

Company A v Comptroller of Taxes
Corporation B v Comptroller of Taxes
Late Company Registration Penalty
March 2022

For the purpose of anonymisation, the true name of any individual or company mentioned below has been fictionalised.

THE ISSUE UNDER APPEAL

Company A, a limited company registered in the BVI, and Corporation B, a company registered in the Seychelles, (together companies the “Appellant Companies”) are appealing the refusal of the Comptroller to waive penalties, in respect of late registration for foreign companies. Under Jersey law, companies must register as a foreign company for tax purposes within 6 months of becoming resident in Jersey.

The Appellant Companies are appealing the application of fines for late filing of that registration. The issue for this Appeal is when did the Appellant Companies become managed and controlled in Jersey and whether that date was less than six months prior to the date of the registration request filed by Trust Co on their behalf.

RECITAL OF RELEVANT FACTS

Trust Co, a TCB business regulated by the JFSC, provides professional directors to its corporate clients. It agreed to provide directors in Jersey for Finance D, a company in financial distress with a pending litigation against prior parties. Finance D owns shares in a Luxembourg company, which had invested in German real estate.

Unbeknown to Trust Co, the Panama directors of two companies, commun shareholders of a Luxembourg company, also resigned and purported to appoint the Trust Co’s directors on the 5th March 2020 for Corporation B and the 4th March 2020 for Company A, on the assumption that Trust Co had agreed to take over the whole structure, including all subsidiary companies, including the Appellant Companies.

At the time of the purported appointment of the Jersey Directors, there were no contractual relationships between Trust Co and either of the Appellant Companies. Trust Co was not immediately notified of the appointment, nor were the Jersey Directors, and none of them accepted the appointment at the time of the resignation of the Panama directors in March 2020. Some months later, Trust Co became aware of the appointments and agreed, for asset protection purposes, to provide directors to the Appellant Companies.

Agreed Statements of Fact:

- **Company A** is incorporated in the British Virgin Islands. It was incorporated in April 2007.
- The registered office address of the company is in the BVI.
- The company has a requirement to be registered with the tax authorities in Jersey as the directors of the company are Jersey residents.

- On 4th March 2020, there was a board meeting, and during this board meeting the previous directors of the company resigned. The previous directors were Mr Jones and Ms Brown. Furthermore, on the same date, the company secretary resigned. The company secretary was Mr Jones.
 - During the board meeting on 4th March 2020, the current directors were appointed. The current directors of the company are Mr Davis, Mr Wilson and Mr Taylor. The current directors are Jersey residents.
 - The next board meeting of the company took place on 20th November 2020 in St. Helier, Jersey.
 - The first correspondence sent to Revenue Jersey, in relation to registering the company for tax in Jersey, was made by Trust Co on 11th March 2021.
 - Revenue Jersey issued a £1,800 penalty to Company A on the 29th April 2021. This penalty relates to a failure to comply to Article 123AA (2) of the Income Tax (Jersey) Law 1961.
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- **Corporation B** is incorporated in the Seychelles. It was incorporated in March 2007.
 - The registered office address of the company is in the Seychelles.
 - The company has a requirement to be registered with the tax authorities in Jersey as the directors of the company are Jersey residents.
 - On 5th March 2020, there was a board meeting, and during this board meeting the previous directors of the company resigned. The previous directors were Mr Anderson and Ms Morrison. Furthermore, on the same date, the company secretary resigned. The company secretary was Mr Anderson.
 - During the board meeting on 5th March 2020, the current directors were appointed. The current directors of the company are Mr Davis, Mr Wilson and Mr Taylor. The current directors are Jersey residents.
 - The next board meeting of the company took place on 29th December 2020 in St. Helier, Jersey.
 - The first correspondence sent to Revenue Jersey, in relation to registering the company for tax in Jersey, was made by Trust Co on 11th March 2021.
 - Revenue Jersey issued a £1,800 penalty to the Corporation B on 29th April 2021. This penalty relates to a failure to comply to Article 123AA (2) of the Income Tax (Jersey) Law 1961.

