

# Unexplained Wealth? SARS Tightens Grip on Loan Accounts in Landmark Ruling

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*Taxpayer D v The Commissioner for The South African Revenue Service IT 35476 (ADM) [2025] ZATC JHB (25 February 2025)*

## INTRODUCTION

On 25 February 2025, the Tax Court of South Africa (Gauteng Local Division, Johannesburg) (the “**court**”) delivered judgment in *Taxpayer D v The Commissioner for the South African Revenue Service (IT 35476)*, dismissing the taxpayer’s appeal and upholding CSARS’s assessments for the 2014 to 2017 tax years.

The court ruled in favour of CSARS, confirming additional assessments totalling approximately R57 million (comprising roughly R37 million in undeclared income and R20 million in undeclared interest income across the four years of assessment) against an individual shareholder whose loan account in his company reflected substantial credits that he could not satisfactorily explain.

## BACKGROUND

The Appellant is a successful businessman who, as sole shareholder and director, owns approximately 19 or 20 companies, several of which are property-owning companies. Five of those companies are relevant to this judgment. The key entity in dispute was Company A Property Holdings CC (“**Company A**”), which owned the Appellant’s personal properties and through which he made payments to third parties, including charitable contributions.

The Appellant earned income from his companies through three sources: salaries, dividends and interest on his loan accounts. He used his credit loan accounts to fund other companies in his group, earning interest on the amounts lent, which was then credited to his loan account in the borrowing company. He also borrowed personally from some of his companies to fund others, generally paying a lower rate when borrowing than the rate he received when lending.

CSARS investigated the Appellant’s loan account in Company A and assessed the credits as undeclared

income and undeclared interest. The assessments were: R30,179,163 undeclared income for 2014; R7,008,191 undeclared income for 2015 (reduced from R12,637,082 after CSARS conceded a double-counting error); and undeclared interest income of R3,321,051 (2014), R5,628,891 (2015), R5,519,590 (2016) and R5,539,465 (2017).

The Appellant argued that the credits in the loan account were capital, not undeclared income. He contended that his erstwhile accountants, FGB, had drawn up the financial statements in error, and that his new accountants, BJP, had subsequently “reconstructed” the accounts to reflect the correct position. CSARS rejected this explanation, maintaining that the Appellant had given four different and inconsistent versions throughout the audit, objection and appeal processes.

## COURT FINDINGS

The court found that the Appellant had given inconsistent explanations for both the source and quantum of the loan account. His version “kept changing both as to the source of the funds and their size”, and the reconstructed version of the Company A account emerged at the “eleventh hour”, first presented to SARS at the second ADR meeting in February 2020. The court relied on section 102(1) of the Tax Administration Act 28 of 2011 (“**TAA**”), which provides that “[a] taxpayer bears the burden of proving ... (a) that an amount, transaction, event or item is exempt or otherwise not taxable.” The court characterised the dispute as one of fact, not law, placing the full burden of proof on the Appellant.

The court held that the Appellant had failed to discharge his onus for several reasons. First, his versions of the source of the funds changed multiple times. Second, he failed to establish that the FGB accounts were erroneous: neither he nor FGB testified, and his new accountants did not have access to FGB’s records. Third, the “reconstructed” financial statements did not withstand scrutiny; the court accepted the expert evidence of Professor CC that they constituted a “zero assurance engagement” that could not be relied upon. Fourth, the court drew an adverse inference from the Appellant’s failure to testify, noting that he had been

present throughout the hearing but did not give evidence on matters within his personal knowledge.

The court upheld CSARS's assessments in full, together with interest under section 89quat(2) of the Income Tax Act. The court declined SARS's request to increase the understatement penalty to 100% (for gross negligence) and confirmed a 25% penalty on the basis that "reasonable care [was] not taken ... in completing a return".

### CAUTIONARY TALE "WAKE-UP CALL"

This judgment is more than a tax dispute; it is a cautionary tale for intra-group transactions. Shareholders who treat loan accounts as informal "money saving tanks" in which to park large amounts should be mindful of SARS's willingness to:

1. demand relevant paperwork as evidence for every transaction;
2. reclassify loan entries as taxable income where no legitimate commercial substance exists; and
3. apply penalties and interest after considering the financial fallout.

This case is a wake-up call to shareholders and directors that informal financial practices, poor record-keeping and vague internal transactions will not be excused. The court's adverse inference from the Appellant's failure to testify underscores that taxpayers must be prepared to explain their financial arrangements personally when challenged.

Loan accounts must be treated with the same care and transparency as any external financial arrangement, failing which taxpayers risk severe tax consequences. Qualified tax professionals should be engaged timeously to ensure that proper documentation and consistent explanations are available when SARS conducts an audit. As the court found, once the taxpayer was unable to provide reliable documentation or consistent explanations, the onus shifted decisively against him.

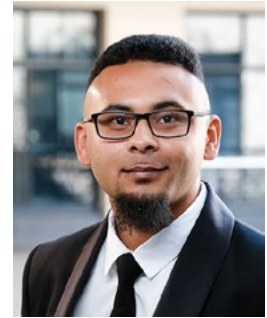
### CONCLUSION

This judgment is a stark reminder of the importance of consistency, accountability and transparency in managing loan accounts. The burden of proof rests fully on the taxpayer when financial records are challenged, and varying versions of events, belated reconstruction of accounts, and a failure to testify will be viewed unfavourably. Taxpayers with complex inter-company loan arrangements should ensure meticulous record-keeping from the outset, as attempting to reconstruct records years later may prove futile.

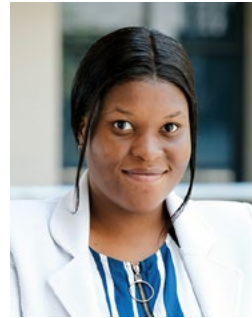
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