HARRIS KYRIAKIDES

Cyprus Tax Litigation Case Law Bulletin 2020

Who we are

Established since 1976, Harris Kyriakides has grown over the years into one of the largest law firms in Cyprus. The development of the firm has always been deeply rooted on the fundamental principles of integrity and professionalism, which have been guiding our overall approach and daily practice. We adhere to the highest standards of excellence and we draw upon our accumulated experience. At the same time, we are adaptive and responsive to the rapidly changing and evolving needs of our clients as well as the developments in the broader financial, technological and transactional context. The firm is dynamic and consistently leads in innovation, technology and modern practices.

At Harris Kyriakides we aspire to provide excellent service each and every time. We are focused on optimal results and insist on the highest standards. Our organisational culture is to constantly challenge ourselves to maintain a high-performance environment in order to successfully respond to our clients' diverse needs. At the same time, we cultivate long-term relationships with our clients and develop a deep understanding of their needs. We believe in providing quality advice and legal expertise along with strategic and commercial thinking, aiming for innovative solutions for any challenges our clients face.

Our Tax Litigation team

We represent a broad range of clients, including multinational companies, closely held businesses, high net worth individuals, trusts, estates and often other tax advisors whether they are lawyers or accountants. Given the depth and breadth of our Tax Litigation practice, we are particularly well-suited to assist multinational companies facing large tax disputes that implicate numerous countries, tax regimes and dispute resolution procedures.

Our experience, expertise, domestic knowledge, and familiarity with European tax law enables us to face the challenges of tax law in modern times. We seek to identify irregularities, if any, and give legal advice at an early stage, seeking to achieve successful settlement from the onset of a dispute, while in cases where actions are taken to Court, the teams of our litigation department provide legal representation, defending the interests of our clients and seek to assist the Court in achieving a just outcome in relation to the matters of the dispute.

Cyprus Tax Litigation Case Law in 2020

In this bulletin, we provide a summary of important tax litigation decisions of the Administrative Court and the Supreme Court in Cyprus that were issued in 2020. The objective of this publication is to provide an insight on recent reported tax litigation disputes that have reached the stage of a Court decision. Court decisions address issues such as the tax assessment undertaken by the Tax Comissioner, the co-existence between capital gains tax and income tax, the imposition of immovable property and inheritance tax and the imposition of excise duty by the Customs and Excise Department.

The decisions of Cyprus tax authorities are subject to judicial review pursuant to article 146 of the Cyprus Constitution. Whereas the Administrative Court does not review, in principle, the correctness of the decisions of the tax authorities, it does examine the legality of the reasoning and has the power to amend decisions of the tax authorities where they have wrongly assessed the facts or exercised wrong jurgment in the interpretation of the law. All decisions of the Administrative Court are subject to appeal before the Supreme Court. Appeals can be lodged only on grounds relating to a questions of law.

1. Application number 1503/2015

Judgement date: 23.01.2020

Parties: Panteli v. Republic of Cyprus through the Ministry of Finance and/or Customs and ExAuthority and/or VAT Commisioner

Facts:

The Applicant contests the legality of the decision of the Respondents with which a monetary charge of €35.133,22 was imposed as tax assessment. The Applicant was registered together with another person as a partnership with the VAT Register on 2.4.2007. After complaints, it was revealed that the partnership issued invoices in its name already in 2006 in which it charged VAT without being registered with the VAT Register. It was also revealed that the partnership did not keep records and books and omitted to submit tax declarations. As a result, the VAT Registrar notified its decision to impose a monetary charge of €35.133,22 for the tax period 1.3.2006 until 31.5.2007 and 1.9.2007 until 11.12.2007. It also registered the partnership with the VAT authorities retrospectively on 14.3.2006.

Decision:

The Court rejected the application because it was filed out of time and confirmed the contested decision. It, nevertheless, continued its analysis and confirmed the position of the Respondents that, even if it was not out of time, in case of lack of information which the taxable person is obliged to keep, the Registrar has the discretionary power to assess the tax owed using the methodology most appropriate under the circumstances and available information from certain time periods in order to derive the VAT owed for the total taxable period. It is the Applicant who has the burden to prove that the tax demanded is unjustified. Such burden is intertwined with the Applicant's obligation to keep records and books and submit the necessary evidence in the absence of which the Registrar has the power to draw its own conclusions.

