



TC06710

Appeal number: Anonymised

PROCEDURE – Application for approval of third party notice under Schedule 36 of Finance Act 2008 – scope of exclusion for auditors’ working papers in paragraph 24 and 26 of Schedule 36 where auditor also assisting in preparation of tax returns – application refused.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Applicant

ex parte

A TAXPAYER

TRIBUNAL: JUDGE JONATHAN RICHARDS

Sitting in private at Taylor House, Rosebery Avenue, London on 14 August 2018

Leslie Sells and Alexander Muir, officers of HMRC, for the Applicant

Written representations by (i) the Auditor and (ii) Michael Paulin of counsel on behalf of the Taxpayers (both as defined in the body of this decision) were considered

DECISION

- 5 1. This is my decision on whether to approve an information notice under paragraph 3 of Schedule 36 of Finance Act 2008 (“Schedule 36”). The decision follows a hearing that was held in private. However, since it raises a point of general application, I decided that I should publish it on an anonymised basis.

Introduction and background

- 10 2. A number of UK resident companies (the “Taxpayers”) are members of a group of companies. The statutory auditor of those companies is an LLP (the “Auditor”). For a particular accounting period (the “Relevant Accounting Period”), the Auditor delivered a qualified audit opinion stating (i) that it could not be certain of the appropriate amount to include in the Taxpayers’ statutory accounts in respect of intra-group debtor balances
15 in the Relevant Accounting Period because of the complex nature of the related party structure within which the Taxpayers operate and (ii) (for certain of the Taxpayers) it could not be certain that turnover had been correctly stated in the Relevant Accounting Period or in figures for the previous accounting period.

- 20 3. HMRC have confirmed to me that, as well as acting as the Taxpayers’ auditor, the Auditor also prepares and submits the Taxpayers’ corporation tax returns to HMRC as the Taxpayers’ agent. The Auditor’s written submissions suggest that this is indeed the position (although the corporation tax returns appear to be prepared by a different team acting behind a “Chinese wall”). There was some suggestion in correspondence (and in the Taxpayers’ written submissions) that the legal entity providing the audit services
25 was different from that providing the tax compliance services. However, it appears that this suggestion was mistaken and I have concluded that the Auditor is the very legal entity that acts as the Taxpayers’ agent for corporation tax purposes.

- 30 4. HMRC were concerned by the qualified audit opinion reasoning that the Taxpayers’ corporation tax liability depended on figures from their accounts and so, if figures in the accounts were incorrect, the Taxpayers may have understated their corporation tax liability for the Relevant Accounting Period. Therefore, in due course, HMRC applied to the Tribunal on a “without notice” basis under paragraph 3 of Schedule 36 to authorise the issue of an information notice requiring the Auditor to provide:

- 35 (1) (for each of the Taxpayers), information on the checks that it tried to carry out to verify intra-group debtor balances and copies of its working papers relating to those checks; and

- (2) (for those Taxpayers whose turnover figures had been qualified), information on the checks that the Auditor performed to verify turnover and copies of relevant working papers.

- 40 So, for example, the proposed information notice for one of the Taxpayers (whose accounts were subject to both a “turnover” and “related party debtor” qualification would have required the Auditor to provide the following information:

1. In respect of debtors amounting to £[amount] for which audit evidence was limited due to the complex nature of the related party transactions:

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- Explain what checks the Auditor attempted or otherwise planned to carry out.

- Provide copies of the working papers from the Audit files in respect of those checks.

2. Adjustment of £[amount] to increase turnover

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- Provide copies of the working papers from the Audit files in respect of those checks.

3. Issue with the comparative figures of deferred income and turnover for the year ending [year end]:

- Provide copies of your working papers from the Audit files in respect of the work done or planned in order to verify those amounts.

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5. In their first application to the Tribunal (which was heard by me on 13 April 2018), HMRC made no mention at all of the provisions of paragraph 24 or paragraph 26 of Schedule 36 (which provide exclusions from auditors' obligations to deliver documents). That was unsatisfactory. HMRC were clearly aware of these provisions and indeed confirmed to me that there had been some discussion within HMRC about those provisions before the application to the Tribunal was made. When HMRC make a "without notice" application such as this, they have a duty of candour to the Tribunal and should point out all relevant factors including factors that might incline the Tribunal not to approve the notice.

