1985 July 31

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ALIKI P. MICHAELIDOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 74/83).

Income Tax—Income Tax Laws, 1961-1969, section 5 (2) (c)—Onus on taxpayer to support a claim for deduction or exemption from tax.

Citizenship of the Republic—Article 198 of the Constitution—Annex "D" of the Treaty of Establishment, s. 2—The Republic of Cyprus Citizenship Law 43/1967, s. 3—Applicant possessed all qualifications prescribed by s. 2 (1) and 2 (2) (b) of Annex "D" and s. 3 of Law 43/1967—Automatically acquired Cypriot Nationality.

Nationality—Dual or plural—Recognised by Domestic Law of Cyprus—Person possessing two or more nationalities (of which the one is the Cypriot nationality)—Is in exactly the same position from the internal point of view as a person possessing only the Cypriot Nationality—The Hague Convention of 1930 on Certain Question Relating to the Conflict of Nationality Laws—Applicable in Cyprus—Article 3 of the Convention—Law 43/1967, s. 7.

Passport—Effect of obtaining.

Interest on tax—Meaning of interest—Law 2/1977, s.2—Interest outside the ambit of tax—Therefore the provisions of

Art. 24 of the Constitution do not prohibit the imposition of an obligation to pay interest with retrospective effect—Interest on tax—Payable in case of unjustifiable omission—S. 34 (2) of Law 61/1969 and s. 42 (2) Law 4/78 as amended by Law 23/1978.

Intepretation of statutes—A fundamental rule that a statute shall not be construed as having retrospective effect, unless such a construction appears very clearly in the terms of the Law—The proviso to sub-section 2 of s. 42 of Law 4/1978 has retrospective effect.

Constitutional Law—Articles 198 and 24 of the Constitution—Annex "D" of the Treaty of Establishment.

Words and Phrases—"Interest", "Omission", "Unjustifiable Omission".

The applicant is of Cypriot origin. She was born in Famagusta in 1916. Her husband, who passed away in 1977, was a citizen of the United Kingdom. The applicant was ordinarily resident in the Colony of Cyprus for a time between 16.8.55 and 16.8.60, immediately prior to the date of the Treaty of Establishment. She continued, however, to be a holder of a British Passport, issued to her on 14.7.73. At the material time for the taxation in this recourse the applicant was a resident of the Republic.

When the applicant's assessments for the years of assessment 1974 and 1975 were originally raised it was not known to the Commissioner that she derived an investment income abroad. In 1980 the Commissioner received information that the applicant and her husband had a joint account in the past abroad. As a result and after exchange of correspondence the Commissioner raised additional assessments on applicant's income in respect of the years of assessment 1974 (73) and 1975 (74). The applicant objected against both assessments. The respondent Commissioner finally determined the objections and communicated his decision by letter dated 9.12.1982. Hence the present recourse.

The grounds on which the applicant relies in this recourse are:

A. Applicant's investment income abroad is not subject

to taxation as the applicant was at the material time a British subject and the income was derived before the coming into force of the Income Tax Law 37/1975 and was not remitted to the Republic.

B. The demand for interest at 6% from 1st July of the years 1974 and 1975, respectively, is erroneous, ultra vires and contrary to Article 24.3 of the Constitution.

Held, as to ground A above:

(1) The Law at the material time in operation was s. 5 (2) (c)* of the Income Tax Laws 1961-1969. It is a well established principle of income tax Law that the onus is on the taxpayer to support a claim for deduction or exemption from tax.

(2) Citizenship of the Republic is governed by the provisions of Article 198** of the Constitution. Article 2*** and Annex "D" of the Treaty of Establishment make provision for determining the nationality of persons affected by the establishment of the Republic of Cyprus. The Law envisaged in Article 198 of the Constitution was enacted and came into operation on 1.12.1968 (The Republic of Cyprus Citizenship Law 43/1967). The provisions of Annex "D" have been adopted as part of the definition of "citizen of the Republic" to be found in s. 3**** of this statute. As the applicant possesses all the qualifications prescribed by s. 2 (1) and 2 (2) (b) of Annex "D" and by s. 3 of Law 43/1967, she automatically acquired the Cypriot nationality.