2. Application number 724/2016

Judgement date: 31.01.2020
Parties: Adamos Adamou Watersports Ltd v. VAT Registrar

Facts:
The Applicant contests that legality of the decision of the Respondent by which its appeal against the issued tax assessment has been rejected and the amount of the tax assessment was stated at €71.334,72. The Applicant was a company which engaged in water sports and the rent of umbrellas and sunbeds. After complaints, officers of the Tax Department inspected the premises of the Applicant and imposed a monetary fine because the Applicant was not issuing receipts as per the provisions of the VAT Law of 2000 (N.95(I)/2000). They found out, inter alia, that the number of sold tickets were not properly recorded and did not reflect the real number of sold tickets, and that the total annual income from the rent of umbrellas and sunbeds by the Applicant was almost half of the income in comparison to one year later when the rent of umbrellas and sunbeds was conducted together with the local municipality. Due to the inconsistent and improper reporting of the books and records of the Applicant, the Tax Department undertook a revenue calculation not based on the actual accounts. Based on the information at its disposal the Registrar identified a certain concealment percentage in the reporting of the revenue. The Registrar, therefore, proceeded to a tax assessment which amounted to €71.334,72.

Decision:
The Court rejected the allegations of the Applicant and stressed that in case the tax declaration is inaccurate or incomplete, the Respondent has the discretion in good faith and using the methodology best suited under the circumstances to determine the VAT owed. In this respect the Tax Registrar enjoys a wide discretion.

3. Application number 84/2013

Judgement date: 14.02.2020

Parties: Theodorou Kyriakou Brothers Farm Ltd v. Republic of Cyprus through 1. Minister of Finance 2. Income Tax Registrar

Facts:

The Applicant was a company active in cow farming. Its income derived from the sale of cow milk and meat. Officers of the Tax Registrar inspected the books and records of the company for the years 2005 to 2009. They found out that purchase of straw in the amount of €340.000,00 was entered in the books of the company. No evidence was submitted for this entry even though the company was repeatedly requested to provide evidence. The company did not have a calendar record of the issued invoices and it was also impossible to verify the reported entries. The Respondent explained to the Applicant that the lack of evidence of reported entries in the books was a serious malpractice and the Applicant was urged to provide evidence in particular for the purchase of straw in the amount of €340.000,00 which was reported in the books of the company for the tax year 2008. With the lapse of eight months and because no evidence of purchase of the straw was submitted the Respondent did not consider the purchase of the straw as part of the tax declaration for 2008 and did not allow the grant of capital discounts as per the provisions of the Assessment and Collection of Taxes Law of 1978 (N.4/1978). The Applicant provided seven payment receipts for purchase of straw in the amount of €340.000,00. The Registrar did not consider them to be good evidence, though, since they were issued by the Applicant itself and were not sale invoices issued by the suppliers. The Respondent served to the Applicant final notifications of income tax for the years 2005 to 2009 and special defence contribution on an assumed dividend distribution for the year 2008.

Decision:

The Court confirmed the decision of the Respondent and rejected the allegations of the Applicant. It underlined that the Respondent has the discretionary power to draw its own conclusions exercising its judgement at the best possible way.

4. Applications numbers 6302-6310/2013

Judgement date: 25.02.2020

Parties: Frenaritis Construction Ltd et al. v. Republic of Cyprus through 1. Minister of Finance 2. Tax Registrar

Facts:

With their applications the Applicants contest the legality of the decision of the Respondent 2 with which immovable property tax was imposed on the Applicants. The Applicants appealed the decision of the Tax Registrar and the appeals were rejected as they were not submitted pursuant to the provisions of the law. The Applicants did not follow the procedure provided for in the Assessment and Collection of Taxes Law of 1978 (N.4/1978) pursuant to which the appellant is required to submit, in addition to the notice of appeal, also a declaration of the taxable amount and pay the tax according to its own calculations. The Court rejected the applications for the same reason. It stressed that the notice of appeal shall also state the reasons for which the taxation is considered to be wrong or that the person on whom the tax is imposed is not liable to pay the tax. The Applicants alleged that they were not liable to pay the tax as they were not the owners of the taxable property.

Decision:

The Court rejected the Applications because with their appeals they did not submit a declaration of the taxable amount and did not pay the relevant tax. The Applicants were, therefore, not entitled to file the Applications.