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6. In any event, I was familiar with paragraph 24 and paragraph 26 of Schedule 36. At the hearing on 13 April 2018, I explained I was concerned that some or all of the information that HMRC were requesting fell within paragraph 24 of Schedule 36 so that the Auditor could not be required to provide it. Therefore, mindful of the comments of Charles J at [67] to [69] of *R (on the application of Jimenez) v HMRC* [2017] EWHC 2585, I asked HMRC to contact both the Taxpayers and the Auditor to offer them the opportunity to make written submissions on the scope of paragraph 24 of Schedule 36 (which I would consider at a reconvened hearing). Both the Taxpayers and the Auditor made helpful written submissions and I am grateful to them for doing so. I have considered these together with helpful written and oral submissions that HMRC have made.

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7. Finally, I should say that the Auditor has quite properly made it clear that it is willing to comply with any lawful requirement to provide documents or information under Schedule 36. Its observations (that paragraph 24 of Schedule 36 means that it is not obliged to provide the information and documents requested) are not made out of any desire to frustrate HMRC's enquiries. The Auditor owes duties of confidentiality to the Taxpayers as clients and therefore, before providing the information requested, wants to be sure that it truly is obliged to deliver that information.

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Statutory provisions

8. HMRC's power to require documents and information comes from paragraph 2 of Schedule 36 which provides as follows:

2 Power to obtain information and documents from third party

- 5 (1) An officer of Revenue and Customs may by notice in writing require a person—
- (a) to provide information, or
 - (b) to produce a document,
- 10 if the information or document is reasonably required by the officer for the purpose of checking the tax position of another person whose identity is known to the officer (“the taxpayer”).
- (2) A third party notice must name the taxpayer to whom it relates, unless the tribunal has approved the giving of the notice and disapplied this requirement under paragraph 3.
- 15 (3) In this Schedule, “third party notice” means a notice under this paragraph.

9. However, HMRC do not have an unfettered power to obtain documents or information from third parties. Unless the taxpayer whose position is being checked agrees, HMRC need the approval of the Tribunal before they can issue a third party notice. That is the result of paragraph 3 of Schedule 36 which provides as follows:

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3 Approval etc of taxpayer notices and third party notices

- (1) An officer of Revenue and Customs may not give a third party notice without—
- (a) the agreement of the taxpayer, or
 - (b) the approval of the tribunal.
- 25 (2) An officer of Revenue and Customs may ask for the approval of the tribunal to the giving of any taxpayer notice or third party notice (and for the effect of obtaining such approval see paragraphs 29, 30 and 53 (appeals against notices and offence)).
- 30 (2A) An application for approval under this paragraph may be made without notice (except as required under sub-paragraph (3)).
- (3) The tribunal may not approve the giving of a taxpayer notice or third party notice unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs,
 - (b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
 - (c) the person to whom the notice is to be addressed has been told that the information or documents referred to in the notice are required and given a reasonable opportunity to make representations to an officer of Revenue and Customs,
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(d) the tribunal has been given a summary of any representations made by that person, and

(e) in the case of a third party notice, the taxpayer has been given a summary of the reasons why an officer of Revenue and Customs requires the information and documents.

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(4) Paragraphs (c) to (e) of sub-paragraph (3) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.

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(5) Where the tribunal approves the giving of a third party notice under this paragraph, it may also disapply the requirement to name the taxpayer in the notice if it is satisfied that the officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

15 10. Paragraph 3 of Schedule 36 therefore provides that the Tribunal may not approve a third party notice unless certain conditions are met. Even if the Tribunal approves a notice, it does not follow that a third party is required to provide all the information and documents specified in the notice because of certain exceptions and qualifications set out in Part 4 of Schedule 36.

20 11. Importantly in the context of this application, paragraphs 24, 25 and 26 of Schedule 36 provide as follows:

24 Auditors

(1) An information notice does not require a person who has been appointed as an auditor for the purpose of an enactment—

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(a) to provide information held in connection with the performance of the person's functions under that enactment, or

(b) to produce documents which are that person's property and which were created by that person or on that person's behalf for or in connection with the performance of those functions.

