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Offshore trusts: Limits of the revenue rule in Jersey (Re Mattas)

FEBRUARY 2023

Overview - Private Client analysis

A trustee of a Jersey law trust sought a blessing of its decisions to challenge a joint tax liability imposed on it and a French-resident beneficiary by the French Tax Authority (the FTA) and to provide security for the challenge. It is a long-established principle of English and Jersey private international law that the home court will not enforce, directly or indirectly, a foreign tax or penal liability. However, the Royal Court of Jersey held that as the trustee had primary liability, it was arguable that the beneficiary would have a right of indemnity or reimbursement from the trustee on payment, whether as a matter of French law, Jersey customary law or the law of unjust enrichment. While it was in the best interests of all the beneficiaries to challenge the liability, the court declined to approve provision of security so as to keep open the argument that the indemnity would not ultimately be enforced.

Equiom Trust (C.I.) Ltd v Mattas and others [2022] JRC 288

What are the practical implications of this case?

A key rationale for the use of offshore jurisdictions is that they enjoy sovereignty in relation to fiscal and taxation law and policy. This is, in part, underpinned by and expressed in the well-established principle of private international law applicable in Jersey and encapsulated in Rule 20 of Dicey & Morris that the courts have no jurisdiction to entertain, directly or indirectly, an action for the enforcement or a revenue law of a foreign state. In the context of trusts, the courts have historically recognised a restricted set of exceptions in which a trustee may properly pay a foreign tax liability.

However, this case makes clear that the so-called ‘revenue rule’ does not automatically preclude a trustee from taking steps in a foreign jurisdiction either to reduce a tax penalty or look to have it cancelled. Rather, it is important to look at matters in the round and consider whether taking such steps would be in the interests of the beneficiaries as a whole. In this case, if the French-resident beneficiary settled the tax penalty, it was recognised that it was arguable that liability for payment would ultimately fall upon the trustee and the trust assets. On the other hand, the court expressly kept open for another day the argument that a claim to reimbursement for a foreign tax liability would infringe the revenue rule.

What was the background?

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A Jersey will trust established in 1979 provided for the income to be paid equally to the testator's two nephews, and upon the death of the surviving nephew, for the capital to be paid to the Greek Government for the establishment of a scholarship fund. The construction of the provisions in relation to the capital required determination by the court.

The FTA deemed the French-resident nephew to be a settlor of the trust and subject to wealth tax on its assets despite his status as an income beneficiary. It levied a default charge primarily on the Jersey trustee for which the nephew was jointly and severally liable. In late 2022, the FTA began enforcement measures against the nephew's bank account. The Jersey trustee applied to the Royal Court of Jersey for urgent approval to challenge the liability, including through the French courts as well as to provide security to the FTA, which was a pre-condition to mounting the challenge. The trustee also sought a variation of the terms of the trust in order to provide it with express administrative powers to do so.

As a preliminary issue, the court determined that formal service through the Foreign, Commonwealth and Development Office pursuant to the State Immunity Act 1978 (as applied to Jersey) was not required in relation to the Greek Government on the basis that the proceedings should be properly characterised as in rem rather than in personam. It therefore ordered substituted service.

Shortly before the hearing of the trustee's blessing application, the nephew had initiated his own challenge providing security from his own resources. The trustee therefore applied for approval of its decision to bring a parallel challenge and to substitute trust assets as security. The applications were opposed by the Greek Government and the Attorney General, representing the interests of charity.

What did the court decide?

The court blessed the trustee's decision to challenge the levy, noting the importance of the trustee having control over any challenge given that primary responsibility for payment lay with the trustee. It was arguable (whether as a matter of French law, the Jersey customary law of guarantee, or on the basis of unjust enrichment) that the nephew would have an enforceable claim to recoup any payment from the trustee in Jersey. A challenge was therefore in the interests of all beneficiaries, including those interested in the capital, as liability might ultimately fall on the trust assets.

However, the court declined to bless the trustee's decision in principle to use the capital of the trust fund to substitute trust assets as security. This was not necessary and the court considered that the best interests of the beneficiaries as a whole were better served by keeping open for the future the argument that the nephew's claim to reimbursement was unenforceable by the Jersey courts as a result of the revenue rule.

The court declined to vary the terms of the trust in light of Article 24(1) of the Trusts (Jersey) Law 1984 (as amended), which provides that a trustee has the same powers as a natural person acting as the beneficial owner of the trust property. The construction of the capital provisions of the trust was left to be determined at a separate hearing.

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Case details

Court: Royal Court of Jersey

Judge: Sir Michael Birt, Commissioner

Date of judgment: 16 December 2022

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