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Akash Nawbatt QC and Sebastian Purnell successfully defend JR challenge on behalf of HMRC: *R(PML) v HMRC*

In a judgment handed down on 7 April 2017 the High Court (Sir Ross Cranston) rejected the claimant's claim for judicial review requiring HMRC to destroy work product derived from information provided pursuant to an allegedly invalid Schedule 36 Finance Act 2008 ("Sch.36") Information Notice.

The judgment provides important guidance on the narrow scope of the jurisdiction of the FTT in an appeal against penalties for failure to comply with Information Notices and the circumstances in which the High Court will order delivery up of work product derived from documentation which is alleged to have been unlawfully obtained.

Background

In the course of an ongoing enquiry into whether the claimant is a managed service company provider, HMRC issued an Information Notice to the claimant under Sch.36, as a result of which the claimant provided HMRC with documents. Penalties were subsequently imposed by HMRC for failure to comply fully with the Information Notice.

In an appeal against those penalties, the FTT considered that the underlying Information Notice had in fact been invalid and therefore that the penalties could not stand (PML Accounting Ltd v Revenue and Customs Commissioners [2015] UKFTT 440 (TC)). The penalties were set aside. HMRC returned the documents it had obtained from the claimant and undertook not to rely on them. The claimants subsequently brought a claim for judicial review requiring HMRC to i) destroy the information provided pursuant to the Information Notice (together with any work product derived wholly or partly from it); and ii) undertake not to make use of the information and work product for any future purpose.

The judgment

The High Court rejected the claimant's claim for judicial review:

- The statutory regime applying to Information Notices precluded the claimant from arguing that the validity of the underlying Information Notice had been resolved as a matter of law by the FTT (paragraph 60).

- The parties had in fact compromised any issues relating to the Information Notice prior to the FTT hearing by virtue of an agreement under s.54 Taxes Management Act 1970, which compromise agreement was final. In addressing on its own initiative the validity of the underlying Information Notice, the FTT had in effect reopened a final decision, which it had no jurisdiction to do (paragraphs 60 and 62).

- The narrow legal issue before the FTT had been whether the penalties were payable under paragraphs 39 and 40 of Sch.36, not whether the underlying Information Notice had been valid – see in particular Birkett v Commissioners for Her Majesty's Revenue and Customs [2017] UKUT 89 (TCC) (paragraphs 66 and 67).

- There had been no public law illegality on HMRC's part. The FTT's decision said nothing about work product and the claimant failed to identify on what basis HMRC was legally obliged to destroy the work product, or to provide the undertakings requested (paragraph 74).

- Breach of legitimate expectation was not arguable. The FTT had not ordered HMRC to return the information as it properly recognised it did not have the jurisdiction to do so (paragraph 77).

- The claimant's claim that it had sufficient interest to rely on the breaches of its clients' Article 8 ECHR rights was not arguable. The FTT held that the issuing of the Information Notice had not breached the claimant's Article 8 rights. Such interference would in any event be justified under Article 8(2) in the circumstances of the ongoing criminal and civil investigations into the claimant's business (paragraph 81).

- Even had the claimant established the grounds of judicial review advanced, the court would have refused relief in order to avoid the risk of future satellite litigation about the origin of the work product derived from, amongst other sources, the Information Notice material (paragraphs 89, 94, and 95).

Akash Nawbatt QC and Sebastian Purnell appeared on behalf of the successful Respondent, instructed by the General Counsel and Solicitor to HMRC. To read the full judgment, please click here.

Akash's principal areas of practice are tax and employment law. He is instructed in complex and high value litigation, and has appeared before the Tax Tribunals, the High Court, Court of Appeal, House of Lords and the Supreme Court. Prior to his appointment as QC, both Chambers & Partners and Legal 500 ranked him as a leading junior in tax and employment.

Seb appears regularly in the First-tier Tribunal, Upper Tribunal and High Court in a broad range of tax litigation encompassing statutory appeals and judicial review proceedings. He has particular expertise in tax litigation in a sports context. Seb is recommended by clients as "superb" and "a pleasure to deal with."

For more information on Akash's and Seb's latest case highlights, or Devereux's leading tax team, please contact our practice managers on 020 7353 7534 or email clerks@devchambers.co.uk.

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