

© Copyright 2024, vLex. All Rights Reserved.

Copy for use in the context of the business of the vLex customer only. Otherwise, distribution or reproduction is not permitted

# X v Comptroller of Revenue

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Le Cocq, Bailiff
<b>Judgment Date:</b>	21 December 2022
<b>Neutral Citation:</b>	[2022] JRC 290
<b>Reported In:</b>	2023 (1) JLR 69
<b>Court:</b>	Royal Court

**vLex Document Id:** VLEX-1038322930

**Link:** <https://justis.vlex.com/vid/x-v-comptroller-of-1038322930>

## Text

X  
and  
Comptroller of Revenue

[2022]JRC290

( Le Cocq, Bailiff):

ROYAL COURT

Taxation — exchange of tax information — provision by other persons of information about taxpayer — threshold conditions — information requested to be foreseeably relevant to tax investigation — sufficient nexus between investigation into taxpayer and wife and Jersey trusts of which wife beneficiary to justify issuing notice

Taxation — exchange of tax information — judicial review — leave granted to seek judicial review where notice arguably too wide — should be restricted to information foreseeably relevant to tax investigation

**Held**, ruling as follows:

(1) Leave to apply for judicial review would not be granted on the grounds of procedural impropriety or irrationality. The respondent was not required to carry out any trial or in-depth investigation into the Country A tax position. The Comptroller was entitled to take at face value the reasonable assertions made by the requesting country provided that reasonable questions asked by Jersey authorities had been satisfactorily answered. The respondent did not need to be satisfied that the information requested would be relevant to a tax investigation but merely that it might be relevant. There must accordingly be some *prima facie* connection between the information requested and the investigation but it did not have to be established that the two were in fact connected in a way which would benefit a tax investigation. In the light of the further information provided by and on behalf of the respondent and the JTC's belief that Y was the ultimate source of the funds in the trusts, there was a sufficient nexus between the investigation into the taxpayer and the applicant and the entities of which the applicant claimed to be settlor and beneficiary to justify the issuing of the notice. Even without the understanding put forward by JTC, an investigation into the affairs of a taxpayer would normally, where the taxpayer had accumulated significant wealth, extend to entities where individuals to whom the taxpayer might expect to be intimately related and have a common financial interest and connection ( paras. 28–34).

(2) The court was however concerned about the breadth of the notice. Certain parts of the notice were clearly relevant to the tax investigation but “all correspondence,” for example, was arguably too wide. There was at least a *prima facie* argument that the request had been granted in terms that were too wide. Leave to apply for judicial review would be granted on the sole ground that the notice was arguably too widely drawn and should be restricted to information that was foreseeably relevant to a tax investigation into Y ( paras. 35–36).

**Cases cited:**

- (1) *APEF Management Co. 5 Ltd. v. Tax Comptroller*, [2014 \(1\) JLR 100](#), considered.
- (2) *Haskell v. Comptroller of Taxes*, [2017 \(1\) JLR 230](#), considered.
- (3) *Stephan v. Comptroller of Taxes*, [\[2021\]JRC075](#); 2021 (1) JLR N [7], considered.

The applicant sought leave to bring judicial review proceedings.

Following a request from the competent authority of Country A, the respondent had issued a notice requiring JTC (Jersey) Ltd. (“JTC”) to produce certain tax information relating to the applicant, her husband (“Y”) and two trusts. The information to be provided included disclosure of all bank accounts held by the applicant and the trusts; copies of all bank statements for the applicant and the trusts; copies of all correspondence to and from the applicant; copies of all correspondence related to the trusts; and supporting documents and/or instructions for all transactions in which the applicant and/or the trusts were involved. The applicant was aware that Y was the subject of criminal proceedings in

Country A but she asserted that they were not tax related.

The applicant sought leave to bring judicial review proceedings in respect of the notice on the grounds of procedural unfairness and illegality/ irrationality. With regard to procedural unfairness, the applicant's complaint in essence was that the notice contained no reasons for the decision. The Deputy Director in Revenue Jersey subsequently provided significant further information as to the nature of the request from Country A and the respondent's consideration of it.

With regard to the ground of illegality/irrationality, it was argued that the scope of the notice must fit within reg. 1A of the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008, which provided in para. (1):

“(1) For the purposes of these Regulations ‘tax information’ means information that is foreseeably relevant to the administration and enforcement, in the case of the person who is the subject of a request, of the domestic laws of the third country whose competent authority is making the request concerning any tax listed in the third column in the Schedule opposite the entry for that third country, including information that is foreseeably relevant to—

- (a) the determination, assessment and collection of such taxes;
- (b) the recovery and enforcement of such taxes;
- (c) the recovery and enforcement of tax claims; or
- (d) the investigation or prosecution of tax matters.”

