

EU Issues – State Aids and Treaty Freedoms

1. Introduction

The purpose of this paper is to provide an overview of court cases at EU level involving State Aids, Treaty Freedoms and Infringements in which Ireland has a particular interest.

2. State Aid Cases

- Ireland v Commission of the European Communities Case T-50/06
- The Commission opened infringement proceedings in 2003 by seeking information about Irish pension taxation rules. While we understand that the action is suspended, the Commission raised a minor issue with one aspect of the measures introduced in the Finance Act 2005, which we expect to resolve over the coming months. Ireland will only grant tax relief on pension contributions to migrant workers where the worker already obtained tax relief in his home country before coming to Ireland. Legal advice has just been received from the Office of the Attorney General and is being examined.

3. Infringements

- Case no. 2005/2427 - Certain income derived from patent royalties
- Case – No 2005/4950 – Tax treatment of Investment Income from UK and other MS Investment Income
- Case - No 2005/2430 – Donations to approved bodies
- Case No. – 2004/4084 – VAT treatment of services provided by Public Bodies
- Case No. 2006/2246 – VAT treatment of services received by Public Bodies from other Member States
- Case No 2006/4608 – VAT treatment of bad debts arising under hire purchase agreements involving finance companies.

4. ECJ Cases

There are 11 current European Court of Justice (ECJ) cases on the tax side where Ireland has intervened/made observations to the European Court. Before intervening in a European Court of Justice Case, Government approval is required so a Memoranda seeking leave to intervene in these cases have already been brought to Cabinet.

These cases break down as 4 direct tax cases and 7 indirect tax cases.

The direct tax cases are:

- C-374/04 Test Claimants in Class IV of the ACT Group Litigation V Commissioners of the UK Inland Revenue
- C-386/04 Centro di Musicologia Walter Stauffer V Finanzamt München für Körperschaften

- C-446/04 FII Group Litigation V Commissioners of the UK Inland Revenue
- C-427/05 Agenzia delle Entrate - Ufficio di Genova 1 V Porto Antico di Genova Spa

The indirect tax cases are:

- C-369/04 Hutchison 3G UK Ltd
- C-409/04 Teleos (UK)
- C-184/05 TwoH International (NL)
- C-277/05 Societe Thermale d'Eugenie (FR)
- C-455/05 Velvet & Steel (G)
- C-62/06 Fazenda Publica (Alfandega de Setubal) v Z.F. Zefeser Importacao e Exportacao de Produtos Alimentares, Ld.
- C-185/06 British Telecommunications

The Chief State Solicitors Office has recently forwarded papers in relation to a Court case on the VAT side involving Menolly Homes and Viking Construction v. The Attorney General - The High Court 2004/1389P. Effectively, the Plaintiffs argue that Financial Resolutions are not constitutional without the relevant primary legislation in place, i.e. the Finance Act. The case is ongoing.

There are three ECJ cases on the International Tax Side in which Ireland has intervened and the ECJ has given its Judgement in the last 12 months. These are:

- C-446/03 - Marks & Spencer plc v David Halsey (Her Majesty's Inspector of Taxes);
- Case C-533/03 - European Commission V Council of the European Union [Legal Base Issue]; and
- C-196/04 - Cadbury Schweppes V UK Inland Revenue.

5. Conclusion

The TSG may wish to discuss these court cases further.