

Ariel v Halabi [2018]JRC006A

April 2018

Background

H was declared bankrupt in 2010 and following a letter of request from the High Court of England and Wales, his trustee in bankruptcy (**TIB**) was recognised in Jersey following application to the Royal Court. As a result, the TIB was vested with appropriate powers to be exercised in Jersey (**Recognition Order**).

This order empowered the TIB to obtain information and documents from certain parties in relation to various trusts and other entities only for the purposes of administering H's estate, "*save with the leave of this court*". The TIB also received certain documents pursuant to a consent order (**Consent Order**) in respect of certain trust proceedings to which he was joined and which stated that the information should only be used for such proceedings.

HMRC issued an information notice which required the TIB to produce all of the information which he had received under the Recognition Order and the Consent Order. HMRC contended that information regarding the various Jersey trusts was relevant to H's tax position. This placed the TIB in a dilemma: to disclose the information would mean he was in contempt of court (which was confirmed by the Court) since he would be acting in breach of the Recognition Order and the Consent Order, and not to disclose the information would place the TIB in breach of the Notice, which would result in financial penalties.

The case is going to appeal in May 2018 (H is appealing). We will report on the outcome of the appeal in our next update.

Decision

The Court confirmed that it had inherent jurisdiction to vary its own orders and that to allow the information to be passed to HMRC for the purposes of its investigation of H's tax position, did not amount to indirect enforcement of a foreign tax law.

The Court also stated that where there was an alternative route to obtain the information, here, pursuant to the Tax Information Exchange Agreement (**TIEA**) between Jersey and the United Kingdom, the Court should refuse to grant leave under or vary its orders to enable the trustee to comply with the notice.

In the circumstances of this case, however, the Court ruled that it was appropriate to grant consent under the Recognition Order and to vary the Consent Order so as to permit the trustee to comply with the Notice, as the material which HMRC required dated back to 1993, and the TIEA did not permit the exchange of material dating prior to 2010.