(3) The possession of dual or plural nationality is recognised by the domestic Law of the Republic. (See the Hague Convention of 1930 on Certain Questions Relating to the Conflict of Nationality Laws applicable in Cyprus and, inter alia, s. 7 of Law 43/1967). The applicant is and at the material time was a citizen of the Republic of Cyprus. She may be also a citizen of U. K. The fact that a citizen of the Republic possesses double nationality

* This section is quoted at pp. 1843-1844 post.
** The relevant part of this Article is quoted at p. 1845 post.
*** This section is quoted at pp. 1845-1846 post.
**** This section is quoted at p. 1846 post.

makes no difference to his position in Cyprus as he is in exactly the same position from the Internal point of view. Under Article 3 of the above Hague Convention a person possessing two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

(4) The applicant did not discharge the burden to bring herself within the exemptions set out in the proviso to s. 5 (2) (c) of the Income Tax Laws, 1961-1969.

(5) In view of the above ground "A" above has to be dismissed.

DICTA of Lord Jowitt, L.C. in *Joyce* v. *D.P.P.* [1946] 1 All E.R. 186 at 191 and of Lord Alvestone L.C.J. in *Brailsford's* case [1905] 2 K.B. 730 at 745 as to the effect of obtaining a passport adopted.

Held, as to ground "B" above:

(1) "Interest" in Law 61/1969 and in the Assessment and Collection of Taxes Law 4/78 (23/78, and 41/79) is not a word of art, but bears its popular sense. The statutory provisions about interest in the aforesaid laws are a move for the avoidance of loss to the State by unjustifiable omission of the taxpayer, causing delay in making an assessment. "Interest" has been defined as "compensation for delay in payment", "recompense to the creditor for being deprived of the use of his money", "payment by time for the use of money" "the return or compensation for the use or retention by one person of a sum of money belonging to, in a colloquial sense, or owed to, another". (See also the definition of interest in the Interst Law 2/1977).

(2) The nature of "interest" as explained above clearly takes it out of the ambit of "tax". Therefore the Constitutional provision prohibiting the retrospective imposition of tax is not applicable.

(3) The proviso to subsection (2) of s.42 of Law 4/1978 as amended by Law 23/1978 provides that the interest payable with regard to any year of assessment preceding the year of assessment beginning on the 1.1.1978 shall be at

the rate of 6% per annum. The language of the proviso demands that the Law must be construed as having a retrospective operation.

(4) For interest to be payable there must be unjustifiable omission. "Omission" means a failure to give any notice, make any return, produce or furnish any document or other information by or under the Law. The omission must be unjustifiable. A distinction must be made between unjustifiable and unreasonable. It is upon the administration to determine in each case, subject to judicial review by this Court, whether an omission is unjustifiable or not. In the circumstances of this case it was reasonably open to the Commissioner to find that the delay in the assessment was due to the unjustifiable omission of the taxpayer.

(5) Ground "B" has, therefore, to be dismissed.

Recourse dismissed.
No order as to costs.

Cases referred to:

Charis Georgallides (1958) 23 C.L.R. 249;

HadjiYiannis v. *The Republic* (1966) 3 C.L.R. 338;

Kittides v. *The Republic* (1973) 3 C.L.R. 123;

Zembylas v. *The Republic* (1981) 3 C.L.R. 258;

Joyce v. *Director of Public Prosecutions* [1946] 1 All E. R. 186;

R. v. *Brailsford* [1905] 2 K. B. 730.

Moschovakis v. *The Republic* (1974) 3 C.L.R. 79;

Bennet v. *Ogston (Inspector of Taxes)* (1930) 15 T.C. 374;

Bond v. *Barrow Haematite Steel Co.* [1902] 1 Ch., 353;

Schulze v. *Bensted (Surveyor of Taxes)*, 7 T.C. 30;

Riches v. *Westminster Bank Ltd.* [1947] 1 All E.R. 469;

Re Farm Security Act 1944 (1947) S.C.R. 394;

Craig v. *Federal Commissioner of Taxation* (1945) 70 C.L.R. 441;

Carson v. *Carson* [1964] 1 W.L.R. 511.

