



EU Tax Law

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Three Fundamental Principles

- • Community law has a direct effect in the Member States and consequently European citizens may rely directly on Community provisions before their national courts (Van Gend & Loos C-26/62);
- • The primacy of Community law, EU law overrides domestic law (The Costa judgment C-6/64);
- • The liability of a Member State to individuals for damage caused to them by an infringement of Community law by that State (Francovich and Others C-6/90 & C-9/90).




Three Fundamental Principles – Reaching Out to Res Judicata...

- The principle of state liability applies to Courts of last instance as well - (Köbler v Republik Österreich Case C-224/01);
- The principle of cooperation arising from Article 10 EC imposes on an administrative body an obligation to review a final administrative decision in breach of EU Law (Kühne & Heitz - C-453/00);
- Art. 10 EC requires national court to ascertain whether legislation which is clearly incompatible with Community law, such as that on which the fee assessments at issue in the main proceedings are based, constitutes manifest unlawfulness within the meaning of the national law concerned. If that is the case, it is for the national court to draw the necessary conclusions under its national law with regard to the withdrawal of those assessments (i-21 and Arcor C-392/04 and C-422/04)



Reaching Out ... to Malta (i)

- ECJ pronouncements are influencing the evolution of Maltese tax law, *some* topical issues...
- Manninen Case (C-319/02) – Challenge to Finnish Imputation System.
- Finnish Imputation System similar to Maltese Imputation System but Maltese UR provides for Relief for Underlying Tax.



Reaching Out ... to Malta (ii)

- Manninen Case (C-319/02) - 'Articles 56 EC and 58 EC preclude national legislation whereby the entitlement of a fully-taxable person in a Member State to a tax credit on dividends paid to him by limited companies, which offsets the corporation tax due by those companies against the tax due from the shareholder by way of income tax on revenue from capital, is excluded where those companies are not established in that State.'
- The amendments made to Article 82 of Cap. 123 by Act II of 2007 (art. 20) which extended the purview of the application of unilateral relief to individuals were influenced by the ECJ decision in Manninen.



Reaching Out ... to Malta (iii)

- Other ECJ Pronouncements bring to mind Maltese realities...
- The Schwarz Case (Case C-76/05) - 'Where taxpayers of a Member State send their children to a school situated in another Member State the financing of which is essentially from private funds, Article 49 EC must be interpreted as precluding legislation of a Member State which allows taxpayers to claim as special expenses conferring a right to a reduction in income tax the payment of school fees to certain private schools established in national territory, but generally excludes that possibility in relation to school fees paid to a private school established in another Member State...' – Art. 14B ITA & Schools named by Minister.



Reaching Out ... to Malta (iv)

- Joined Cases C-283/06 and C-312/06 (The ‘HIPA Case’);
- Banca Popolare di Cremona v Agenzia Entrate Ufficio Cremona, Case C-475/03 (The IRAP Case);
- On 6th Directive – Extra VAT Nulla VAT.
- The Fifth Schedule to Cap. 382 of the Laws of Malta and Part G of the Annex includes an Excise tax chargeable on mobile telephony services



ECJ Pronouncements are also a source of taxpayer protection...

- The Principle of Proportionality - Molenheide Garage v. Belgium (C-286/94);
- Rules imposing charges of taxpayer must be clear & precise - SA Gondrand Frères (Emmentaler Cheese Case) (C-169/80);
- Protection of legitimate expectations, prohibition of retrospective legislation, protection of vested rights (INZO v. Belgium C-110/94).



Maltese Realities...

- Very Efficient and Knowledgeable International Tax Unit but...
- Arbitrary Draconian Penalties...
- No Effective Means of Judicial Review...
- No Quasi-Judicial Means to Challenge Rulings & Technical Opinions in Income Tax...
- Retrospective Legislation...



Upgrading to ECJ Standards

- Legislative Intervention;
- Judicial Intervention;
- Education.



Legislative Intervention

- Manninen seems to set some form of precedent;
- EU Tax Law experts to review our Laws in the light of evolving case law;
- Some sort of pre-emptive *autotutela* by Parliament itself.



Judicial Intervention

- Traumatic, Unpredictable, Undesirable...
- But our Courts have fared extremely well...
- Without referring to ECJ pronouncements Caruana like INZO, Pig Breeding like Paktanak (ECtHR)...
- Several topical issues in front of our Courts... Robert Engelbrecht (Case C-262/97) principles have arisen in pending Court of Appeal Case.
- Several references to ECJ dicta in VAT Appeals...
- No requests for preliminary rulings so far.