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The European Convention On Human Rights Act, 2003

1. The European Convention On Human Rights Act, 2003 Note for Information - [From Tax Memo 30/2003:10/11/2003]

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Background

What is it?

The European Convention for the Protection of Human Rights and Fundamental Freedoms is a binding treaty of the Council of Europe. It protects fundamental, civil and political rights and freedoms such as to the right to life, liberty and security, the right to a fair trial (Article 6) and the right to freedom of thought, expression and assembly.

When Ratified?

Ireland was one of the original signatories of the Convention, which in September 1953 was formally ratified in Ireland and became binding on the State.

The Present Position

Because, under our Constitution the only law making authority is the Oireachtas, the Convention has been law *for* Ireland but not *in* Ireland. Thus, if a person had wanted to vindicate a right under the Convention they would first have had to exhaust all possible remedies under our national law, before going on to plead their case before the European Court of Human Rights in Strasbourg.

The Position under the New Act

The enactment of the European Convention on Human Rights Act, 2003 will make rights under the Convention enforceable in Irish courts in certain circumstances.

Enactment of the European Convention on Human Rights Act, 2003

The Act Itself

This Act was signed into law on the 30th of June 2003 and its provisions will come into effect on the 31st of December 2003. The Act does not incorporate the substance of the Convention into Irish law. The Act gives further effect (subject to constitutional provisions) to the European Convention on Human Rights and Fundamental Freedoms together with its associated protocols. The Act adopts what is known as the ‘interpretative model’ of incorporation.

Purpose of the Act

The Act seeks to ensure that the courts in interpreting and applying any statutory provision or rule of law shall, as so far as possible, do so in a manner which is compatible with the obligations of the State under the Convention and its protocols. The Act imposes on all Government agencies and State agencies a requirement to perform functions in a manner compatible with our obligations under the Convention.

Effect of the Act

It is important to emphasise that current statute law including revenue legislation remains in full force and effect. It would not be sufficient for a taxpayer or agent to claim, for example, that penalties should not be paid because they considered that a particular penalty provision in our legislation infringed the provisions of the Convention. In those circumstances, under the Act, a citizen may bring an action in the courts seeking a declaration that the particular statutory provision or rule of law is incompatible with the State’s obligations under the Convention. The Act also provides, however, that if such a declaration of incompatibility were given, the statutory provision would remain in place and it would be a matter for the Government to consider what steps should be taken to remedy the particular incompatibility in question. There is provision for seeking damages in certain situations. The legislation also preserves the right of individual petition to the European Court of Human Rights.

The Position in a Comparable Jurisdiction

A similar Act, the 1998 Human Rights Act, was enacted in Great Britain and came into force there in Oct 2000. Since then there have been a number of challenges under that Act to aspects of their Revenue law – in particular under Article 6 of the Convention, relying on earlier interpretations of that Article by the European Court of Human Rights. Some of these issues are still ongoing and their outcome may in due course have implications for aspects of our work also. This is being kept under observation.

Queries

Meanwhile any specific queries relating to the applicability of the European Convention of Human Rights Act or the Convention itself may be addressed to OPED or the Office of the Revenue Solicitor.

2. European Convention on Human Rights Act, 2003 Revenue Position - [From OI 2005 No. 075: 01/07/2005]

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Background

The foregoing memo was issued in November 2003 to advise staff of the enactment in the Oireachtas of the European Convention on Human Rights Act, 2003 and of its implications for Revenue.

The Issue

There have been reports of an increasing tendency on the part of some practitioners in particular cases to say that Revenue may not proceed in those cases due to Revenue legislation being incompatible with the European Convention on Human Rights or that Revenue practices or procedures in the handling of those cases offend against that code.

The Present Position

This instruction is being issued to assure staff that our legal advice is, that current legislation does comply with the principles laid down in the Convention. Revenue policies and procedures, if implemented in accordance with the appropriate authorisations, instructions and safeguards also comply. Revenue will also ensure all new legislation, policies and procedures are compatible with the Convention.

A claim that Revenue is in breach of its obligations under the ECHR Act 2003 should not be allowed to hold up the progress of a case in the normal way. However, if the claim is sustained by the taxpayer or agent the matter should be reported firstly to the Office of the Revenue Solicitor. That Office will provide advice on the Convention and will confirm whether in the particular circumstances there appears to be a case to answer or not. A draft written response to the taxpayer or agent may be submitted to the Office of the Revenue Solicitor for approval, if required.

Conclusion

The position therefore continues to be that current Revenue legislation remains in full force and effect. If a person wishes to challenge Revenue on its application of the law, they may do so by bringing an action in the Irish courts seeking a declaration that a particular provision, policy or procedure **as applied to them** infringes their rights and is therefore incompatible with the State's obligations under the law, the Irish Constitution or European Convention on Human Rights.

[Additional Note: See e-Brief No 15/2008 [re Deceased Taxpayers](#)]