(2) Sub-paragraph (1) has effect subject to paragraph 26.

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25 Tax advisers

(1) An information notice does not require a tax adviser—

(a) to provide information about relevant communications, or

(b) to produce documents which are the tax adviser's property and consist of relevant communications.

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(2) Sub-paragraph (1) has effect subject to paragraph 26.

(3) In this paragraph—

“relevant communications” means communications between the tax adviser and—

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(a) a person in relation to whose tax affairs he has been appointed, or

(b) any other tax adviser of such a person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs, and

“tax adviser” means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person).

26 Auditors and tax advisers: supplementary

(1) Paragraphs 24(1) and 25(1) do not have effect in relation to—

(a) information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any client in preparing for, or delivering to, HMRC, or

(b) a document which contains such information.

...

(3) Paragraphs 24(1) and 25(1) are not disapplied by sub-paragraph (1) or (2) if the information in question has already been provided, or a document containing the information in question has already been produced, to an officer of Revenue and Customs.

12. Central to the exclusion set out in paragraph 26 of Schedule 36 is the concept of a “tax accountant”. However, there is no statutory definition of this term that applies for the purposes of Schedule 36.

13. HMRC suggest that the apparent conundrum surrounding the absence of a definition of “tax accountant” can be resolved once it is appreciated that the provisions of Schedule 36 referred to above involve a “rewrite” of provisions that were formerly set out in the Taxes Management Act 1970 (“TMA 1970”). Prior to the introduction of Schedule 36, HMRC’s power to obtain documents from third parties was contained in s20(3) of TMA 1970. Section 20(9) of TMA 1970 stated that the provisions of s20 were subject to restrictions in s20B of TMA 1970.

14. One of the restrictions (in s20B(9) of TMA 1970) related to auditors and tax advisers and provided as follows:

(9) Subject to subsections (11) and (12) below, a notice under s20(3) ...

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(a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and

(b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.

Section 20B(11) of TMA 1970 then provided:

(11) Subject to subsection (13) below, subsection (9) above shall not have effect in relation to any document which contains information explaining any information, return, accounts or other document which the person to whom the notice is given has, as tax accountant, assisted

any client of his in preparing for, or delivering to, the inspector or the Board.

15. Section 20D(2) of TMA 1970 contained the following definition of a “tax accountant”:

5 (2) For the purposes of sections 20 and 20A, a person stands in relation to another as tax accountant at any time when he assists the other in the preparation or delivery of any information, return, accounts or other document which he knows will be, or is or are likely to be, used for any purpose of tax...

10 16. Section 20, s20A and s20D(2) of TMA 1970 are now no longer in force.

Discussion

17. HMRC are quite rightly not arguing that there is any reason why taking the actions set out in paragraphs 3(3)(c) to (e) of Schedule 36 might prejudice the assessment or collection of tax. Therefore, before I approve the information notices requested, I must
15 be satisfied that all of the requirements of paragraphs 3(3)(a) to (e) of Schedule 36 are met. I will, therefore, address these requirements in turn though not in the order in which they appear in Schedule 36 as some can be dealt with briefly.

Paragraphs 3(3)(a), paragraph 3(3)(c) and paragraph 3(3)(d) of Schedule 36

18. I was shown evidence that the application for a third party notice had been approved
20 by a named “authorised officer” of HMRC and I was satisfied that the requirement of paragraph 3(3)(a) of Schedule 36 was met.

19. I was satisfied that the Auditor has been told that the information or documents are required and was given a reasonable opportunity to make representations to HMRC about the information notice. HMRC have provided me with a copy of the Auditor’s
25 representations. Therefore, the requirement of paragraph 3(3)(c) and paragraph 3(3)(d) of Schedule 36 is met and I have taken the Auditor’s representations into account in this decision.

Paragraph 3(3)(e) of Schedule 36

20. I was shown correspondence between HMRC and the Taxpayers. In that
30 correspondence HMRC explained that they wanted information that provided context to entries in the Taxpayers’ audited accounts because that would help HMRC to check the Taxpayers’ corporation tax position. In their written observations, the Taxpayers suggest that this explanation is inadequate.

