

Sars wins critical court battle against business

The South African Revenue Service (Sars) has welcomed a decision of the Supreme Court of Appeal to dismiss two appeals by a company seeking to validate its business rescue procedures.



Image source: Sergii Ghatiuk – 123RF.com

The company, PFC Properties and its trust, the De Robillard Family Trust, owed Sars at least R148m and failed to pay the amount and instead went into business rescue and sold its assets for far below market value.

The assets included a R45m yacht which was sold for R12m, another yacht valued at R13m sold for R570,000 and R50m value house sold for R11.3m.

The revenue collector's commissioner, Edward Kieswetter, condemned the use of business rescue processes in an attempt to avoid paying taxes.

"It was unfortunate that some taxpayers abuse the business rescue proceedings, to the detriment of creditors. In most instances, the fiscus is the main victim.

“Sars will continue to act firmly and decisively when business rescue proceedings are abused to the detriment of the fiscus. We will without any equivocation oppose such abusive applications,” Kieswetter said.



Former Sars auditors arrested in R321m tax evasion scheme

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Sars explained the reasons why the court dismissed the applications.

“The issue before the SCA was whether the conduct on the part of PFC and the De Robillard Family Trust’s trustees in launching the business rescue application, constituted an abuse of court process. The SCA held that that application should not have been considered by reason of its use in a scheme of abuse. The Court held that the business rescue application was a stratagem.

“Consequently, the business rescue application could not suspend the liquidation application because the former was tainted by abuse. Apart from this, the De Robillard Family Trust’s trustees failed to make out a case that there was any prospect of rescuing PFC. All its assets had been sold-off and it had lost its substratum. The SCA further held that the liquidation order granted by the Pretoria High Court was unassailable. For these reasons, both appeals were dismissed with costs,” Sars said.

The revenue collector vowed to clamp down on any attempts to avoid paying what is due to the taxman.

“Sars will not stand idle when taxpayers abuse the mechanisms of the Companies Act by acting malignantly to deprive Sars what is due and payable to the fiscus. Any elaborate and carefully calibrated plans to withhold taxes will be resisted emphatically.

“Sars will always work in the manner that supports the growth of the economy with concomitant job creation. Where, for whatever reason businesses do not perform optimally and they are unviable, every role player in the process is duty bound to act professionally and without fear, favour or prejudice against any creditors,” the revenue service said.

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