Neutral Citation: [2023] UKFTT 00971 (TC)

Case Number: TC08992

FIRST-TIER TRIBUNAL
TAX CHAMBER

Heard at Taylor House, London

Appeal reference: TC/2021/10906

INCOME TAX – Sch 36 information notice requiring appellant to carry out email searches using particular terms – whether notice in that form was valid – whether documents reasonably required – whether "fishing expedition" – appeal allowed

Heard on 3 and 4 October 2023
Judgment date: 8 November 2023

Before

TRIBUNAL JUDGE ANNE REDSTON

Between

PARKER HANNIFIN (GB) LIMITED

Appellant

and

THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Imran Afzal of Counsel, instructed by PricewaterhouseCoopers LLP

For the Respondents: Ben Blakely, Litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION AND SUMMARY

1. Parker Hannifan (GB) Limited ("the Appellant") is a member of the Parker Group. In June 2014, the Appellant refinanced earlier debt by issuing a £238m Eurobond ("the Eurobond") to Parker Hannifan LLP ("the LLP"); the LLP borrowed the same amount from Parker Hannifan Global Capital Management Sarl ("PHGCM"), based in Luxembourg. On 1 January 2017, the LLP transferred the Eurobond to Parker Hannifin Barbados Srl ("PH Barbados"). The Appellant claimed tax relief on the interest paid on the Eurobond.

2. HMRC is considering whether to refuse relief for some or all of that interest on the basis that the refinancing in 2014 and/or the transfer in 2017 had an "unallowable purpose" within the meaning of s 441 and s 442 of the Corporation Tax Act 2009 ("CTA 2009").

3. On 17 September 2019, HMRC issued an information notice ("the Notice") under Finance Act 2008, Schedule 36 ("Sch 36"). Unlike most Sch 36 Notices, the Notice did not set out particular documents or categories of documents which HMRC required the Appellant to provide; instead it required the Appellant to carry out an email search using a list of specified terms ("Terms"), such as "avoidance", and to provide all the emails identified as a result.

4. The Appellant engaged PricewaterhouseCoopers ("PwC") to carried out the search; this produced over 11,000 results. PwC reviewed the output to identify those emails which were relevant to the purpose of the Eurobond refinancing in 2014 and the subsequent transfer in 2017, and identified 1,695 emails; these were provided to HMRC.

5. HMRC responded the same day without looking at any of those emails, saying that the Appellant was required to provide all the emails. The Appellant made a late appeal against the Notice. Although HMRC accepted the appeal could be made late, they did not change their position. The Appellant notified the appeal to the Tribunal. PwC subsequently provided HMRC with an analysis of the withheld documents, split into twelve different categories ("the Categories").

6. On behalf of the Appellant, Mr Afzal put forward the following grounds of appeal in the alternative:

> (1) The Notice was invalid because it did not "specify or describe" the documents to be produced, and instead only contained the Terms.
>
> (2) Documents identified by PwC as irrelevant were not "reasonably required", and the Notice should either be set aside in its entirety, or varied so that only those documents identified as relevant by PwC were in scope.
>
> (3) The Notice should be varied to (i) limit the dates for which documents were to be provided; (ii) exclude documents which HMRC had subsequently agreed were not relevant, and (iii) make it clear that legally privileged materials were excluded.

7. For the reasons explained in the main body of this decision, I decided that the Notice was not invalid simply because it was expressed by reference to the Terms.

8. However, I went on to find that the requirements of the Notice were far too wide, with the result that many of the documents produced by the Terms were not reasonably required: for example, emails with the phrase "for the *avoidance* of doubt" were caught because they contained the Term "avoidance", as were over 1,600 emails relating to personnel issues including maternity leave, pensions and redundancies. HMRC themselves belatedly accepted that emails within four of the Categories were not reasonably required; those Categories contained over 4,200 documents or 44% of those which had been withheld.

9. Had the Appellant appealed the Notice before the PwC exercise had been carried out, I would have set it aside on the basis that it was far to broad. However, the Tribunal has to consider the position at the time of the hearing. For the reasons explained in the main body of this decision, I found that reliance could be placed on the exercise carried out by PwC, and varied the Notice to exclude the documents PwC had identified as irrelevant. The textual changes to the Notice are at the end of this decision.

