COLLAS CRILL

Disclosure of trust documents to a non-beneficiary

OCTOBER 2015

H A PATEL & K PATEL (A PARTNERSHIP) V HMRC P2014] UKFTT 167 TRUSTS

The First-tier Tribunal of England and Wales has not accepted the settlors' / protectors' position that they do not possess or control the information and documents requested by HMRC despite the trustee refusing to disclose such information to a non-beneficiary.

The decision demonstrates a possible ignorance, or disregard, for the niceties of trust law dealing with the disclosure of trust information and documentation.

Facts

The settlors and protectors of a trust were issued by HMRC with an information notice under the Finance Act 2008 ("FA 2008"), which extended to information and documents held by the trustee, and consequently appealed the notice to the First-tier Tribunal ("Tribunal").

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The FA 2008 requires a taxpayer to provide information or documents reasonably required for checking a taxpayer's tax position, but only if such information or documents are in the taxpayer's possession or power. The settlors argued that the trustee had both refused to hand over the relevant information and documentation and also did not take into consideration the settlor's wishes. Therefore, the taxpayers argued that such requested information and documents were not in their possession or under their control.

However, the Tribunal formed the opinion that it was clear the taxpayers had not made a serious effort to obtain the relevant information and documents and had passively accepted the trustee's refusal.

Furthermore, the Tribunal did not accept that the trustee did not consider the settlor's wishes when, previously, the trustee had complied with the lawful and reasonable requests of the settlor. It was on this basis that the Tribunal dismissed the appeal, it not being satisfied that, on the balance of probabilities, the information and documents were not in the taxpayers possession or under their control.

The Tribunal's decision was further influenced by two facts: (1) there was no evidence that it was unlawful or unreasonable for the trustee to refuse to provide the information or documents; and (2) the taxpayers had the power to appoint and remove trustees and, therefore, had the power to exert influence over the trustee.

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Comment

Even taking into consideration the facts which influenced the Tribunal's opinions, and there is no doubting from the facts that the settlors and the trustee could have had far more proactive dialogue, the decision demonstrates a possible ignorance, or disregard, for the niceties of law dealing with the disclosure of trust information and documentation. The official transcript of this case does not show that the taxpayers were also beneficiaries. The rights of beneficiaries, and the obligations that a trustee has to the beneficiaries, must be considered by a trustee when deciding whether to disclose trust information or documents to a non-beneficiary.

The fact that a third party, such as a settlor or protector, can appoint and remove a trustee, and consequently influence, or perhaps blackmail is more appropriate, a trustee into making a decision, is not proper grounds for the trustee to make disclosure to third parties. The Tribunal's decision demonstrates that trustees, in today's environment, have to live in a practical world maintaining an open, and continuous, dialogue with beneficiaries, but also looking for practical solutions. Trustees administering trusts with outdated terms should consider (if possible) amending the terms to allow the trustee flexibility for the current administrative environment.

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