Recourse.

Recourse against the decision of the respondents to impose tax on the applicant for the years of assessment 1974 and 1975 on investment income derived outside the Republic.

G. Triantafyllides, for the applicant.

M. Photiou, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant by this recourse seeks the annulment of the decision of the respondent Commissioner of Income Tax (hereinafter referred to as "the respondent") whereby tax was imposed on her for the years of assessment 1974(73) and 1975(74) on investment income derived outside the Republic, plus interest on the tax at 6% from 1.7.75 and 1.7.76, respectively.

The applicant is of Cypriot origin. She was born at Famagusta on the 25th March, 1916. She married her late husband, Petros Michaelides, a citizen of the United Kingdom, who passed away on the 3rd November, 1977. She was ordinarily resident in the Island of Cyprus (Colony of Cyprus) for a time between 16.8.55 and 16.8.60, immediately prior to the date of the Treaty of Establishment. She continued, however, to be the holder of a British passport (United Kingdom and Colonies) No. C. 104410 which was issued to her by the British High Commission in Cyprus on 14.7.73. At the material time for the taxation in this recourse the applicant was a resident of the Republic.

The applicant derived her main income as a Director of a private company "G. P. Michaelides & Sons Ltd.". Her assessments for the years of assessment 1974 and 1975 were originally raised only on her emoluments and on her income arising in the Republic. It was not known to the Commissioner that she derived an investment income abroad.

On 27.12.79 the respondent addressed a letter to the applicant in her capacity as administratrix of the estate of her husband in which he informed her that he had proceeded with the issue of an additional assessment of her husband's income for the year of assessment 1973(72). A bank account with Grindlays Bank (Jersey) Ltd. in the joint names of the applicant and her husband was closed by the bank as there was no balance for considerable time and this was brought to the knowledge of the late husband of the applicant by letter of the bank dated 20.9.76.

In 1980 the respondent received information that the applicant and her husband had a joint account in the past abroad.

The respondent on 12.3.80 by letter required her to declare her investment income abroad for each of the years of income 1973-1978 and to furnish him with extracts from her banking accounts abroad covering the period 1.1.73 - 31.12.78.

The applicant thereupon applied to the said bank in Jersey requesting them to furnish her an extract of the said account from the date it was opened to the date it was closed. On receipt of this extract her tax consultant submitted to the respondent letter dated 27.5.80 in which he informed the respondent that as the applicant and her deceased husband had been suffering for many years from serious diseases, considerable sums of money had been spent by the deceased on medical treatment which they used to receive annually from specialists in England, Germany and Israel. He further contended that she is and had always been a British subject and that the investment income derived in Jersey prior to the coming into operation of Law No. 37/75 was not subject to taxation in the Republic as it is common ground that such investment income was not remitted to the Republic.

After inquiry and advice the respondent on 23.1.81 informed the applicant's tax consultant, Mr. Phanos Ionides, that the applicant's husband was not a citizen of the Republic but she was such a citizen by virtue of the provisions of Articles 2.1 and 2.2(b) of Annex "D" of the Treaty of Establishment of the Republic of Cyprus. On

1.12.80 the respondent raised an additional assessment on applicant's income in respect of the year of assessment 1974(73). Objection was filed to that assessment on behalf of the applicant on 21.12.80.

On 10.12.81 the respondent raised an additional assessment for the applicant in respect of her income for the year of assessment 1975(74). An objection to this assessment was again taken on 18.12.81.

The grounds of the objections were that the assessments were erroneous in that the applicant was a British subject and hence her investment income abroad was not liable to income tax as it was not remitted to the Republic.

The respondent finally determined the objections and communicated his decision by letter dated 9.12.82 (appendix "B" to the opposition) and issued notices of tax payable dated 11.12.82 (exhibit No. 2).

The grounds on which the applicant relies in this recourse are:-

(a) The applicant was at the material time a British subject and not a Cypriot and as the investment income abroad was derived before the coming into force of the Income Tax Law No. 37/75 and was not remitted to the Republic, it was not liable to income tax; and,

(b) The demand for interest at the rate of 6% from 1st July of the years 1974 and 1975, respectively, is erroneous, ultra vires and contrary to Article 24.3 of the Constitution.