10. In coming to that conclusion, I took into account that HMRC:

(1) did not submit that PwC had misunderstood the scope of the Notice;

(2) accepted PwC had acted professionally and in good faith;

(3) agreed that PwC had correctly identified as irrelevant over 4,200 documents which made up four of the Categories, but could not explain why PwC's categorisation could not be relied upon in relation to the other eight Categories; and

(4) contended that 3,648 emails about financing transactions and restructuring unrelated to the Eurobond were reasonably required because they would "provide useful context" for HMRC or "could be informative", in relation to the Parker Group's "commercial drivers" for those other transactions. Mr Afzal characterised this as an invalid "fishing expedition", and I agreed.

11. I therefore allowed the Appellant's second ground of appeal. Since the Appellant has already provided HMRC with the documents within the scope of the Notice as varied, no further compliance is required.

THE EVIDENCE

12. The Tribunal was provided with a document Bundle of 1,231 pages, which included:

(1) correspondence between the parties and between the parties and the Tribunal;

(2) the Appellant's corporation tax ("CT") computations for the years ending 30 June 2014 through to 30 June 2020, and its statutory accounts for the last two of those years; and

(3) various documents relating to the Eurobond.

13. Ms Katie Wheeler is an HMRC Officer who has been working on the "case team" relating to the Appellant since late November 2021. She provided a witness statement, gave oral evidence led by Mr Blakely, was cross-examined by Mr Afzal and answered questions from the Tribunal. I found her to be an honest and straightforward witness. However, some parts of her witness statement set out her view as to whether the documents were "reasonably required", and, as Mr Afzal said, this was a matter for submissions rather than evidence. Similar points are also included in HMRC's Statement of Case, to which Ms Wheeler contributed, and a number of paragraphs from her witness statement were imported by reference into Mr Blakely's skeleton argument. I have taken those paragraphs as forming part of HMRC's submissions.

14. Ms Karen Rockley was the HMRC Officer at the time the Notice was issued. She gave a short witness statement which related only to the Appellant's late appeal application. The facts in that statement were not in dispute and she did not give oral evidence.

15. Mr Gavin Carpenter is a customer compliance manager at HMRC. His witness statement also related only to the Appellant's late appeal application; the facts in that statement were not in dispute and he did not give oral evidence.

16. Mr Anthony Wallace was the HMRC Officer who decided that HMRC should accept the late appeal. He provided a witness statement, and was due to attend to give oral evidence but was unable to do so because of illness. On 26 September 2023, Mr Blakely notified the Tribunal that HMRC would no longer be relying on Mr Wallace's witness statement, and I have not taken it into account in making this decision.

THE FACTS

17. These findings of fact are made on the basis of the evidence summarised above. Unless otherwise indicated, they were not in dispute. There are further findings of fact later in the decision about the following points:

(1) the Terms used in the Notice, at §98 to §105;

(2) the scope of the Notice, and PwC's approach to the search, at §116 to §117, and §120;

(3) communications between the parties at §§123 to §125, and §128 to §129;

(4) PwC's categorisation exercise, at §113, §134 and §173; and

(5) HMRC's approach to the use of third parties, at §112.

The Eurobond

18. The Parker Group includes both UK and overseas entities. Apart from the Appellant, other UK entities include the LLP and Parker Hannifin Manufacturing Ltd ("PHML"). The Appellant is a holding company, and PHML a trading subsidiary**.**

19. In 2007, PHML issued a Eurobond to the LLP to refinance the earlier acquisition of the Domnick Hunter Group Limited ("the 2007 Eurobond"), and in 2008 the Appellant issued a Eurobond to finance the acquisition of KV Automation Ltd ("the 2008 Eurobond"). Interest on both these Eurobonds was accrued.

20. On or around 25 June 2014, the following steps took place:

(1) The Appellant issued the Eurobond for £238m to the LLP; the LLP funded this by borrowing £238m from PHGCM, a Luxembourg Sarl.