21. In *R (on the application of Derrin Brothers Properties Ltd and others) v HMRC and others* [2016] EWCA Civ 15, the Court of Appeal considered the purpose of paragraph
35 3(3)(e) of Schedule 36 and concluded as follows:

70. Paragraph 3(3)(e) of schedule 36 requires that the taxpayer has been given a summary of the reasons why HMRC's officer requires the

information and documents. In contrast to the position of the third party, schedule 36 does not, however, require the taxpayer to be given any opportunity to make representations to HMRC opposing the request in the third party notice.

5 71. Consistently with the legislative objectives I have described, the giving of summary reasons to the taxpayer is not for the purpose of enabling the taxpayer to make representations directly or indirectly to the FTT. It was already established in *R v A Special Commissioner ex parte Morgan Grenfell & Co Ltd* [2002] TC 74 TC 511 in relation to the
10 former scheme under section 20 of the TMA that, in the case of a notice to the taxpayer for production of documents, the fact the notice came at the investigatory stage as well as the need to avoid frustrating the intention of the legislation led to the conclusion that the taxpayer had no right to demand an inter partes oral hearing.

15 72. The reason for the giving of summary reasons to the taxpayer under schedule 36 is purely to guard against arbitrary conduct by the tax authority and to provide the context for any application to the FTT for approval of the third party notice, approval which cannot be given unless the FTT is satisfied pursuant to paragraph 3(3)(b) that the officer giving
20 the notice is justified in so doing.

22. Understood in those terms, I do not consider that HMRC’s explanation to the Taxpayers is inadequate. On the contrary, their explanation demonstrates that they are taking the same position with the Taxpayers as they are with the Tribunal and are arguing that, because the information requested sheds a light on figures that appear in
25 the Taxpayers’ audited accounts which, in turn, are relevant for corporation tax purposes it is reasonably required to check the Taxpayers’ corporation tax position. In the next section, I will consider whether HMRC are justified in seeking this information. However, for the purposes of paragraph 3(3)(e) of Schedule 36, I consider that HMRC’s explanation is adequate: it provides relevant context for the question
30 whether HMRC are justified in seeking the information and indicates that, far from engaging in “arbitrary conduct”, HMRC are articulating rational and consistent reasons why they require the information.

Paragraph 3(3)(b) of Schedule 36

35 23. Therefore, the crux of the issue is whether I am satisfied that HMRC are justified in giving the proposed notice.

24. For the reasons set out at [25] to [27], I am satisfied that it is reasonable for HMRC to consider that the information sought from the Auditor will be of relevance when “checking” the Taxpayers’ tax liability.

40 25. In their written submissions, the Taxpayers argued that the amount of intra-group balances could be of no relevance to income that the Taxpayers earn from third party customers. I accept that submission so far as it goes. However, I was shown evidence that HMRC have come to a reasonable view that, as well as engaging in business with unrelated companies, the Taxpayers may be providing goods and services to other group entities. On that basis, it is reasonable for HMRC to consider that related party

balances may, in part, reflect the amount of intra-group business that was conducted in the Relevant Accounting Period and so have a bearing on the Taxpayers' corporation tax liability. I recognise that it cannot be guaranteed in advance whether information on why the Auditor expressed uncertainty on the Taxpayers' intra-group balances will
5 necessarily be relevant to the Taxpayers' corporation tax liability. That will depend on the precise intra-group balances which were within the scope of the Auditor's qualified audit opinion. However, it is certainly reasonable for HMRC to be concerned that, if intra-group balances are not reliably measured in the Taxpayers' audited accounts, their corporation tax liability as set out in their self-assessment returns may be incorrect.

10 26. There can be no doubt that turnover figures that appear in the Taxpayers' accounts have the potential to be of real relevance to the Taxpayers' corporation tax liability and, quite rightly, in their written submissions, the Taxpayers have not argued otherwise.

