section 7(2), the appellants submitted the share block enterprise operated and was administered as a collective scheme. In essence, the single Use Agreement operated as a "blanket document". They submitted the terms of the Use Agreement bound successive share block holders. Such an arrangement is inconsistent with the SBCA.

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[31] *Durban City Council v Woodhaven Ltd* 1987 (3) SA 555 (A) at 560C; *Van der Merwe v Van Wyk, NO* 1921 EDL 298 at 301.

[72] Clause 3.1 of Company EG's Articles provides that the authorised share capital of the company comprises 4 000 ordinary par value shares. Those shares are divided equally between two share blocks. Share Block No. 1 relates to the Wooden Road frontage buildings occupied by Bread Ahead and Foot Gear, whilst Share Block No. 2 relates to the rear premises occupied by Price Store, the Waste Centre and the associated parking areas. The evidence establishes that approximately 32 share certificates were issued to various individuals and trusts.[32] By contrast, Company LS's 2 000 ordinary shares were divided into six share blocks corresponding with the six immovable properties registered in its name. Successive shareholding had changed over time. The documentary evidence does not demonstrate that specific units or defined portions of those properties were allocated to successive shareholders in the manner contemplated by the statutory scheme.

[73] The appellants contended that the rights conferred under the Use Agreements transferred to successive shareholders by way of cession, thus vesting the right to receive rental directly in each holder. That contention is not supported by any contemporaneous documentation evidencing the cession of those rights, nor by any documentation demonstrating reciprocal acceptance of such rights by successive shareholders. The court was referred to no written deeds of cession, amended Use Agreements, or other documents recording the transfer of those rights as shareholdings changed over time.

[74] The difficulty with the appellants' reliance on the collective operation of the scheme is that the distinguishing feature of a share block company is not merely its registration under the SBCA, but the statutory purpose for which it exists and the way that purpose is implemented. The object of a share block company is to operate a share block scheme for the benefit of its members, and section 7(2) requires that each member be entitled, under a Use Agreement, to the use of a *specified part* of the immovable property. It is that statutory nexus between the shareholding and the identifiable part of the property that distinguishes a share block scheme from other types of property-owning enterprises.

[75] SARS correctly accepted that section 7(2) does not preclude the holder of a right to the use of an identifiable unit from itself being a registered company with its own shareholders. The critical requirement, however, is that the shares in the share block company must remain linked to a specified part of the immovable property, and not to the property as a whole.

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[32] The share certificates are dated 2 March 2001; 1 November 2004; 1 May 2005; 1 July 2005; 1 August 2005; 1 February 2006; 7 July 2006; 16 January 2007; 10 October 2013; 1 March 2015; 18 November 2015 and 19 June 2020.

Did the practical operation of the share block schemes support the accrual to share block holders?

[76] Turning to the practical operation of the share block schemes, the objective documentary evidence reveals that the lease agreements were concluded by the appellants in their own names as lessors. In terms of those agreements, the tenants were contractually obliged to pay rental to the appellants, who issued the tax invoices, levied and accounted for VAT on the rental received, and assumed the contractual obligations of the lessor towards the tenants.

[77] The objective features of the lease arrangements demonstrate that, as between the appellants and the tenants, the contractual rights and obligations vested in the appellants. Since accrual occurs year by year, the contention that accrual to shareholders occurred based on the 1996 Use Agreement, in respect of the lease agreement, is not tenable. The economic rights could not have vested in individual share block holders. For this reason, the practical implementation of the schemes differed from the appellants' legal characterisation.

[78] To the extent that the appellants contend that they merely acted as agents for the shareholders, collecting the rental on their behalf without acquiring any beneficial entitlement thereto, the appellants accepted that there was no written mandate or agency agreement recording an agency relationship between the appellants and the share block holders. When pressed on the issue, it was submitted that the agency arose by implication from the appellants' status as share block companies and from the rights conferred under the Use Agreements. In other words, the alleged agency was inferred from the statutory and contractual framework rather than founded upon any express contractual mandate. While the absence of a written mandate is not, of itself, decisive, and an agency may arise tacitly or by implication, the evidential burden was on the appellants to establish the existence and scope of that relationship.[33]