(a) INVESTMENT INCOME ABROAD

The Law at the material time in operation was s. 5(2)(c) of the Income Tax Laws, 1961-1969, that runs as follows :-

«5(2)(γ) - (ι) το σύνολον του εκτός της Δημοκρατίας προκύπτοντος εισοδήματος εξ επενδύσεως θα λογίζηται ως εισόδημα κτηθέν εν τη Δημοκρατία, είτε τούτο μετεφέρθη εις την Δημοκρατίαν είτε μη:

Νοείται ότι οσάκις οιονδήποτε πρόσωπον ήθελεν ικα-

νοποιήσει τον Έφορον ότι, καίτοι διαμένον εν τη Δημοκρατία, δεν έχει την μόνιμον κατοικίαν του (domicile) εν αυτή ή ότι δεν είναι πολίτης της Δημοκρατίας ή ότι μολονότι είναι πολίτης της Δημοκρατίας δεν διαμένει μονίμως εν αυτή, το πρόσωπον τούτο θα υπόκειται εις φορολογίαν επί τοσούτου μόνον εκ του ούτω προκύψαντος εισοδήματος του εξ επενδύσεως όσον μεταφέρεται εις την Δημοκρατίαν».

("The whole of the investment income arising outside the Republic shall be deemed to be income derived from the Republic whether or not remitted to the Republic:

Provided that where any person shall satisfy the Commissioner that though residing in the Republic does not have his domicile in it or he is not a citizen of the Republic or that though he is a citizen of the Republic, he is not permanently resident therein, he shall be liable to tax on such part only of his investment income so arising as is remitted to the Republic").

It is common ground that the investment income of the sub judice decision was derived outside the Republic and that it was not remitted to the Republic and that the applicant was residing in the Republic.

It is a well established principle of income tax Law that where a taxpayer claims any exemption or deduction from tax, the onus is on him to support such claim for exemption or deduction. This principle is very clearly expressed in the following passage from the judgment of the Supreme Court in the case of *Charis Georghallides,* (1958) 23 C.L.R. 249, at p. 256:-

"One dealing with fiscal legislation should carefully examine first, whether the taxpayer is clearly within the words of the provisions by which he is charged with tax and, secondly, if he claims any exemption or deduction from tax—to which liability is either admitted or established—whether such claim is clearly supported by the relevant provision of the Law. In a disputed case the onus to satisfy the Court as to liability to pay tax is on the Tax Authorities and the

onus to support a claim for exemption or deduction allowance is on the taxpayer".

(See *Andreas Hadjiyiannis* v. *The Republic*, (1966) 3 C.L.R. 338, at p. 350; *Plutis Kittides* v. *The Republic*, (1973) 3 C.L.R. 123, at p. 133).

Citizenship of the Republic is governed by the provisions of Article 198 of the Constitution. The relevant part thereof for this case reads as follows:-

"198.1 - The following provisions shall have effect until a law of citizenship is made incorporating such provisions -

(a) any matter relating to citizenship shall be governed by the provisions of Annex "D" to the Treaty of Establishment;

(b) .....

2. For the purposes of this Article 'Treaty of Establishment' means the Treaty concerning the Establishment of the Republic of Cyprus between the Republic, the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland".

Article 6 and Annex "D" of the Treaty of Establishment make provision for determining the nationality of persons affected by the establishment of the Republic of Cyprus.

Section 2 of Annex "D" of the Treaty of Establishment runs as follows:-

"1. Any citizen of the United Kingdom and Colonies who on the date of this Treaty possesses any of the qualifications specified in paragraph 2 of this Section shall on that date become a citizen of the Republic of Cyprus if he was ordinarily resident in the Island of Cyprus at any time in the period of five years immediately before the date of this Treaty.

2. The qualifications referred to in paragraph 1 of this Section are that the person concerned is -

(a) a person who became a British subject under the provisions of the Cyprus (Annexation) Orders in Council, 1914 to 1943; or

(b) a person who was born in the Island of Cyprus on or after the 5th of November, 1914; or

(c) a person descended in the male line from such a person as is referred to in sub-paragraph (a) or (b) of this paragraph.