The applicant submitted that the notice demanded disclosure of a very broad range of information pertaining to the applicant and the trusts. She was a beneficiary of the trusts but Y was not and never had been. As the applicant and the trusts were not tax resident in Country A and as Y had never been a beneficiary of the trusts, it was arguable that the notice was a fishing expedition and that the decision to issue a notice in those terms was irrational.

JTC believed that Y was the original source of the funds in the entities that they administered. The applicant submitted that the trustee's opinion was immaterial.

### **Legislation construed:**

Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 (Official Consolidated Version, ch.17.850.30), reg. 1A: The relevant terms of this regulation are set out at para. 13.

reg. 16B(1): The relevant terms of this provision are set out at para. 27.

### **Text cited:**

OECD, *Convention on Mutual Administrative Assistance in Tax Matters*, arts. 4–5 (1988).

S.M. Baker for the applicant;

S.A. Meiklejohn for the respondent.

Bailiff

- 1 Le Cocq, This is an application by X (“the applicant”) for leave to bring a judicial review of a notice dated May 30th, 2022 (“the notice”) issued by the respondent requiring JTC (Jersey) Ltd. (“JTC”) to produce certain tax information relating to the applicant, her husband, Y, and two trusts known as the T Trust and the U Trust (“the trusts”) following a request to the respondent from the competent authority of Country A (“CAA”).
- 2 At the request of the parties, I agreed that the application for leave would be heard in private and although this judgment is not anonymized for the purposes of file and parties, if and to the extent it is issued and published in the normal way it will, subject to any further order of the court, then be anonymized.
- 3 The notice requires JTC to provide within thirty days tax information in respect of the persons and entities mentioned above for the period of April 1st, 2015 to March 31st, 2021 inclusive (therein defined as the period). The information to be provided is listed as follows:
  - “a. Copies of trust deeds and declarations;
  - b. Copies of amendments to the trusts deeds and declarations;
  - c. Name and address of the trusts' beneficiaries;
  - d. Name, address and account number of all bank accounts held by the trust, to include which trusts;
  - e. Listing of all other asset owned by the trusts;
  - f. Listing to include all investments made into the trusts since their creation, to include date, amount and source of funds;
  - g. Copies of the trusts' financial statements for the period;
  - h. Name, address and account number of all bank accounts held by the individuals, to include which individuals;
  - i. Copies of bank statements for the period;
  - j. Copies of all correspondence to and from the individuals;

k. Copies of all correspondence related to the trusts;

l. Supporting documents and/or instructions for all transactions during the period.”

- 4 The applicant brings her application for leave on two grounds, namely procedural unfairness (Ground 1), and illegality/irrationality (Ground 2).
- 5 With regard to procedural unfairness, the complaint in essence is that the notice contains no reasons for the decision beyond the fact that the respondent is satisfied that the request has been “validly constituted in accordance with the Tax Information Exchange Agreement with Country A.”
- 6 The applicant is aware that Y is the subject of criminal proceedings in Country A but asserts that they are not tax related. It is therefore assumed, for the purposes of the appellant's argument, that the tax investigation to which the notice pertains is distinct from the criminal proceedings facing Y in Country A.
- 7 A request for further information made by the applicant's advocates to the respondent met with a refusal to give any further information citing art. 9 of the Tax Information Exchange Agreement between Country A and Jersey which deals with the matter of confidentiality.
- 8 It is argued that in order to obtain any explanation as to why the respondent has issued the notice, it is necessary for the applicant to establish a *prima facie* case for leave for judicial review and for permission to be granted. In other words, the applicant must first show arguable grounds upon which the notice can be impugned before any substantive explanation for the decision giving rise to the notice can be given. It is argued that this circularity is unfair and that unfairness has been recognized by the court on other occasions (see *Stephan v. Comptroller of Taxes* (3) ( [\[2021\]JRC075](#), at para. 22)). It is therefore argued that the position that the applicant finds herself in is offensive to natural justice because she is being, in effect, excluded from the ability to challenge a legal process to which she is subjected. She cannot understand the decisions to which she and the trusts have been subjected and therefore cannot take comprehensive legal advice. She wishes, in effect, to argue that the provisions of art. 9 of the TIEA and the appropriate regulations under which the notice has been issued do not, taken together, create a bar that prevents the respondent from giving the reasons for its decision.
- 9 Whatever the force may be in such an argument, since the application for leave has been issued, an affidavit has been filed on the part of Mr. Luc Rochefort dated October 3rd, 2022. Mr. Rochefort signed the notice.
- 10 That affidavit contains significant further information as to the nature of the request from the CAA and the respondent's consideration of it. In essence, Mr. Rochefort, who is the Deputy Director in Revenue Jersey and is in effect the competent authority for the purposes of

exchange of tax information, deposes as follows:

- (i) The respondent received a request under the relevant TIEA on January 4th, 2022. That request was reviewed to ensure that it met the requirements of a valid request.
- (ii) The request explained that the applicant's spouse, Y, is a resident taxpayer of Country A and is currently under investigation for allegedly committing a tax fraud. The Securities and Exchange Board of Country A have issued an interim order restraining X from "buying, selling or dealing in the securities market."
- (iii) The request named the applicant together with Y as the beneficial owners of two companies in Country B and also as the settlor and beneficiary of two trust structures in Jersey, namely the trusts that are mentioned in the notice to JTC.
- (iv) The request also had stated that "For the purposes of investigating the source of funds and the subsequent utilisation of such funds by the individual and/or his family members and to determine, assess and for the collection of taxes from Y and/or from his family members under the Country A Act 1 and the Country A Act 2, the information requested was required."
- (v) The period during which information was sought is the period covered by the TIEA.
- (vi) The request had been examined to ensure the information requested was foreseeably relevant to the "determination, assessment, enforcement or collection of tax" as required both by the OECD's Model Convention and under the TIEA.
- (vii) Confirmation had been sought from the CAA as to whether the applicant was herself subject to their investigation and confirmation was received that she was not, but that the investigation has good reason to believe that the source of funds in the trusts came from Y and as such were potentially subject to Country A taxation.
- (viii) Information reported to Revenue Jersey under the common reporting standards was also considered and it indicated that with regard to some of the entities set out in the request Y had a current controlling interest or the applicant was involved. This included the T Trust, one of the entities referred to in the notice.

11 With regard to the refusal of the respondent to provide information prior to the issuing of the affidavit, Mr. Rochefort asserts that he is required to maintain the confidentiality set out in art. 9 of the TIEA and indeed generally under the Convention. At para. 29 of his affidavit, he cites the following:

"29. The confidentiality provisions of the TIEA are underpinned by guidance issued by the OECD for the Exchange of Information. Paragraph 2 in Article 26

of the OECD's Model Convention provides nearly identical wording to the TIEA's provisions as written in the paragraph above. The Model Convention wording is:

'Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above.'

30. The Model Convention's Commentary is the main resource for providing clarity to the Convention. The Commentary provides this guidance in the interpretation of the above: 'The confidentiality rules of paragraph 2 apply to all types of information received under paragraph 1, including both information provided in a request and information provided in response to a request.'

12 With regard to the second ground, that of illegality/irrationality, it is argued that the scope of the notice must fit within the requirements of reg. 1A of the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 ("the 2008 Regulations").

13 Regulation 1A of the 2008 Regulations is in the following terms:

**" 1A Tax information**

(1) For the purposes of these Regulations 'tax information' means information that is foreseeably relevant to the administration and enforcement, in the case of the person who is the subject of a request, of the domestic laws of the third country whose competent authority is making the request concerning any tax listed in the third column in the Schedule opposite the entry for that third country, including information that is foreseeably relevant to—

- (a) the determination, assessment and collection of such taxes;
- (b) the recovery and enforcement of such taxes;
- (c) the recovery and enforcement of tax claims; or
- (d) the investigation or prosecution of tax matters.

(2) Tax information may be—

- (a) information within an individual's knowledge or belief; or
- (b) information recorded in a document or any other record in any format, that a person has in his or her possession, custody or control."



- 14 The applicant submits that the notice demands disclosure of a very broad range of information pertaining to the applicant and to the trusts. She is a beneficiary of the trusts. Y, so she asserts, is not and has never been such a beneficiary. The information sought as set out above includes:
- (i) disclosure of all bank accounts held by the applicant and the trusts;
  - (ii) copies of all bank statements for the applicant and the trusts;
  - (iii) copies of all correspondence to and from the applicant;
  - (iv) copies of all correspondence related to the trusts; and
  - (v) supporting documents and/or instructions for all transactions in which the applicant and/or the trusts were involved.
- 15 It is asserted that because the applicant and the trusts were not tax resident in Country A and Y has never been a beneficiary of the trusts, it is arguable that the notice, because of its inclusion of the applicant and the trusts, is a fishing expedition. The decision to issue a notice in those terms was, so it is argued, irrational.
- 16 It is right that I observe that JTC, as trustee, has been in communication with the applicant's legal advisers and in an email have confirmed that they believed that Y was the original source of the funds in the entities that they administered. The applicant argues in response to that that the trustees' opinion is immaterial and of course may be wrong. It is the applicant's case that she is the settlor and indeed beneficiary of the entities. The mere assertion of the trustee is not a sufficient nexus between the taxpayer, Y, and the entities which are the subject of the notice.