[79] The tax invoices were issued by the appellants in their own names, they levied and accounted for VAT on the rental received, and the appellants assumed the contractual obligations of the lessor under the lease agreements. In addition, the appellants furnished suretyships in their own names in relation to obligations arising from the leases. Those features are more consistent with the appellants acting as principals in their dealings with the tenants, rather than as agents on behalf of the share block holders. The alleged agency finds no support in the contemporaneous documentation and is inconsistent with the way the lease arrangements were implemented. The objective evidence leads to the conclusion that the

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33 *Minister of Agriculture and Land Affairs and Another v De Klerk and Others* [2013] ZASCA 142; 2014 (1) SA 212 (SCA) para 39.

appellants contracted with the tenants as principals rather than as agents for the share block holders.

[80] Another feature illustrating the divergence between the statutory framework and its practical operation concerns the management of the common property, the collection of levies and the distribution of rental income. As mandated by section 13 of the SBCA, Clause 26 of the Articles of both appellants require the establishment of a Levy Fund for the upkeep, management and control of the immovable property. Share block holders were obliged to contribute monthly to that fund in proportion to their respective shareholdings and, in turn, bear a proportionate share of the costs associated with the management and maintenance of the common property.

[81] Rather than levies being raised and administered through a dedicated Levy Fund as required by the SBCA, the evidence shows that the rental income was pooled, expenses were deducted by the appellants, and the net balance was thereafter distributed to the share block holders. The appellants' explanation for this deviation was that these functions were performed in respect of the "collective operation" of the share block schemes. Neither the SBCA nor the appellant's contractual documents with share block holders envisage or mandate the "collective operation" relied on. A share block scheme can only be administered with reference to the separate financial administration of individual units as required by the SBCA. Section 13(1) states clearly that a share block company shall "establish and maintain a levy fund". No evidence was forthcoming of such funds, nor was there any evidence as to how these funds were managed.

Is the appellants' financial information consistent with accrual to share block holders?

[82] Company LS's tax return reflected fixed property as an asset valued at R11 861 609. The fixed property was, however, not disclosed as an asset in the financial statements even though Company LS sought to claim a deduction for repairs and maintenance in respect of the property. Company LS's financial statements reflect the value of the properties in the sum of R11 861 609 as a "Company LS Partnership" unsecured, interest-free loan. Company LS distributed R9 871 376 to share block holders, which was described as a "distribution to share block holders" allowance in its tax return.

[83] Similarly, with Company EG, its tax return reflected a fixed property valued at R11 457 978. This amount, which was disclosed as an "asset" made up of the cost of the property amounting to R11 310 576, together with a motor vehicle valued at R147 402, resulted in the total of R11 457 978. Here too, the fixed property was not disclosed in the financial statements even though Company EG sought to claim a deduction for repairs and maintenance of R 2 493 509 in respect of the property. Company EG's financial statements

reflect the value of the property in the sum of R11 310 576 as an "Company EG Partnership" unsecured, interest-free loan. Company EG distributed R4 507 955 to share block holders, which was described as a "distribution to share block holders" allowance in its tax return.

[84] The appellants' case is that the economic benefits associated with the properties vested in the share block holders and that the companies consequently had no beneficial entitlement to the rental income. Yet the tax returns and financial statements do not reflect that distinction: they record either the properties themselves, or amounts corresponding substantially to their value, as assets associated with the appellants. The above disclosures are significant, not only because their accounting treatment is determinative of the legal rights and accrual in issue, but because they reveal an inconsistency in the way the properties and the corresponding interests were recorded and accounted for.

[85] Firstly, the distribution of the net rental was not determined by reference to the rental generated by a specified unit to which a share block holder's rights were said to attach. There is no evidence to demonstrate the proportionate distribution in relation to the varying sizes of the units. Instead, the pooled net rental was distributed amongst shareholders in proportion to their respective "shareholdings". Secondly, the financial statements reflected a pooling and distribution of "net profits" which is not consistent with the activities of a share block company. The distribution supports the conclusion that the appellants operated as a proprietary company and treated the rental as income in their hands. Despite the IT3(b) Certificates produced as evidence of a distribution to share block holders, earlier inquiries by SARS revealed that there had been no withholding dividend tax paid as required in section 64E of the ITA and this was not disputed.