5. Application number 1198/2014

Judgement date: 10.02.2020

Parties: W Investments Ltd v. Department of Customs and Excise, and VAT through the Director of the Department of Customs and Excise, and VAT

Facts:

The Applicant is a company registered with the VAT Register and offering professional business advice. An inspection took place in the premises of the company to find out whether the information submitted to the VAT Registrar was correct. The investigation showed that the company omitted to report Intrastat data contrary to the provisions of the national law and the European Directive 2006/112/EC. The Applicant was requested to submit the omitted Intrastat data and it did so. The Applicant also omitted to pay output tax of €1.348.965,86 which was assessed by the Respondent and corresponded to the provision of services per invoice to a Polish company. The Respondent alleged that the Polish company was not registered with the VAT in Poland because the registration number did not appear in the VAT Information Exchange System (VIES). The Applicant submitted documentation from the Polish authorities that the taxable company was indeed registered with the VAT in Poland. The Applicant supported that payment of the VAT shall take place in the Member State of the recipient of the service, thus in Poland and not in Cyprus.

Decision:

The Court accepted the arguments of the Applicant that the rejection of its appeal against the tax assessment of €1.348.965,86 was unjustified because the Respondent did not verify the documentation of the Polish authorities regarding the registration of the company with the VAT. It based its conclusion merely on the fact that the VAT number of the company did not appear in the VIES. The rejection of the appeal was vitiated by a defective statement of reasons. Therefore, the Application succeeded and the contested decision of the Respondent was cancelled.

6. Application number 1034/2015

Judgement date: 7.2.2020
Parties: Gerzone Limited v. Republic of Cyprus through the Tax Registrar

Facts:
The Applicant contests the decision of the Respondent with which its appeal against the tax assessment for part of the amount of the assessment which corresponds to €58.706,70 was rejected. The Respondent inspected the books and accounts of the company and issued a tax assessment. The Applicant appealed and argued that in relation to the contested amount it had no obligation to use the reverse charge methodology for services received from abroad because such services related only to holding and sale of investments to a subsidiary company. The appeal was rejected and the Applicant filed an application against the rejection.

Decision:
The Court examined the allegations of the Applicant and concluded that a holding company whose sole purpose is to acquire holdings in other undertakings and which does not involve itself, directly or indirectly, in the management of those undertakings does not have the status of a taxable person. Therefore, the Registrar should have examined before the issuance of the relevant tax assessment as well as at the stage of examining the appeal whether the Applicant had such an involvement in the operations of the companies in which it participated as a shareholder which would constitute an economic activity which results in actions subject to VAT. The Registrar failed to undertake such an assessment. The application succeeded.

7. Application number 1011/2016

Judgement date: 10.02.2020
Parties: ROS Estates Ltd v. Republic of Cyprus through the Tax Tribunal

Facts:
The Applicant applied to the Court to declare that the decision of the Tax Tribunal to request the Applicant to provide security in the amount of €40.000,00 either through a bank guarantee or cash was void. The Applicant filed an appeal before the Tax Tribunal which is responsible to examine appeals against decisions of the Tax Registrar because it did not agree with the imposed capital gains tax, income tax and special defence contribution. The Tax Tribunal decided that the requirements to examine the appeal were met and requested the Tax Registrar to submit all information it had at its disposal. The Tax Registrar in its report requested that the Applicant deposits a security. The Tax Tribunal requested that the Applicant submits evidence that it would be able to pay any potential tax upon the decision on the appeal. The Tax Tribunal, after examination of the evidence, decided to use its discretion provided for in the Assessment and Collection of Tax Law (N.4/1978) and asked the Applicant to provide security in the amount of €40.000,00 in 30 days otherwise it would not proceed with the examination of the appeal.

Decision:
The Court underlined that the Tax Tribunal had the right to ask the provision of security only in the preliminary stage of examination of the deadline and payment of the non contestable tax. Only at this stage and before examining the substance of the appeal it is possible to request the provision of security. In this case the provision of security was requested months after the filing of the appeal and after the submission of the Tax Registrar's report. Therefore, the application succeeded.