15 27. I paused slightly at the fact that some of the documents and information that HMRC are requesting relate to checks that the Auditor performed in its capacity as auditor. I will deal with that concern in more detail below when I consider the scope of the exclusion set out in paragraph 24 of Schedule 36. However, absent paragraph 24, I am satisfied that it is reasonable for HMRC to want to review documents and information relating to those audit checks. For example, the Auditor's response to the information notice might reveal that almost all audit checks were completed satisfactorily and,
20 having been given information on audit checks that could not be completed, HMRC might be satisfied that the outcome of those checks could have no bearing on the Taxpayers' corporation tax liability. By contrast, if the Auditor's response revealed that accounting entries that have a real bearing on taxable profit could not be verified, that would help HMRC to understand the scale of the problem and decide either to obtain
25 further information or to consider raising assessments.

28. Therefore, absent paragraph 24 of Schedule 36, I was satisfied that HMRC's requests for information were reasonable. However, if the information requested falls within the scope of the exclusion in paragraph 24 of Schedule 36, the requirements of paragraph 3(3)(b) would not be met, as HMRC would not be "justified" in giving a
30 notice requiring the Auditor to provide documents and information that are protected from disclosure by paragraph 24 of Schedule 36 and I will now turn to the scope of that exclusion, as qualified by paragraph 26 of Schedule 36.

29. HMRC accepted that the information and documents that they are requesting fall squarely within paragraph 24 of Schedule 36. Therefore, they accept that were it not for the provisions of paragraph 26 of Schedule 36, they would not be justified in giving the
35 notices. However, HMRC argue that paragraph 26 "switches off" the provisions of paragraph 24 in reliance on the following chain of reasoning:

- (1) The Auditor acts as "tax accountant" in preparing the Taxpayers' corporation tax returns.
- 40 (2) When submitting the Taxpayers' corporation tax returns, the Auditor is obliged to include, with those returns, a copy of the Taxpayers' audited accounts for the Relevant Accounting Period.

(3) Therefore, the Auditor has, as tax accountant, “delivered” the Taxpayers’ audited accounts to HMRC¹.

5 (4) The documents and information that HMRC are requesting the Auditor to “explain” the audited accounts which are themselves documents which the Auditor has, as tax accountant, “delivered to” HMRC.

(5) Therefore, the exclusion set out in paragraph 26 of Schedule 36 applies so that the documents and information requested are not protected from disclosure.

10 30. Before addressing the detail of HMRC’s submissions, it is worth emphasising an important aspect of the protection set out in paragraph 24. In Schedule 36, Parliament has enacted a regime that permits HMRC to obtain information from a third party where that information is reasonably required to check a person’s tax position. HMRC have been given that intrusive statutory power because Parliament recognises the public interest in taxpayers paying the right amount of tax. However, despite that public interest paragraph 24 of Schedule 36 protects certain information and documents held by auditors from disclosure. Therefore, paragraph 24 recognises that even where information is reasonably required to check a person’s tax position, it may nevertheless be protected from disclosure. It follows that Parliament has necessarily concluded that the public interest in protecting auditors’ papers and information from disclosure can, at least in some situations, outweigh the public interest in ensuring that the right amount of tax is being paid.

25 31. It seems clear that paragraph 26 was enacted because Parliament realised that an accountant might, as well as acting as auditor and preparing an opinion on a company’s accounts, also prepare tax returns on behalf of the company. Suppose that HMRC wrote to such an accountant asking for an explanation of how the company’s taxable profit in its tax return had been calculated. It would frustrate the purpose of HMRC’s information powers if the accountant could respond that, because of paragraph 24 of Schedule 36, it is not obliged to provide information to HMRC because its determination of profit (for the purposes of the company’s corporation tax return) derived from information (the company’s own figures for profit) that the accountant obtained and reviewed in its capacity as auditor. If that were the position, there would be the risk of distortion and unfairness: an accountant who also happened to be a company’s auditor would have to provide little information to explain a calculation of taxable profit, whereas an accountant who was not also an auditor could be required to provide information and explanation. Therefore, the legislation recognises that a person who acts as a “tax accountant” and delivers tax returns to HMRC on behalf of a taxpayer

¹ In HMRC’s skeleton argument sent prior to the hearing, they argued that the audited accounts were “prepared for” HMRC as “tax accountant” because, when preparing those accounts, the Auditor would have been aware that figures appearing in the accounts would be used for the purposes of the Taxpayers’ computation of taxable profit. That argument was rightly not pursued at the oral hearing. The Auditor does not prepare accounts “for” HMRC: rather, it delivers to the Taxpayers’ shareholders an opinion on accounts that the Taxpayers’ directors have prepared. Moreover, the audit opinion is clearly given in the capacity of auditor, not tax accountant.

can legitimately be asked questions about the contents of that tax return even if that person also audits the taxpayer concerned.