SUMMARY OF FINDINGS/DECISIONS

In the matter of the Appeal by Company A and Corporation B hearing in March 2022, the Appellant Companies are unsuccessful on the basis that the Appellant Companies were unable to produce the documentation supporting when the management and control was effectively transferred to Jersey. While Revenue Jersey asserted that management and control commenced on the appointment of the Jersey directors by the resigning Panama Directors, we are of the view that appointment was not effective at that time, as the prospective directors were not aware of the appointment, had not consented to act, and there was no contractual relationship between the companies and Trust Co, which provides professional directors to companies requiring management and control in Jersey.

In particular, the absence of discussions in the minutes of the appointments of the directors and the absence of correspondences with the registered agents with the consents of the Jersey directors to act as directors would have been useful indicators.

REASONS FOR THE DECISION

There is an uncertainty in respect of when management and control effectively started in Jersey, either from inception as claimed by Revenue Jersey or from November 2020 as claimed by the Appellant Companies.

Article 123.1.b specifically said that a company is regarded as resident when it is managed and controlled in Jersey.

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The companies, which became Jersey tax resident, triggered by the change of the board of these two companies and replacement with new board members, composed solely of Jersey directors.

(i) the appointment of the directors was retrospective and (ii) there is uncertainty on the date at which the directors consented to act as directors and (iii) there is uncertainty on the date at which they were informed of their appointments.

The directors of the Appellant Companies informed Revenue Jersey that the Companies were resident in Jersey and entered the date of their retrospective appointments when registering the Appellant Companies with Revenue Jersey.

Trust Co, a regulated TCB business, is required to have appropriate record keeping arrangements for compliance with the applicable Laws (including anti-money laundering legislation and company legislation), Orders and regulatory requirements, set by the Code or the relevant AML/CFT Handbook.

Trust Co took over a business subject to litigations against the previous parties involved and communications by the previous administrators was less than perfect.

- (i) For months, the directors of the Appellant Companies were not aware that they had been appointed as directors and did not take any actions;
- (ii) In November and December 2020, the directors of the Appellant Companies held their first board meetings in Jersey for each of the Companies;
- (iii) Neither of the minutes of the board meetings of the Appellant Companies (held in Jersey) document the appointment of the directors, or the fact that the appointments were retroactive, and only deal with the appointment of company secretaries and a loan agreement;
- (iv) No correspondence with the registered agents of the Appellant Companies was provided, nor emails containing letter of acceptances from the Jersey directors sent to the registered agents;
- (v) No e-mails evidencing when the Jersey Directors requested the registered agents to amend the Directors register;
- (vi) Trust Co only received incomplete files, and in particular are still missing the accounting records.
- (vii) The only action taken by the the directors of the Appellant Companies has been to start legal actions with Law Firm E; and
- (viii) The Panama directors resigned, as there were no funds in the two companies, and they assumed that Trust Co had agreed to take on all the companies in the structure.

Trust Co argued that they only became aware of their appointment in November 2020, following receipt and review of files sent by the Panama directors, who were the previous directors of the Appellant Companies. In turn, Trust Co's new business committee took place to agree to provide directorship services to these two companies. Trust Co thus argued that the directors did not take any actions before November 2020, as they were not aware that they had been appointed as directors, and therefore management and control could not have been transferred to Jersey prior to November 2020.

Revenue Jersey argued that management and control took place from the moment the directors were named as directors in the directors' registers as declared in the forms prepared by Trust Co and submitted to Revenue Jersey.

However, the Panel could not satisfy itself of the date at which the directors consented to act as directors and of the date at which the directors effectively became aware of them being appointed as directors, as:

(i) The minutes of the first board meeting in Jersey did not disclose the retrospective appointment of the directors, nor were any letters of acceptance tabled at the meeting;

(ii) The practice is that a registered agent would only agree to change directors in the registers and enter new directors, based on letters of acceptance by the directors. No correspondence with the registered agents of the Appellant Companies was provided, nor any emails containing letters of acceptances from the Jersey directors sent to the registered agent.

On the basis of the facts produced to us, and in particular the lack of documentation by Trust Co, as highlighted above, it was not possible to document when effective management and control really started, and thus it was not possible to refute the position of Revenue Jersey that the effective management and control started on the date the directors were entered into the registers, as some key documents were missing.

On this basis, it was decided to reject the appeal by the Appellant Companies, and rule in favour of Revenue Jersey.