8. Application number 1011/2016

Judgement date: 14.02.2020

Parties: Bioland Energy Limited v. Republic of Cyprus through 1. Minister of Finance 2. Director of Customs and Excise Department

Facts:

The Applicant was a company active in the import and trade of photovoltaics. It imported in Cyprus and traded 1384 photovoltaic panels. Instead of China the stated country of origin was Malaysia and, thus, the Applicant did not pay the respective countervailing duty, anti-dumping duty and VAT. The Respondent accepted all the provided import evidence and documents filed by the Applicant for custom clearing purposes through the electronic system "Theseas" (Theseas Declaration Information) which named Malaysia as the country of origin. The products, thus, fell under preferential treatment and a reduced import custom duty was paid. There were, nevertheless, serious suspicions that the country of origin was China and the products were only in transit in Malaysia before they arrived in the EU. The Respondent investigated the case and informed the Applicant that it owed to the Republic of Cyprus €127.845,89 for countervailing duty, anti-dumping duty and VAT and a monetary charge of €12.784,59. The Applicant denied payment and applied to the Court asking for a declaration that the decision of the Respondent was void. It argued that it had no responsibility and no involvement in the certificates of origin of the products and that the Respondent breached the fundamental principle of good governance and the public' s confidence in the administration.

Decision:

The Court rejected the application. Based on the national and the Community customs legislation and the EU case law, the national customs authorities have the right even after customs clearance to control the origin of imported products and impose the appropriate custom duties, where necessary.

9. Application number 542/2015

Judgement date: 27.3.2020

Parties: **Welfare Fund of Workers and Employees in the Construction Industry and Other Related Sectors v. Republic of Cyprus through the Tax Tribunal**

Facts:

The application relates to the decision of the Tax Tribunal to impose capital gains tax on the Applicant for the sale of four plots of land as the gain from the sale was considered to constitute an investment. The Applicant disagreed that it was liable to pay capital gains tax. The Court explained that each case must be examined in its own facts and it shall be analysed whether the sale of the property constituted an investment, thus subject to capital gains tax or was part of the business activities of the Applicant which would mean that the income from the sale would be subject only to income tax. The Court underlined the fact that the Applicant had the plots of land in its possession for 28 years. The articles of association of the welfare fund allowed investments in immovable property but did not include any provision on trading of immovable property. The Court extracted the conclusion that the welfare fund was able to act as an investor to preserve the purposes for which it was established. The plots of land were sold in 2007 in the exact same condition in which they were bought in 1979; no actions had been taken in the 28 years to exploit them or improve their condition. They were sold in 2007, a time in which the prices of immovable property boomed. The proceeds from the sale were saved in a bank account.

Decision:

The Court also took into account the fact that for 16 years the welfare fund did not sell, and for 12 years, it did not buy any immovable property. It was, thus, concluded that the sale of the plots was an investment and not part of the business activities of the Applicant. The latter was, therefore, liable to pay capital gains tax and the application was rejected.

10. Application number 1530/2016

Judgement date: 7.4.2020

Parties: Constantinou v. Republic of Cyprus through the Ministry of Finance

Facts:

The Applicant requested the annulment of the Respondent's decision with which it dismissed its appeal on the decision of the Respondent to impose on the Applicant income tax. The Applicant was self-employed and engaged in real estate development. He submitted its income tax declaration for the year 2012. The Respondent requested additional evidence for advertising expenses and sales promotion and imposed on the Applicant income tax in the amount of €72.356,41. The grounds for invalidity submitted by the Applicant referred to error of fact and law, lack of proper investigation and reasoning, infringement of the principle of good faith and the right to a prior hearing. The Respondent concluded that the disputable amount paid to a real estate company related to commissions and real estate expenses and, thus, was not allowed to be considered as an expense because the relevant company was not a registered real estate company. In particular, the amount was paid for advertising services and sales promotion. The payment of commission to non-registered real estate agents is not allowed as an expense because it is illegal pursuant to the Law on Real Estate Agents (N.71(I)/2010) and the Contracts Law (Ch. 149).

Decision:

The Court rejected all grounds for invalidity and confirmed the contested decision.

11. Application number 606/2017

Judgement date: 15.4.2020
Parties: 1. Ramadan & ors v. Republic of Cyprus through the Ministry of Finance and the Tax Department

