



Personal Liability of Officers of a company for the payment of VAT owed by a Company

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1. In the very recent judgement ***Assiotis and ors v. Olympia Designs (Properties) Ltd, Civil Appeal 143/2020, dated 12.4.2021***, it became clear that Officers of a VAT registered Company, which owes VAT and for this reason has been found guilty together with its Officers in criminal proceedings for offences related to the failure of payment of VAT owed, do not have a personal liability for payment of such amounts.
2. More specifically, in the *Assiotis* judgement, both the Director of the Company and the Company were found guilty, after having pleaded guilty, on 44 charges concerning breaches of the Value Added Tax Law, (95(I)/2000). The Court of First Instance imposed on the Company monetary fines and concurrent custodial sentences to the Director. Further, the First Instance Court ordered that the Company and the Director pay the amounts owed.
3. The Director filed an appeal against the order to personally pay the owed VAT, whilst no appeal was filed against the order for the Company. The Supreme Court in its decision, referred to the case of *Attorney General of the Republic v. Solomonides, Criminal Appeal number 232/15 324/15 and 325/15, dated 14.2.2019*, where certain orders were issued both against the Company and the Director for payment of owed VAT, and distinguished between the two cases as follows:
 - the *Assiotis* case concerned the interpretation of section 46(12) of the VAT Law,
 - section 46(12) provides that “... *the criminal court which declares any person guilty for failure to pay to the Commissioner any amount owed...has the power in addition to the imposition of sentence, to issue an order with which the person found guilty is ordered to pay to the Commissioner the said amount.*”,
 - According to the Court in *Assiotis*, the provisions of section 46(12) are clear in the sense only a person subject to payment of VAT owes these amounts. If the person subject to payment of VAT is a company, then the amount is owed only by the Company and not by its officers,
 - Further, section 46(13) of the Law provides that the amount due is considered as a civil debt and thus does not burden the officers of the company,
 - The approach is different as per the Customs Code Law, Law 94(I)/2004, where it is specifically provided that the officer of a legal person is criminally liable for an offence carried out by the legal person and he himself is jointly and severally liable together with the legal person in any civil proceedings.

- In the *Solomonides* case, no arguments were presented before the Court in relation to the interpretation of section 46(12) and especially with regards to the reference in the said section of the issuing of an order for payment of the amount owed against the person who owes such amount. In view of the fact that no arguments were presented and nothing was decided in relation to the ambit of the said section of the law, that part of the judgment was not binding on the Supreme Court when deciding on the *Assiotis* case.
4. Therefore, according to the recent judgement of *Assiotis*, a natural person, officer of the Company, which fails to pay VAT owed and for this reason is found guilty together with the officer of the Company, cannot be ordered to personally pay such amount of VAT owed by the Company to the Commissioner. The Company however, which owes the VAT, may be ordered by the Court in accordance with section 46(12) of the VAT Law whilst exercising its criminal jurisdiction, to pay the VAT owed in addition to any other penalty or sentence that may be imposed by the Court.