3. Any citizen of the United Kingdom and Colonies born between the date of this Treaty and the agreed date shall become a citizen of the Republic of Cyprus at the date of his birth if his father becomes such a citizen under this Section or would but for his death have done so".

As envisaged in Article 198 of the Constitution, the Republic of Cyprus Citizenship Law, 1967 (No. 43/67) was enacted and came into operation on 1.12.68. The provisions of Annex "D" have been adopted as part of the definition of "citizen of the Republic" to be found in s. 3 of this statute, that reads as follows:-

«Πολίται της Δημοκρατίας είναι τα πρόσωπα τα οποία, κατά την ημερομηνίαν της ενάρξεως της ισχύος του παρόντος Νόμου, απέκτησαν ή δικαιούνται να αποκτήσωσι την ιδιότητα του πολίτου της Δημοκρατίας δυνάμει των διατάξεων του Παραρτήματος Δ ή τα οποία μετά την ρηθείσαν ημερομηνίαν αποκτώσι την τοιαύτην ιδιότητα του πολίτου δυνάμει των διατάξεων του παρόντος Νόμου».

"Citizens of the Republic are persons who on the date of the coming into operation of this Law, either have acquired or are entitled to acquire citizenship of the Republic under the provisions of Annex "D" or who, after the date aforesaid, acquire thereafter such citizenship under the provisions of this Law."

The applicant possesses all the qualifications prescribed by s. 2 (1) and 3 (2) (b) of Annex "D" of the Treaty of Establishment and in s. 3 of the Republic of Cyprus Citizenship Law, 1967, and thereby automatically she acquired the Cypriot nationality - *(Zembylas* v. *The Republic,* (1981) 3 C.L.R. 258, at p. 264.

The applicant is in possession of a British passport. The effect of obtaining and possessing a passport is set out in the judgment of Lord Joffe, L. C., in *Joyce* v. *Director*

of Public Prosecutions, [1946] 1 All E.R. 181, at p. 191, thus:-

"The essential fact is that he got the passport and I now examine its effect. The actual passport issued to the appellant has not been produced, but its contents have been duly proved. The terms of a passport are familiar. It is thus described by Lord Alverstone, L.C.J., in *Brailsford's* case, [1905] 2 K.B. 730, at p. 745:-

'It is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Government of foreign nations and to be used for that individual's protection as a British subject in foreign countries....

By its terms it requests and requires in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need. It is, I think, true that the possession of a passport by a British subject does not increase the Sovereign's duty of protection, though it will make his path easier. For him it serves as a voucher and means of identification. But the possession of a passport by one who is not a British subject gives him rights and imposes upon the Sovereign obligations which would otherwise not be given or imposed. It is immaterial that he has obtained it by misrepresentation and that he is not in law a British subject. By the possession of that document he is enabled to obtain in a foreign country the protection extended to British subjects. By his own act he has maintained the bond which while he was within the realm bound him to his Sovereign. The question is not whether he obtained British citizenship by obtaining the passport, but whether by its receipt he extended his duty of allegiance beyond the moment when he left the shores of this country. As one owing allegiance to the King he sought and obtained the protection of the King for himself while abroad' ".

Under the Hague Convention of 1930 on Certain Ques-

tions Relating the the Conflict of Nationality Laws, a person may possess more than one nationality. The application of this Convention was extended to Cyprus by the United Kingdom when this country was a British colony. The Republic continues to be bound by it; on 5.3.70 the Republic of Cyprus informed the Secretary-General of the United Nations, who is the depositary, that it considers itself and continues to be bound by it, by virtue of the devolution clause of Article 8 of the Treaty of Establishment and the Inheritance Rules of Public International Law. The possession of dual or plural nationality is recognized by our domestic law - (See, inter alia, s.7 of Law 43/67).

Under s. 7 (1) of the Republic of Cyprus Citizenship Law, 1967, a citizen of the Republic who is also a national of any foreign country can, when of age and full capacity, make a declaration of renunciation of citizenship of the Republic and thereby he ceases to be a citizen of the Republic.