### The law relating to applications for leave

- 17 In *Stephan v. Comptroller of Taxes* (3), Bailhache, Commr., of the taxpayer applicant for leave to make a judicial review application, said ( [\[2021\]JRC075](#), at para. 22):

“He has to show a *prima facie* case—an arguable case—that the competent authority has acted illegally, irrationally or with some impropriety such as would justify the grant of judicial review. In considering any application for leave, the court will have in mind, as Beloff, Commissioner, said, that this is an investigative process where the object is the gathering of information and not at that stage the taking of action necessarily adverse to the tax payer once it has been obtained, other than the invasion of privacy and any possible effect on the taxpayer's contractual relationships with service providers.”



18 The Commissioner went on to say ( *ibid.*, at para. 33):

“There is clear local authority to the effect that it is not the job of the Jersey Competent Authority to carry out a mini trial in order to establish the position of the requesting authority under its own law—see *Larsen* (no. 1) [2013] (2) JLR 499 at paragraph 197. At the same time, there is also some authority for the proposition that the requested authority must conduct—because it is reasonable to do so—a sufficient enquiry in an appropriate case so as to be satisfied that it would be proper to exercise these statutory powers conferred upon him. In many cases, given the quite regular exchanges between tax authorities of different countries, there will be no reason for the Competent Authority in Jersey to be unduly troubled by the request which has been received; but the position may be different where the domestic authority is put on notice of particular difficulties which have arisen in the requesting country.”

19 In *Haskell v. Comptroller of Taxes* (2), the court said this ( [2017 \(1\) JLR 230](#), at para. 34):

“The Law and the Regulations provide for the circumstances where the first respondent is able to give assistance to a requesting state, and a process for judicial review. It is true that there is an obligation on the first respondent to satisfy himself that he had jurisdiction to take the steps which he is taking in issuing a notice and/or in passing information to the requesting state, but it is equally true that there is a presumption of regularity. Until the taxpayer raises some reason why the first respondent is not acting lawfully, that presumption of regularity continues.”

20 And the court said ( *ibid.*, at para. 33):

“The duty of candour is triggered by the grant of leave or permission which itself demonstrates that a judicial review of the application is arguable, and it follows that there is then a duty to put before the court all the relevant facts and reasoning which underlie the decision under challenge ... The critical thing is that the public authority provides a comprehensive and rational account of its decision. Without that, the court cannot assess the legitimacy of the decision and there is no counterbalance to the possibility, which would otherwise exist, of administrative malpractice.”

### **The law relating to the notice**

21 The Government of Jersey and the Republic of Country A have entered into a Tax Information Exchange Agreement which is currently in force (“the TIEA”). Both jurisdictions are also signatories to the Convention on Mutual Administrative Assistance in Tax Matters (“the Convention”). It is the Convention and the 2008 Regulations that govern the administration of the TIEA.

22 The Convention provides that, at art. 4:

“The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.”

23 In art. 5, the Convention states:

“At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.”

24 This is to an extent mirrored in the 2008 Regulations cited above.

25 In *APEF Management Co. 5 Ltd. v. Comptroller of Taxes* (1), the court considered the meaning of what was “foreseeably relevant” and cited with approval the commentary at art. 26 of the Model Tax Convention in the following terms ([2014 \(1\) JLR 100](#), at para. 17):

“5. The main rule concerning the exchange of information is contained in the first sentence of the paragraph. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to secure the correct application of the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes of every kind and description imposed in these States even if, in the latter case, a particular Article of the Convention need not be applied. The standard of ‘foreseeable relevance’ is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in ‘fishing expeditions’ or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In the context of information exchange upon request, the standard requires that at the time a request is made there is a reasonable possibility that the requested information will be relevant; whether the information, once provided, actually proves to be relevant is immaterial. A request may therefore not be declined in cases where a definite assessment of the pertinence of the information to an ongoing investigation can only be made following the receipt of the information. The competent authorities should consult in situations in which the content of the request, the circumstances that led to the request, or the foreseeable relevance of requested information are not clear to the requested State. However, once the requesting State has provided an explanation as to the foreseeable relevance of the requested information, the requested State may not decline a request or withhold requested information because it believes that the information lacks relevance to the underlying investigation or examination. Where the requested State becomes aware of facts that call into question whether part of the information requested is foreseeably relevant, the competent authorities should consult and the requested State may ask the requesting State to clarify foreseeable relevance in the light of those facts. At the same time, paragraph 1

does not obligate the requested State to provide information in response to requests that are ‘fishing expeditions,’ *i.e.* speculative requests that have no apparent nexus to an open inquiry or investigation.”