[86] When questioned about these inconsistencies and the way the share block schemes were accounted for in practice, the appellants accepted that the accounting treatment did not accurately reflect the legal structure upon which the appellants rely. They attributed this to what was described as accounting "shortcuts". They maintained, on the strength of the case in *Pyott Ltd v Commissioner for Inland Revenue,*[34] that the matter must be decided based on the provisions of the statutory formula contained in the ITA and not accounting entries in the taxpayer's book of accounts. The errors in the financial statements could not alter the underlying rights created by the share block scheme and the Use Agreements. The submission cannot be sustained. The present appeal is not solely about the statutory interpretation of the ITA provision but involves a determination of whether the appellants operated a share block scheme.

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[34] *Pyott Ltd v Commissioner for Inland Revenue* 1945 AD 128 (*Pyott*).

[87] In *Stellenbosch Farmers' Winery Ltd v Commissioner, South African Revenue Service; Commissioner, South African Revenue Service v Stellenbosch Farmers' Winery Ltd*,[35] took account of how financial receipts were treated in financial statements to determine whether the receipts were of a capital nature, therefore not taxable. Similarly in *GB Mining and Exploration SA* (*Pty*) *Ltd v Commissioner, South African Revenue Service*,[36] the SCA recognised the important evidential role of a taxpayer's financial statements and accounts in corroborating the information contained in its tax return.

[88] In the present matter, the entries in the appellants' tax returns and financial statements are not relevant because they determine who was legally entitled to the rental income, but because they form part of the contemporaneous evidence against which the appellants' present characterisation of their affairs must be evaluated. They form part of the broader contractual arrangements and objective evidence concerning the way the share block schemes operated. The accounting records must therefore be considered together with, rather than in isolation from, those other features.[37] The so called "shortcuts" are indicative of the operating model, which is in contravention of the SBCA, and clearly denote that income received was received in the hands of the Share Block Companies, and not in the hands of the share block holders.

[89] Sight cannot be lost that at inception the appellants' basis for objection to the additional assessment was that since they are share block companies, their income is exempt on account of section 10(1)(*e*) of the ITA.[38] It bears emphasising that the appellants adopted different positions regarding the nature and tax treatment of the income. Section 10(1)(*e*) of the ITA exempts levy income received by or accrued to a qualifying share block company. Interpretation Note 64 of 2012[39] explains that this exemption is limited to levy income only, collected from members to defray expenses arising from the management of their collective interests.

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35 *Stellenbosch Farmers' Winery Ltd v Commissioner, South African Revenue Service; Commissioner, South African Revenue Service v Stellenbosch Farmers' Winery Ltd* [2012] ZASCA 72; 2012 (5) SA 363 (SCA) para 35.

36 *GB Mining* paras 29-30.

37 Ibid 43.

38 "**10 Exemptions—**

(1) There shall be exempt from normal tax—

…

(e) (i) any levy received by or accrued to-

(aa) …

(bb) a share block company as defined in the Share Blocks Control Act from the holders of shares in that share block company…".

39 SARS Interpretation Note 64 of 2012 at 6.

[90] The appellants' financial statements submitted to SARS as part of the verification process do not reflect the disputed income as levy income. The Interpretation Note further explains that the levy-income exemption and the basic exemption are applied in determining the taxable income for the relevant year. Thus, while qualifying levy income may be exempt, rental and other non-levy income remains taxable, subject to any applicable limited statutory exemption, which at the current time is R50 000.[40]

[91] Where the appellants subsequently contend that the information was incorrect, they were required to provide evidence explaining the precise nature and extent of the error, together with supporting documentation. The appellants have a duty to provide credible and reliable evidence explaining the alleged error and substantiating the position they now contend is correct.[41] These discrepancies mean the matter could not be decided on a stated case. The appellants were duty bound to lead evidence to explain them.