The present applicant has not renunciated her Cyprus nationality. She is and at the material time was a citizen of the Republic of Cyprus. She may be also a citizen of the United Kingdom. The fact that a citizen possesses double nationality makes no difference to his position in Cyprus as he is in exactly the same position from an internal point of view - *(Moschovakis* v. *The Republic,* (1974) 3 C.L.R. 79).

Under Article 3 of the Hague Convention a person possessing two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

The applicant did not discharge the burden cast on her to bring herself within any of the exemptions set out in the proviso to s. 5 (2) (c) of the Income Tax Laws, 1961-1969. In view of the foregoing the first ground is untenable.

(b) *INTEREST*

It was submitted by counsel for the applicant that the Law applicable with regard to payment of interest on income tax is s. 34 (2) of Law 53/63, as amended by Law 61/69; that s. 42(2) of Law 4/78, as amended by Laws 23/78 and 41/79, do not apply for the years of assessment 1975(74) and. 1974(73); that s. 34 (2) of Law 53/63, as

amended by Law 61/69, provides for payment of interest only in the cases of wilful default or fraud. The taxpayer in this case was neither guilty of wilful default nor fraud and, therefore, she is not by law required to pay any interest. The application of s. 42 (2) of Law 4/78, as amended, provides for payment of interest in the case of «αδικαιολόγητος παράλειψις» ("unjustifiable omission") on the part of the taxpayer. Interest is taxation and retrospective imposition of interest is repugnant to the provisions of Art. 24.3 of the Constitution, and finally it was not open to the Commissioner to find that the delay in the assessment was due to unjustifiable omission (αδικαιολόγητος παράλειψις) of the taxpayer.

"Interest" has been variously judicially defined as payment by time for the use of money *(Bennet* v. *Ogston (Inspector of Taxes),* [1930] 15 T.C. 374, 379, per Rowlatt, J.), compensation for delay in payment *(Bond* v. *Barrow Haematite Steel Co.,* [1902] 1 Ch. 353, 363, per Farwell, J.), recompense to the creditor for being deprived of the use of his money *(Schulze* v. *Bensted (Surveyor of Taxes),* 7 T. C. 30, 33; *Riches* v. *Westminster Bank Ltd.,* [1947] 1 All E. R. 469, at 472). Lord Wright in *Riches* case at p. 472 said:-

> "The general idea is that he is entitled to compensation for the deprivation. From that point of view it would seem immaterial whether the money was due to him under a contract, express or implied, or a statute, or whether the money was due for any other reason in law. In either case the money was due to him and was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute or was unliquidated and claimable under the Act as in the present case".

In the Canadian case *Re Farm Security Act 1944,* (1947) S.C.R. 394, Rand, J., at p. 411, said:-

> "Interest is, in general terms, the return or compensation for the use or retention by one person of a

sum of money belonging to, in a colloquial sense, or owned to, another".

Relevant also is the definition of "interest" in the Interest Law, 1977 (No. 2/77) that runs as follows:-

«Τόκος» σημαίνει την αμοιβήν ή αποζημίωσιν δια την χρήσιν ή διακράτησιν υφ' ενός προσώπου χρηματικού κεφαλαίου ανήκοντος ή οφειλομένου εις έτερον πρόσωπον και οιονδήποτε ποσόν, υπό μορφήν δικαιώματος, επιβαρύνσεως ή εξόδων ή οιανδήποτε άλλην μορφήν, πέραν του κεφαλαίου, πληρωτέον εις τον δικαιούχον του χρηματικού κεφαλαίου επ' ανταλλάγματι ή εν σχέσει προς την χρήσιν ή διακράτησιν του χρηματικού κεφαλαίου, αλλά δεν περιλαμβάνει ποσά άτινα νομίμως επιβάλλονται συμφώνως προς τας διατάξεις του περί Τοκιστών Νόμου του 1962 ή συμφώνως προς τας διατάξεις του περί Ελέγχου Ενοικιαγοράς και Πωλήσεως επί Πιστώσει και Μισθώσεως Ιδιοκτησίας Νόμου του 1966 υπό τινος τοκιστού ή διαθέτου, αναλόγως της περιπτώσεως, δια ενοίκια και δικαιώματα ενοικιαγοράς, έξοδα, επιβαρύνσεις ή δαπάνας».