Facts:
The Applicants requested, inter alia, that the Court declares that the decision of the Respondent by which it notified the Applicants of the tax owed is invalid to the extent that it demands the payment of interest. This case was about the property of the late Turkish Cypriot Seid Seidali who died in 1970 in the village Timi in Paphos. In 2014 his son, Applicant 1, submitted to the Tax Department a property declaration of his later father, whose heirs at the time of his death were his two sons, his two daughters and his wife. The value of the property was estimated at €73.030,00. Based on that estimation the Tax Registrar demanded €13.978,00 as inheritance tax and €24.361,00 interest calculated from 4.12.1971 until 29.5.2015. Applicant 1 replied to the Tax Registrar that he was willing to pay the inheritance tax but not the interest. The Tax Registrar demanded payment of the inheritance tax along with the interest. The Court underlined, at first, that the decision of the Tax Registrar to require payment of interest is an enforceable administrative act which is subject to judicial control. The Inheritance Tax Law (N.67/1962) provides that no interest shall be paid on the imposed inheritance tax when the assessment of the payable inheritance tax is not completed within 18 months from the death of the deceased person and this delay is not attributed to the executor or any other person who is obliged to pay the inheritance tax. The Applicants argued that they were permanently living abroad and the situation in the Republic of Cyprus after 1974 was on the boil. They, thus, did not need to pay any interest on the applicable inheritance tax since they were never notified from the Republic of Cyprus that they need to submit any documentation or proceed to any other actions in relation to their father's death.

Decision:
The Court was not convinced that there was any valid reason for the 34-year delay. Although their father died in 1970, the Applicants proceeded with the property declaration of the deceased in 2014. The Registrar is not responsible to search for the administrator or the heirs of the deceased. The Applicants were responsible to submit the property declaration of the deceased on time and they presented no convincing explanation for the 34-year delay. The late Seid Seidali died in 1970, before the Turkish invasion in 1974, and in any case the property was not situated in the occupied part of the island. The application was rejected.

12. Application number 534/2007

Judgement date: 26.6.2020

Parties: BP Eastern Mediterranean Limited v. Republic of Cyprus through the Ministry of Finance and the Director of the Customs and Excise Department

Facts:

The Applicant is a company licensed to operate a general tax warehouse and which provided air fuels to the Cyprus Police Force. With this application the Application contested the decision of the Director of the Customs and Excise Department dated 24.1.2007 to demand payment of excise duties and VAT in the amount of €64.811,00 and in addition monetary charge of €6.481,00 plus interest of 9% annually on the total payable amount for the products provided to the Cyprus Police Force for the time period May 2004 to August 2006. The Applicant argued that the flights to transfer water for fire-fighting purposes were serving the public interest and were performed within the Republic of Cyprus. They were, thus, exempt from excise duties. During the relevant time the Applicant was filling in all relevant declaration required by the law with full and accurate supporting evidence. The officers of the Respondent were of the opinion that the products offered by the Applicant were not subject to excise duties and, thus, did not demand such duties. In 2007 they changed their mind and issued the contested decision with which they demanded payment of excise duties. The Applicant was requesting with its electronic declaration the exemption from special excise duties and the Respondent was approving it.

Decision:

The Court examined the relevant legislation relating to the special jet fuels which the Applicant delivered for aircraft supplies of the Cyprus Police Force and fire-fighting helicopters at the airport of Paphos for flights performed within the Republic and concluded that they were not exempted from excise duties. The Respondent has the right at a later point in time to demand payment of taxation which was due and was for whatever reason not paid. However, the Court underlined that the Applicant was providing all information in its electronic declarations in which it was requesting exemption from excise duties and the Respondent was approving it. There was no clear opinion in the Department of Customs and Excise whether the products at stake were subject to excise duties or not. However, the Court concluded that it would be contrary to the established principle of good faith and protection of legitimate expectations to oblige the Applicant to pay excise duties for the contested time period. The application succeeded.

13. Application number 697/2016

Judgement date: 29.7.2020

Parties: Woodhead v. Republic of Cyprus through 1. Minister of Finance, 2. Tax Department

Facts:

The Applicant is a UK citizen. In 2008 she sold two houses in Cyprus which she bought in 2006. It was considered that the sales of the two houses constituted commercial transactions. The Applicant paid in 2008 €257.305,89 as income tax. In 2012 she claimed against the Tax Department that the proceeds from the sale should have been subject to capital gains tax and not income tax. She was not permanently living in Cyprus and the proceeds from the sale were not the profits from her permanent residence in Cyprus. She, thus, argued that the Tax Department wrongly considered the sale to be a commercial transaction and not a capital expenditure. The Tax Department, nevertheless, insisted that the sale was a commercial act. It based its conclusion, inter alia, on the following reasons: a) the short time period of ownership of the houses, b) the fact that the sale occurred five months after a previous sale of property by the Applicant, c) the houses are located in a commercial and touristic area in Protaras, d) the fact that she was living in another house when she bought the two houses, e) the construction work performed to improve the two houses, f) the receipt of loan in order to buy the two houses, g) the fact that the houses were sold in 2008 when the real estate prices boomed.