26 The confidentiality provisions are provided for in art. 9 of the TIEA and are in the following terms:

“Any information received by a contracting party under this agreement shall be treated as confidential and may be disclosed only to persons or authorities ... in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement ... The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.”

27 Regulation 16B(1) of the 2008 Regulations provides as follows:

“(1) Information received by the competent authority for Jersey from the competent authority for a third country pursuant to a tax information exchange agreement shall be disclosed only to persons, and used only for the purposes, described in that agreement.”

## Conclusion

- 28 I cannot ignore the regulatory regime in which JTC operates in this Island and the fact that they are required to satisfy themselves as to the source of funds that they administer and whilst it is conceivable that their information in that regard is in error, *prima facie*, it is of significant weight that they appear to hold the view that Y is the ultimate source of the funds in the entities they administer.
- 29 One of the arguments put forward by the applicant is that the approach of the respondent is wrong because the respondent is worried about falling foul of international standards in the OECD to the extent that no appropriate weight is being given to the interests of the applicant. The Comptroller of Revenue is, so counsel for the applicant says, frightened of “having his homework marked.”
- 30 I did not detect anything in the correspondence or action of the respondent to justify such a description. It is entirely appropriate and indeed completely unsurprising that the competent authority in Jersey, the respondent, would be astute to ensure that the Island's obligations under the Conventions to which it is a party and specifically the TIEA would be met scrupulously. That does not mean that they are met carelessly but, if a request falls within, *prima facie*, the scope of the TIEA and, after suitable enquiry, the respondent is satisfied that the request is provided for by the TIEA, then it does not appear to me to be surprising

that a notice would issue and the terms of the TIEA be strictly adhered to.

- 31 The respondent is not required to carry out any trial or an in-depth investigation into the Country A tax position. The Comptroller is entitled to take at face value the reasonable assertions made by the requesting country provided that reasonable questions asked by Jersey authorities have been satisfactorily answered.
- 32 The respondent does not need to be satisfied that the information requested will be relevant to a tax investigation but merely that it “might be relevant.” There must accordingly be some *prima facie* connection between the information requested and the investigation but it does not have to be established that the two are in fact connected in a way which would benefit a tax investigation.
- 33 In the light of the further information provided by and on behalf of the respondent, and the expression of belief given by the trustee in this case (in the light of the fact that the trustee would be taken to know the source of funds that it holds on trust), in my view, there is a sufficient nexus between the investigation into the taxpayer and the applicant and the entities of which the applicant claims to be settlor and beneficiary, to justify the issuing of the notice, and I decline to give leave for judicial review on the grounds of procedural impropriety or irrationality.
- 34 Even without the understanding put forward by JTC, in my view, an investigation into the affairs of a taxpayer would normally, where the taxpayer has accumulated significant wealth, extend into entities where individuals to whom the taxpayer might expect to be intimately related and close to and have a common financial interest and connection.
- 35 I am, however, concerned about the breadth of the notice. Certain parts of the notice are clearly relevant to the tax investigation, but “all correspondence” seems to me to arguably be, for example, too wide. I do not make any final determination in that respect but it seems to me that there is at least a *prima facie* argument that the request has been granted in too wide terms.
- 36 In the circumstances, I grant leave to apply for a judicial review on the sole ground that the notice is arguably too widely drawn and should be restricted only to information that is foreseeably relevant to a tax investigation into Y.
- 37 Following the hearing of this matter, I received correspondence from the applicant's legal advisers and, at my invitation, a response from the respondent's legal advisers relating to the disclosure of information to the applicant that had been provided by JTC to the respondent.
- 38 I was asked to take this into account in reaching my decision as an example of further

---

circumstances where disregard has been paid to the applicant's rights to privacy and information.

- 39 Having reviewed that documentation, I do not think it is relevant to the determination that I have made for the reasons largely set out in the answer to it provided by the respondent. Any refusal by JTC to provide to the applicant information that it itself has provided to the respondent is a matter between the applicant and JTC and is not, in my judgment, relevant to this application.

*Ruling accordingly.*