

## **IFS – TAXATION AND HUMAN RIGHTS**

There was a time when mentioning taxation and human rights in the same breath produced a reaction of astonishment on the part of the audience. The perception was that human rights were concerned with torture, extra-judicial executions and forced labour, rather than with taxation (which usually – but not always – involves none of these). Increasingly, however, the link is being made and the reaction of the audience is no longer one of astonishment.

Human rights law is not simply concerned with the egregious breaches of individual rights: more broadly, it is concerned with limits on what a government can do to its nationals, its residents and others affected by its decisions. Once one recalls that the department of government with which most people have most contact on a regular basis is the revenue department, the link between taxation and human rights becomes self apparent. That being said, the protection of human rights in the field of taxation has not exactly advanced by leaps and bounds. In some countries a constitutional bill of rights has been applied to protect taxpayers, and in a few instances – Germany is perhaps the most notable – constitutional courts have struck down tax rules or actions of the revenue authority. In recent years there has also been a trend to enact codes of taxpayers' rights (and sometimes obligations) in the tax legislation itself or in a taxpayers' charter or taxpayers' bill of rights. This process is certainly gaining momentum, with countries such as Italy and Spain enacting such legislation in recent years.

At the international level, most human rights conventions were adopted without much thought being given to fiscal issues. The European Convention on Human Rights, dating from the 1950's, was adopted without any particular consideration of tax matters (as an examination

of the *travaux préparatoires* to the Convention show). However, the European Convention has been applied in an increasing number of tax cases both before the European Convention's own Court in Strasbourg, and before national courts which have been called upon to apply the Convention. The Strasbourg Court has not shown itself to be particularly assiduous in its concern for taxpayers, but there have been some positive developments.

On the one hand, the European Court of Human Rights has held that ordinary tax disputes do not benefit from the guarantee of a right to a fair trial under Article 6 of the Convention, and the Court has frequently recognised the "wide margin of appreciation" enjoyed by states in enacting tax legislation. Thus, for example, there is no right under the Convention to the determination of a tax case within a reasonable time; and, recently, the Court held that it was not discriminatory to deny an exemption from inheritance tax to two siblings living together as a family unit, while such exemption would have applied if they had been a married couple (or a homosexual couple in a registered civil partnership).

On the other hand, the Court has now decided that virtually all tax-geared penalties should be regarded as "criminal charges" for the purposes of the Convention, so that the penalty hearing must be concluded within a reasonable time, there is a right to full information about the charges which may lead to the penalty, and there is an (albeit limited) right to legal aid. Equally, discriminatory tax legislation has been struck down on several occasions, and the right to privacy in tax matters has been upheld.

As revenue authorities seek and acquire more extensive powers (see, for example, the results of the Powers Review in the United Kingdom), these safeguards become more and more

important. It also becomes more important that tax advisers are aware of the rights of their clients when seeking to advise them. An example is the right to silence in the context of a criminal investigation (which, as explained, will include an investigation which may lead to a tax-geared penalty). It may not always be advisable for a client to exercise the right to silence and refuse to supply information to the revenue authority: nevertheless, it is important to be aware that such a right exists.

The starting perception is that human rights are concerned with disappearances, executions and torture. However, as these extreme breaches of rights become (thankfully) rarer in most countries, acts of government which may make the life of the ordinary citizen unbearable or even just unacceptable, are being recognised as worthy of intervention by courts applying human rights norms. We are likely to see this trend continuing in future years.

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