(2) The Appellant loaned £99m to PHML, and PHML repaid to the LLP the debt which had arisen under the 2007 Eurobond.

(3) The Appellant repaid to the LLP the debt which had arisen under the 2008 Eurobond.

(4) The LLP repaid £238m to PHGCM.

(5) The Appellant made a capital contribution of £75m to PHML.

21. Some further restructuring took place between February and June 2016, and on 1 January 2017, the Eurobond was contributed to PH Barbados.

22. Advice on the above was provided by Eversheds LLP ("Eversheds"), Deloitte LLP ("Deloitte"); Ernst & Young LLP ("Ernst & Young") and Ogier LLP ("Ogier"). The Appellant claimed deductions in its tax computations for the interest incurred on the Eurobond. There was some disagreement between the parties as to the quantum of that interest, but it was agreed that between July 2014 and June 2020, it exceeded £75m.

HMRC's enquiries

23. HMRC opened enquiries into the Appellant's CT returns for the years ending 30 June 2014, 2015, 2017, 2018 and 2020; there was a dispute as to whether an enquiry had also been

opened for 2019, but I do not need to resolve that issue for the purposes of this appeal. HMRC also issued a discovery assessment for the year ending 30 June 2016.

24. Those HMRC enquiries were focused on two main concerns:

(1) whether HMRC should refuse relief for some or all of the Eurobond interest on the basis that the refinancing in 2014 and/or the transfer to Barbados in 2017 had an "unallowable purpose" within the meaning of CTA 2009, s 441 and s 442; and

(2) whether the interest deductions should be denied, in whole or in part, under the transfer pricing provisions set out in Part 4 of the Taxation (International and Other Provisions) Act 2010 ("TIOPA").

25. On 9 August 2016, HMRC wrote to Mr Graham Ellinor, the Finance Director of the Parker Group's entities in the UK, Ireland and South Africa, asking for information in relation to the Eurobond. Mr Ellinor replied on 3 October 2016, saying that the arrangements had been entered into because PHML's balance sheet needed strengthening. Further correspondence ensued about both transfer pricing and the Eurobond.

26. On 25 October 2017, HMRC asked the Appellant for documents and information as to the discussions which had taken place in relation to the Eurobond, including all of the following:

(1) planning papers and communications;

(2) related tax and accountancy advice;

(3) related approval and governance documents; and

(4) legal documents brought into existence to give effect to the transactions.

27. Mr Michael Gordon-Brown of Deloitte responded to that letter on behalf of the Appellant; he made some comments about the commercial rationale for the Eurobond, and concluded by saying that:

> "We note that you provided a schedule detailing a request for information and documents. Our client has confirmed that there is very little in the way of formal written documentation."

28. Mr Gordon-Brown suggested that the matter would be "better expeditated in a meeting" between HMRC and Mr Ellinor, and this took place on 8 February 2018. Mr Ellinor provided some information, and the meeting ended with him agreeing to revisit the letter of 25 October 2017; he said he would send "documentation where possible", and would also provide copies of emails and other communications.

29. On 30 August 2018, Mr Ellinor wrote to HMRC, saying:

> "Because it was an internal transaction and did not involve new money, this transaction was often dealt with in informal meetings and thorough telephone calls – which are not minuted. This approach should be borne in mined when considering the documentation I have managed to retrieve.
>
> My approach here was to look through my email archives, starting with the completion of the Eurobond refinancing and then working backwards chronologically. I have attached copies of all the emails I have found on this subject…I have not in general provided copies of attachments as your request was more focused on the nature of the dialogues rather than having sight of supporting agreements and other legal documentation."

30. Attached to that letter were around 500 pages of emails between Mr Ellinor and eighteen other individuals, including tax partners at Deloitte, staff and partners at Eversheds, associates at Ogier and tax managers within overseas Parker entities.

31. HMRC reviewed those documents, and on 15 March 2019 asked for further information. Mr Ellinor responded on 31 May 2019 with a further 70 pages of documents, including deeds of variation, diagrams and board minutes.