Decision:

The Court rejected the application and concluded that the Respondent took a reasoned decision on the grounds of the prevailing facts. There was, thus, no reason for the Court to intervene in the decision of the Respondent.

14. Application number 1222/2014

Judgement date: 18.9.2020

Parties: Hermes Airports Ltd v. Republic of Cyprus through 1. Minister of Finance, 2. Director of Customs and Excise Department and VAT Registrar

Facts:

The Applicant was registered with the VAT Register and its business activities related to the development and operation of the Larnaca and Paphos airports, and the provision of services to airline companies. According to the national and European legislation, for VAT purposes the place of supply of services in case the person receiving the services is a taxable person is the place where the recipient is established. As a result, non established airlines acquiring handling services from Cyprus suppliers are not liable to pay VAT in Cyprus. An investigation of the Respondent revealed that the Applicant had wrongly issued credit notes for taxable services provided to airlines in the amount of €1.229.088,70 which resulted in a reduction of the output tax for the corresponding amount. It was revealed that at least fourteen airlines were established in Cyprus and owed to pay VAT. The Respondent, thus, rejected the appeal of the Applicant on its decision to demand payment of assessed tax in an amount of €4.344.618,66.

Decision:

The Court upheld the decision of the Respondent and rejected the application. It also stated that the decision to impose interest and further charges on the assessed tax is a non-discretionary act which follows the tax assessment.

15. Application number 467/2017

Judgement date: 15.12.2020
Parties: Pafilia Property Developers Ltd v. Republic of Cyprus through VAT Registrar

Facts:
The Applicant requested the annulment of the Respondent's decision which assessed VAT in the amount of €1.561.448,42 and €186.602,43 plus interest and charges. The Applicant appealed against the Respondent's decision and the appeal was rejected. The case referred to the real estate projects Epea 3-7, Peyia Springs, Hesperides and Elysia Park. In relation to Epea 3-7 and Elysia Park the Applicant explained that there were substantial changes in the initial applications for planning permission which were submitted to the Urban Planning Authority before 30.4.2004. Pursuant to the VAT Law (N.95(I)/2000) the delivery of immovable property is exempted from VAT unless if the transfer occurs before the first occupation of the immovable property or the transfer occurs pursuant to a sale contract or an agreement which provides that the immovable property will be transferred at a future point in time or pursuant to a lease agreement with the option to buy the immovable property provided that it occurs before the first occupation. If, however, a proper application for issuance of a planning permission has been submitted before 1.5.2004, then the exemptions do not apply and the delivery of immovable property shall be treated as an exempted transaction. In the case at stake the initial applications for issuance of planning permission were submitted to the Urban Planning Authority before 1.5.2004. The law neither requires the issuance of the planning permission nor the performance of the construction work pursuant to the application submitted before 1.5.2004.

Decision:
The Court concluded that the submission of an application for issuance of a planning permission before 1.5.2004 is sufficient for the delivery of immovable property to be considered as a transaction exempted from VAT. The application succeeded and the contested decision was annulled to the extent it related to the real estate projects Epea 3-7 and Elysia Park.

16. Appeal number 160/2013

Judgement date: 13.1.2020

Parties: Republic of Cyprus through 1. Minister of Finance, 2. Customs and Excise Department v. Agroti

Facts:

The Appellee imported a used Mercedes C180 in Cyprus. He paid taxes and excise duty in the total amount of €3.458,00 under protest and reserved his rights. It then demanded the return of the paid taxes because the Department of Road Transport at the registration of the vehicle noticed that the vehicle body/chassis was counterfeit. The Appellant rejected the return of the paid taxes with the argument that they were lawfully owed and attributed, and the registration of the vehicle with the Department of Road Transport took place at a later point in time. The Court at first instance accepted its application as it concluded that the Appellant did not perform a proper enquiry and did not examine all facts which were relevant for the case and annulled the contested decision not to return the paid taxes. The Customs and Excise Department appealed against the first instance decision at the Supreme Court, the appeal succeeded, and the first instance decision was set aside.