32. The definition of “tax accountant” is clearly intended to refer to someone who assists another with the preparation of tax returns. I do not think, therefore, that the precise definition of “tax accountant” matters very much since the concept that Parliament has in mind was reasonably clear. Therefore, I will not say that Parliament must have meant the definition of “tax accountant” that applies for the purposes of paragraph 26 of Schedule 36 to be necessarily the same as that set out in the (now repealed) s20D(2) of TMA 1970. However, given what I have said at [31] above, I think that “tax accountant” has at least a similar meaning to that formerly contained in s20D(2).

33. With that background as to the overall purpose of paragraph 24 and paragraph 26, I will now address the details of HMRC’s submissions. The crucial link in their reasoning is that set out at [29(3)]: the Auditor has “delivered” the audited accounts to HMRC in its capacity as tax accountant and therefore can legitimately be asked relevant questions (and required to produce relevant documents) to “explain” those audited accounts. For the reasons set out below, I disagree with this interpretation.

34. First, HMRC’s analysis involves giving an unduly literal interpretation to the concept of “delivering” the audited accounts. In a narrow sense, of course, the Auditor has “delivered” those accounts to HMRC as it has sent them to HMRC to accompany the corporation tax returns. However, I believe that paragraph 26 is seeking to identify the returns or statements that a tax accountant is making, not documents that it is required to send together with those returns or statements. On that interpretation, the corporation tax return is prepared or “delivered” as tax accountant. The same is true of any schedules to the return or any statement that reconciles the calculation of taxable profit (in the tax return) with accounting profit (in the audited accounts). However, the audited accounts themselves are not prepared for HMRC (they consist of a report to the company’s shareholders on accounts that the directors have prepared) and while they are certainly “sent to” HMRC, they are not “delivered to” HMRC in the requisite sense.

35. The interpretation at [34] is reinforced by the wording of paragraph 26 of Schedule 36 itself. Paragraph 26 of Schedule 36 does not refer just to documents “delivered” to HMRC. The full reference is to:

...information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any client in preparing for, or delivering to, HMRC... (emphasis added)

The clear emphasis is on documents that the tax accountant, using its professional skill as a tax accountant, has helped the taxpayer to prepare or deliver. The conclusion that any document that is merely sent to HMRC falls within its scope is inconsistent with this reading of paragraph 26. A client does not need a tax accountant’s professional assistance merely to send documents to HMRC; it needs help with the substantive preparation of the content of documents. Once that is appreciated, it becomes clear that the focus is on documents which a person has as tax accountant, had some role in preparing or filing.

36. The example of the documents and information that HMRC are requesting set out at [4] above focuses quite clearly on documents and information relating to the statutory audit. The request is not for documents and information that the Auditor has in its capacity as tax accountant. If the Taxpayers did not use their auditor to prepare their corporation tax returns, HMRC would not be able to obtain the documents and information requested from the auditor as paragraph 24 would clearly apply and protect that information and documents from disclosure. I see no reason why HMRC should be entitled to disclosure of the documents and information simply because the Auditor also happens to act as the Taxpayers' agent for the preparation and submission of corporation tax returns.

37. My overall conclusion, therefore, is that the requirement of paragraph 3(3)(b) of Schedule 36 is not met and I will not approve the information notices requested.

38. There is no right of appeal to the Upper Tribunal against this decision and so I will not include the usual paragraph that appears in decisions of the First-tier Tribunal that notifies rights of appeal to the Upper Tribunal. I have set out reasons for my decision in case HMRC wish to seek judicial review of it.

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JONATHAN RICHARDS
TRIBUNAL JUDGE

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RELEASE DATE: 10 September 2018