

SARS must also wait in line

Business rescue places a moratorium on legal proceedings against the company, which includes action from the South African Revenue Service (SARS).

Although SARS usually gets preferential status as a creditor when a company goes into liquidation, a recent judgment in *SARS v Beginsel NO and Others* has established a new precedent in terms of which it must wait in line for payment with all other unsecured creditors.

Graeme Palmer, senior associate at law firm Garlicke & Bousfield, said many businesses in financial distress had tax liabilities.

Although SARS might not be pleased with the recent court decision, allowing it to jump the queue in front of other creditors in the business rescue process would prevent the rescue of many distressed companies - resulting in their liquidation and rendering the business rescue process ineffectual.

Palmer said that, in most cases, companies accumulated tax liabilities in the ordinary course of business. There was a loophole in the law for SARS - as the regulator investigating offences - to become a preferential creditor, which he said would be justified when the taxpayer had concealed its true state of affairs or where there had been dishonest reporting.

Source: *Sunday Times* via I-Net Bridge