32. On 14 June 2019 a meeting took place between Mr Ellinor; Parker's tax director for Europe and its UK tax manager; Mr Gordon-Brown and another representative from Deloitte and four HMRC officers including Ms Rockley and Mr Carpenter. HMRC asked how Mr Ellinor had identified the emails he had sent to HMRC; he had read through them, and had not used search terms as "he did not trust this to show all emails". HMRC asked detailed questions about some of the documents, and ended by saying they would consider their next steps.

The Notice is issued

33. On 17 September 2019, Ms Rockley issued the Notice. Her covering letter said:

> "An information notice is used if HMRC believe the information we wish to see is reasonably required for the purpose of checking a taxpayer's tax position. Your returns for the APE 30/06/2014 to APE 30/06/2017 have claimed loan relationship debits for tax purposes.
>
> The key consideration for HMRC is therefore "is the information we are asking for reasonably required for the purpose of checking the company's tax position?" – in this case the admissibility of the loan relationship debits.
>
> In order to check the tax position in this context, we consider it reasonable to obtain the prime documents and information that we believe will enable us to gain an understanding of the full facts of and around the restructure and its impact."

34. The Notice required the Appellant to carry out a search of the emails of its three directors: Mr Ellinor, Mr Elsey and Mr O'Reilly, for the period 1 December 2013 to 31 January 2017. HMRC subsequently accepted that it was not possible to search Mr O'Reilly's emails as he had left the Appellant in 2014 and his emails had been deleted in line with company policy.

35. The Notice required the search to be carried out using a list of Terms, under three headings ("the Headings")[1]. For a document to fall within the Notice, at least one Term had to be satisfied under each of the three Headings. If an email met the search criteria, any attachments were also to be provided.

36. The First Heading was made up of the following Terms:

> "'Debt' OR 'Interest' OR 'Deduction*' OR 'Debit*' OR 'Loan Relationship*' OR 'LLP' OR Parker Hannifin (GB) Limited OR Parker Hannifin Manufacturing Limited OR PHGB OR PHML OR 'Deloitte' OR 'Ernst & Young'"

37. The Second Heading was made up of the following Terms:

> "Graham Ellinor OR Jim Elsey OR Rob Parker OR John O'Reilly OR Adrian Churchill OR Nigel Parsons OR Franco Ferrero OR Kathi Wanner OR Oleg Williamson OR Ian Clinton OR Guy Fabe OR Brian Spellacy OR Denise Superka OR John Maike OR David Boyd OR Paul-Michel Rebus OR Amanda

[1] The Notice describes each of these three Headings as "Term 1", "Term 2" and "Term 3" but to avoid confusion with the many separate Terms under each of those Headings, in this decision I have replaced "Term 1", "Term 2" and "Term 3" with "the First Heading", "the Second Heading" and "the Third Heading".

Partland OR Natalie Thorn OR Wyn Jones OR Michael Gordon-Brown OR Sarah Hesleton OR Peter Coe OR Lisa Stott."

38. The Third Heading was made up of the following Terms:

(1) "Driver*" AND "Tax" OR "Commercial".

(2) "Purpose" AND "Tax" OR "Commercial".

(3) "Reason" AND "Tax" OR "Commercial".

(4) "Loan" AND "I/co" OR "Interco*" OR "Inter*" OR "Intra".

(5) "Capital*" AND "GB" OR "116"

(6) "Allotment*" AND "GB" OR "116"

(7) "Euro bond*" OR "Eurobond*" OR "HMRC*" OR "Refinanc*" OR "Re-financ*" OR "Restructur*" OR "Unallowable" OR "Avoidance" OR "*441*" OR "Barbados" OR "Another table" OR "*414*.

39. The use of an asterisk in the above Terms signified that all variations were to be included. The Notice gave the following example: the Term "driver*" would include "drivers", "driver/drivers", "driver", "driver1", "driver.", "driver?".