Conclusion

[92] Once the statutory and contractual framework is considered against the way the schemes were implemented, the appellants' contention that the rental income did not accrue to or was not received by them cannot be sustained. The appellants' case depends upon the proposition that the Use Agreements divested the companies of any entitlement to the rental and vested that entitlement directly in the shareholders. The objective evidence does not support that proposition. The collective operation of the schemes (which is not catered for in the SBCA), the absence of identifiable allocations corresponding to successive shareholders, the manner in which rental was collected and accounted for, and the absence of any documented agency or cession are inconsistent with the direct accrual of the rental to individual shareholders.

[93] The practical operation of the schemes has significance. The appellants concluded the leases in their own names, received the rental from tenants, issued the tax invoices, accounted for VAT, administered the rental income and expenses, and thereafter distributed the net proceeds to shareholders. The rental was pooled and distributed according to "shareholding" rather than by reference to the rental generated by the particular unit said to be allocated to a share block holder. This mode of operation cannot readily be reconciled with the contention that the rental from each unit accrued directly to the holder of the corresponding use right. On the contrary, the objective facts demonstrate that the appellants received the rental in the first instance and that the shareholders subsequently received distributions from the pooled net proceeds in the form of deemed dividends.

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40 Ibid at 8.
41 *GB Mining* paras 29-30.

[94] Although the appellants produced revised financial statements as part of their TCR 32 statement, purporting to clarify the treatment of levy income, rental income and distributions to shareholders, the deficiencies and inconsistencies in the original financial statements and tax returns remained material. The appellants accepted that the revised statements were not formal amendments to the original financial statements, but illustrative schedules showing how the financial information should, according to them, have been presented.

[95] I accordingly find that, notwithstanding the appellants' formal registration as share block companies and the rights of use and occupation conferred by the Use Agreements, those rights did not result in the rental income accruing directly to the shareholders. The rental income was received by and accrued to the appellants for purposes of the definition of “gross income” in section 1 of the ITA. The subsequent distribution of the net rental to shareholders did not alter the character of the income when received or the person to whom it accrued. The appellants' reliance on the collective operation of the share block schemes, agency and cession is not supported by the evidence and does not displace this conclusion.

[96] What remains is the question of costs. The ordinary rule that costs follow the result does not apply. SARS seeks the costs of suit against the appellants. An unsuccessful appeal does not, without more, justify a costs order. In terms of section 130(1)(*b*) of the TAA,[42] the court may, on application by an aggrieved party, award costs where the appellant's grounds of appeal are held to be unreasonable.[43]

[97] The appellants persisted with *points in limine* which were not part of their objection to reverse the assessment and dispose of the appeal. The appellants further persisted with the contention that the rental income accrued to share block holders. The reliance on the share block form, even though the central factual premise and *modus operandi* upon which that argument rested was not supported by the contemporaneous documentary evidence renders the grounds of appeal unreasonable within the meaning of section 130(1)(*b*). A costs order in favour of SARS on Scale C is accordingly justified.

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[42] Section 130(1)*(b)* states that “the tax court may, in dealing with an appeal under this Chapter and on application by an aggrieved party, grant an order for costs in favour of the party, if—

…

(b) the ‘appellant’s’ grounds of appeal are held to be unreasonable;”

[43] *Capitec Ltd v Commissioner, South African Revenue Service* [2024] ZACC 1; 2024 (4) SA 361 (CC) para 97.

Order

[98] In the result, the following order is made:

1. The appeal by the appellants is dismissed.
2. The rental income was received by, and accrued to the appellants, thus the income constitutes “gross income” taxable in the hands of the appellants for the purpose of income tax.
3. The South African Revenue Service’s additional assessment of R1 533 009 in respect of Company EG and R2 830 697 due by Company LS is therefore confirmed.
4. The appellants are ordered to pay the respondent's costs of the tax appeals on Scale C, including the costs of one counsel.

SIWENDU J
JUDGE OF THE HIGH COURT,
KWAZULU-NATAL LOCAL DIVISION,
DURBAN

I agree.

MRS PATRICIA VAN ROOYEN
MEMBER OF THE TAX COURT:
COMMERCIAL MEMBER

I agree.

MRS RISHANI GARACH
MEMBER OF THE TAX COURT:
ACCOUNTANT

Case information

Date of Hearing	:	28-30 April 2026
Further submissions	:	24 July 2026
Date of Judgment	:	24 August 2026