"'Interest' means the remuneration or compensation for the use or detention by a person of money capital belonging or due to another person and includes any amount, in the form of fees, charges or costs or otherwise, in excess of the capital, payable to the person entitled to the capital in consideration of or in relation to the use or detention of the money capital, but does not include any amounts lawfully imposed under the provisions of the Money Lenders Law 1962 or under the provisions of The Hire Purchase, Credit Sale and Hiring of Property (Control) Law 1966 by a moneylender or disposer, as the case may be, in respect of rental and Hire Purchase Fees, costs, charges or expenses."

It has frequently been held in relation to various taxing Acts that the word "interest" is not necessarily to be taken as a techinal term, and that it is frequently used in such Acts in a popular sense - *(Craig v. Federal Commissioner of Taxation*, (1945) 70 C.L.R. 441, per Latham, C. J., at p. 446).

"Interest" in Law 61/69 and in the Assessment and Collection of Taxes Law, No. 4/78 (23/78 and 41/79) is not a word of art but bears its popular sense. The statutory provisions about interest in the aforesaid law are a move for the avoidance of loss to the State by unjustifiable omission of the taxpayer, causing delay in making an assessment.

The tax is quantified under the relevant legislation. The nature of interest, as set out hereinabove, clearly takes it out of the ambit of "tax". Interest in these taxing laws is neither tax nor penalty. Therefore, the constitutional provision prohibiting imposition retrospectively of tax is not applicable.

Section 34(2) of the Taxes (Quantifying and Recovery) Law, 1963, as amended by s. 16 of Law 61/69, provides:-

> "Where the delay in making an assessment is due to taxpayer's wilful default or fraud, interest at the rate of 6% shall be payable from the first day of December of the year to which the assessment relates irrespective of the year in which such assessment was actually made".

Section 42(2) of Law 4/78, as amended by Law 23/78, reads:-

> "42.-(1) .....
>
> (2) Οσάκις η καθυστέρησις εις την διενέργειαν βεβαιώσεως οφείλεται εις αδικαιολόγητον παράλειψιν του φορολογουμένου, καταβάλλεται τόκος προς εννέα τοις εκατόν ετησίως από της πρώτης ημέρας του Δεκεμβρίου, του έτους εις το οποίον αναφέρεται η βεβαίωσις, ανεξαρτήτως του έτους εν τω οποίω όντως εγένετο η τοιαύτη βεβαίωσις».
>
> ("Whenever the delay in making an assessment is due to a taxpayer's unjustifiable omission, interest at the rate of 9% per annum shall be payable from the first day of December of the year to which the assessment relates irrespective of the year in which such assessment was actually made").

Law 4/78 came into operation on 1.1.78. It is a funda-

mental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the law, or arises by necessary and distinct implication.

The proviso to subsection (2) of s.42 reads:-

> "Provided that interest payable with regard to any year of assessment preceding the year of assessment beginning on the 1st January, 1978, shall be at the rate of 6% per annum."

The language of the said proviso, which is part and parcel of the statutory provision for payment of interest, demands that the law must be construed as to have a retrospective operation. Furthermore the rule against the retrospective effect of statutes is not a rigid or inflexible rule but is one to be applied always in the light of the language of the statute and the subject-matter with which the statute is dealing - *(Carson* v. *Carson,* [1964] 1 W.L.R. 511).

For interest to be payable there must be unjustifiable omission. "Omission" means a failure to give any notice, make any return, produce or furnish any document or other information required by or under the law. The omission must be unjustifiable. A distinction must be made between unjustifiable and unreasonable. It is upon the Administration to determine, in each particular case, subject to judicial review by this Court, whether an omission is unjustifiable or not.

In the circumstances of this case, as explained earlier on in this judgment, it was reasonably open to the Commissioner to find that the delay in the assessment was due to the unjustifiable omission of the taxpayer.

In view of the aforesaid this recourse fails. It is hereby dismissed with no order as to costs.

Recourse dismissed.
No order as to costs.