PwC's approach

40. The Appellant instructed PwC to carry out the search. PwC noted that there were a number of problems with the Terms:

(1) Terms 441* and 414* had presumably been included with the aim of catching references to statutory provisions; in particular, CTA s 441 sets out the unallowable purpose provision. However, these Terms also caught thousands of phone numbers, postcodes and figures forming part of financial information. PwC therefore took the decision to use "section 414", "s414" and "414 CTA 2009" instead of "414*", and to use "section 441", "s441" and "441 CTA 2009" instead of "441*".

(2) The Term *"Reason*" AND "Tax" OR "Commercial"* caught numerous irrelevant references, such as the use of "reason" in the same email as the words "commercial property". PwC amended the Term so that that the words "tax" or "commercial" had to be within 10 words of the word "reason". PwC did the same for the Terms where "purpose" and "driver" were included in an email which also included "Tax" OR "Commercial".

(3) Disclaimers were attached to almost all of the emails as standard, and these disclaimers included the phrase (emphasis added) "the preceding information…only should be used or disseminated for the ***purpose*** of conducting business with Parker…". The use of the word "purpose", when combined with the words "tax" or "commercial" elsewhere in the email satisfied the search criteria. PwC decided to eliminate those results.

(4) The Term "Ernst & Young" would not necessarily pick up all relevant references. PwC expanded it to "'Ernst' w/2 'Young'".

41. Having made those amendments to the Terms, PwC identified 11,162 documents; these constituted over 10% of the total emails in Mr Ellinor's and Mr Elsey's inbox over the three year period covered by the Notice.

42. PwC considered that "due to the breadth of the search terms, this search process resulted in a significant number of documents wholly unrelated to HMRC's queries". A specialist team within PwC therefore carried out a manual review to identify the documents relating "to the

purpose of [the] Eurobond issued by Parker Hannifin (GB) Limited in 2014 and the subsequent transfer of the Eurobond receivable in 2016". That exercise identified 3,567 possibly relevant documents, including all those relating to other intragroup financing exercises. A second review was then carried out by PwC tax specialists, who identified 1,695 documents as being relevant; these included communications covered by legal professional privilege ("LPP").

43. On 17 December 2019, Mr Ellinor wrote to HMRC, expressing his disappointment at having been sent the Notice, given the Appellant's "extensive co-operation during your long-standing enquiries". He attached an Appendix written by PwC setting out the process they had undertaken. The Appendix explained the difficulties with the Terms, and how PwC had resolved those difficulties; it set out the three levels of review, and gave details as to the types of irrelevant documents, such as lease renewals, HR related matters and correspondence with HMRC.

44. In the same letter, Mr Ellinor emphasised that complying with the Notice had cost the Appellant "significant…time and money", and in his view had added nothing relevant to what had already been provided.

45. On the same day, PwC emailed HMRC a link to a shared drive allowing access to the 1,695 documents identified as relevant, along with examples of documents identified as irrelevant. Ms Rockley did not look at any of those documents before emailing Mr Ellinor some four hours later saying:

(1) the Appellant had not "fully complied" with the Notice;

(2) HMRC required all the 11,162 documents, and not only those identified as relevant by PwC; and

(3) those documents were to be provided by 20 December 2019.

The late appeal and the statutory review

46. On 20 December 2019, the Appellant made a late appeal against the Notice. Mr Ellinor said the Appellant would have appealed earlier, had he understood that HMRC required all material generated by the Terms rather than those documents which were relevant to the Eurobond. The appeal was submitted on the basis that all the information generated by the search using the Terms was not reasonably required.

47. Ms Rockley referred the Appellant's late appeal application to Mr Wallace, a Sch 36 authorising officer. On 21 January 2020, Mr Wallace decided to allow the Appellant to make a late appeal. He also emailed Ms Rockley setting out some "next steps"; these included:

> "Contact the customer to discuss precisely what we want and why (including the reason for requesting the tax advice).
>
> Ask him to confirm in writing that all emails relating to the Eurobond transaction have been supplied including those setting out the reasoning for the transaction and the tax advice received.
>
> Review the information already provided critically, checking for gaps. If gaps are found highlight them and refer to the customer.
>
> At that point we can prepare for a Tribunal hearing if we still believe that all the relevant material that is reasonably required has not been provided."

