

## Litigation - Cyprus

### Importing secondhand cars from member states to Cyprus

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#### Background Decisions

Cyprus has no domestic vehicle industry and is totally reliant on imports. Its entry to the European Union in 2004 necessitated changes to the taxation of imported vehicles, but interpretations of how the system should be applied varied between (and sometimes within) the relevant government departments. Two recent Supreme Court decisions have made clear that the existing legislation on the issue is inconsistent with the EC Treaty.

#### Background

When Cyprus joined the European Union in 2004 it was required to align its domestic legislation with EU Directive 91/680/EC, which regulates the application of value added tax (VAT) to cars purchased in another member state.

The Cyprus VAT legislation distinguishes between new<sup>(1)</sup> and secondhand<sup>(2)</sup> cars. However, it gives no explicit guidance on the tax to be charged when a private party buys a secondhand car in one member state with the intention of moving it to another.

Article 90 of the EC Treaty prohibits the discriminatory taxation of goods (including cars) which are imported to one member state from another and provides as follows:

*"No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.*

*Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products."*

Thus, Article 90 prohibits any domestic legislation that provides for more favourable taxes for home-produced cars compared to imported cars. It does not restrict the freedom of any member state to establish a differentiated tax system, applicable even to similar products, as long as the criteria are objective - for example, they refer to the type of raw materials or production process used. This type of differentiation is compatible with Community law if the purpose is to achieve economic policy objectives which, in turn, are compatible with the requirements of the treaty and secondary legislation and if the methods used ensure that all discrimination (both direct and indirect) against imports from other member states and protection of competing domestic products is avoided.

In relation to secondhand cars, a particular difficulty arises under Article 90 where domestic secondhand cars are not taxed in the same way because they were previously taxed as new.

#### Decisions

In *Demosthenous v Republic of Cyprus* (698/2010) and *Koliniotis v Republic of Cyprus* (1404/2011), both decided in late August 2012, the Supreme Court ruled that the national laws concerning the import of secondhand cars from a member state do not comply with the EC Treaty, as the tax charged on secondhand cars imported into Cyprus from other member states is based on engine capacity and carbon dioxide emissions, without taking into consideration the age of the car. In both cases, the applicant imported a secondhand car from the United Kingdom and paid the required customs duties, but the Motor Vehicle Registry refused to register the cars without payment of extra taxes related to engine capacity and carbon dioxide emissions.

In both cases the Republic of Cyprus rejected the owners' argument that they had already paid the required taxes when they first purchased the car overseas, and insisted on payment of the taxes laid down under Cyprus law. The applicants argued that this was discriminatory as the age of the car was not mentioned. They paid the taxes under protest and took the case to the Supreme Court.

The court, bearing in mind the European Court of Justice's decisions in *Americo Joao Nunes Tadeu* (C-345/93, March 9 1995) and *Antonio Gomes Valente* (C-393/98, February 22 2001), concluded that the extra taxes which the applicants had been required to pay were in breach of the EC Treaty and ordered the Republic of Cyprus to repay the full amount.

The government has now drafted a new law to amend the existing law regarding the taxation of new and secondhand cars imported from another member state. The new law is under consideration by the House of Representatives.

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#### Endnotes

<sup>(1)</sup> A car is considered to be 'new' as long as it was supplied less than six months after the date of its first entry into service or had not travelled more than 6,000 kilometres when supplied.

<sup>(2)</sup> A car that does not meet the conditions of a new car.

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