Decision:

The Supreme Court underlined that when the excise duty was imposed it was lawfully owed pursuant to the information that the Customs and Excise Department had at its disposal. The law requires the payment of excise duty when products are imported in the Republic irrespective of the intended use of the products or any defects that they may have. No possibility of exemption or return of the excise duty is provided for by the law in such case. The investigation of the Customs and Excise Department was complete and sufficient. The fact that the Appellee could not use the vehicle because the vehicle body/chassis was counterfeit was not relevant for the Customs and Excise Department which was responsible to impose excise duty pursuant to the facts at its disposal and for the purpose of proper taxation of imported products and not for the purpose of the registration of the vehicle for use within the Republic which was a different administrative procedure within the responsibility of the Department of Road Transport. The excise duty was owed as per the provision of article 27 of the Excise Duty Law (N.91(I)/2004) and was correctly attributed.

17. Appeal number 39/2014

Judgement date: 28.1.2020
Parties: Aphrodite Hotels Ltd v. Republic of Cyprus through VAT Registrar

Facts:

The Appellant was registered with the VAT Register and engaged in the management of the hotel it owned named Intercontinental Aphrodite Hills Resort Hotel in Paphos which started its operation in March 2005. An investigation from the Appellee revealed that there were inconsistencies and mistakes in the tax declarations of the Appellant. Therefore, the Appellant proceeded to a tax assessment which was set at €169.947,56. The Appellant appealed the tax assessment and in particular the point 10 thereof which related to the deduction of the input tax of €98.852,55 which related to the amount of €273.483,74 which referred to consulting services for the construction of the hotel the Appellant received from the company Lanitis Development Ltd in three occasions after its registration with the VAT Registe. The Appellant argued that the time of provision of the services shall be considered to be the time of issuance of the invoices of Lanitis Developments Ltd to the Appellant so that they constitute consecutive provisions and are taxable in their entirety, and consequently the relevant VAT is deducted in its entirety. The Appellee rejected the allegation that €98.852,55 has been wrongly assessed. The Appellant did not have the right to deduct the entire amount of the input tax of the invoices issued by the company Lanitis Development Ltd since part of that amount related to services offered more than 6 months before the registration of the company with the VAT Register. The Appellant filed an application against the rejection which was dismissed at first instance. This appeal is against the decision at first instance. The grounds of annulment revolve around the argument of the first instance Court that the time of provision of the services is the time of issuance of the invoices of the foreign experts to Lanitis Development Ltd and not the time the Appellant is charged for these services.

Decision:

The Supreme Court rejected the appeal as it did not find any mistakes by the first instance Court in the extraction of its conclusions and the implementation of the VAT law. It underlined that the provided services could not be considered as consecutive for the relevant VAT amount to be deducted in its entirety. It also confirmed that the crucial time of provision of the services was indeed the time of issuance of the invoices of the foreign experts to Lanitis Development Ltd.

Our Team

Angela Charalambous
Partner

Angela Charalambous is a Partner of the Administrative & Public Law and Family and Estate Department at Harris Kyriakides. Angela's main area of practice is public law, which includes dealing with cases before the Supreme and Administrative Court in relation to disputes arising from public and/or administrative law – including taxation disputes.

Expertise
Administrative Law, Public Law, Family and Estate

Academic Qualifications
LLB, University of Cyprus, 2014

Professional Qualifications
Member of the Cyprus Bar, 2015

T: +357 24 201 655 , Ext.: 655
E: a.charalambous@harriskyriakides.law

Angeliki Papaefstathiou
Associate

Angeliki Papaefstathiou is an Associate of the Administrative Law and Family and Estate Department at Harris Kyriakides. Angeliki's main area of practice is public law, which includes dealing with cases before the Administrative Court in relation to disputes arising from public and/or administrative law – including taxation disputes.

Expertise
Administrative and Public Law

Academic Qualifications
LLB National and Kapodistrian University of Athens, 2015

Professional Qualifications
Member of the Cyprus Bar, 2016

T: +357 24 201 641, Ext.: 641
E: a.papaefstathiou@harriskyriakides.law

HARRIS KYRIAKIDES

Nicosia
1 Kinyra street, 5th floor
1102 Nicosia, Cyprus

Larnaca
115 Faneromenis Avenue, Antouanettas Building
6031 Larnaca, Cyprus

Limassol
106 Gladstonos,
3032 Limassol, Cyprus

Paphos
4 Nicou Nicolaidi & Kinyra, 2nd Floor,
8011 Paphos, Cyprus