48. On 27 February 2020, Ms Rockley responded to Mr Ellinor, saying she agreed with PwC's amendments to the Terms "*441*", "*414*" and "Ernst & Young"; and she also agreed with the exclusion of emails identified only because of the wording used in disclaimers. She went on to say that HMRC did not consider the Notice to be "unduly onerous" and reiterated that all documents identified by PwC as irrelevant were to be provided. She also said:

> "Information on other group restructurings also aids our understanding of the way the group operates and how this is comparable to the Eurobond restructuring. We would consider the provision of these documents to be within the scope of the information request."

49. On 23 March 2020, HMRC issued a revised Notice, removing Mr Reilly, and amending the Terms in relation to "*441*", "*414*" and "Ernst & Young", and excluding disclaimers.

50. On 15 April 2020, a meeting took place which was attended by Mr Ellinor and the Appellant's tax manager; five officers of HMRC, and Mr Morely and Mr Fulton from PwC. During the meeting, Mr Morely said that the type of filtering applied to the Appellant's emails was "a tried and tested process" which PwC and other large accountancy and law firms had carried out in other cases; that statement was not disputed by the HMRC attendees.

51. On 14 May 2021, HMRC confirmed that their position was unchanged. On 7 June 2021, the Appellant requested a statutory review, and in a second letter sent at the same time, Mr Ellinor set out further examples of irrelevant material identified by the Terms; he also pointed out that Terms 1 and 2 were almost always satisfied, because the first contained the Appellant's name, and the second contained Mr Ellinor's and Mr Elsey's names.

52. On 21 June 2021, Mr Ellinor provided further detailed representations, including that the Notice was invalid because it did not "specify any known and specific documents or information" but instead required the Appellant to carry out a search using the Terms; he also suggested using a third party law firm, see further §124ff.

53. On 21 September 2021, Ms Natasha Henshaw issued her statutory review decision. She decided to vary the Notice as follows:

> (1) Emails containing personal records of Parker Hannifin employees, as defined by section 12 of the Police and Criminal Evidence Act 1984, may be redacted to omit any information that makes the record a personal record.
>
> (2) Emails containing personal data within section 3 of the Data Protection Act 2018 may be redacted to remove that personal information, unless its inclusion is relevant to the tax position.

54. Other than in respect of these "personal records", Ms Henshaw upheld the Notice, finding that the documents identified by the Terms were "reasonably required". On the same day, the Notice was reissued; the new document excluded personal records as defined above.

55. On 20 October 2021, the Appellant made an in-time notification of its appeal to the Tribunal. It was common ground that the appeal related to the Notice as varied on 23 March 2020 and on 21 September 2021. Attached to the Grounds of Appeal were nine appendices, one of which was Mr Ellinor's letter dated 21 June 2021.

56. On 26 May 2022, PwC provided HMRC with its analysis of the documents it considered to be irrelevant; that analysis included the Categories set out at §113 below.

WHETHER NOTICE INVALID BECAUSE IT CONTAINED ONLY SEARCH TERMS

57. On 21 September 2023 the parties exchanged skeleton arguments in compliance with directions issued by the Tribunal. Mr Afzal's skeleton stated that the Appellant's "primary position" was that:

> "The Information Notice is invalid because it does not specify or describe the information or documents to be produced, and instead only contains search terms, with the consequence that it should be set aside."

58. On 28 September 2023, Mr Blakely informed PwC that HMRC considered that this "Terms" point fell outside the Appellant's Grounds of appeal. On 29 September 2023, PwC emailed the Tribunal and HMRC stating that the Appellant disagreed, but also filed and served a application to amend the Grounds in case that were found to be necessary. I responded the same day, saying that this issue would be considered at the beginning of the hearing. On 2 October 2023, Mr Blakely provided the Tribunal and the Appellant with a copy of *R (ex p Ulster Bank) v HMRC* [1997] STC 832 ("*Ulster Bank*").

59. Having considered the Appellant's Grounds of Appeal, and having heard both parties' submissions, I decided that an amendment to the Grounds was required; I went on to allow the Appellant's application. I gave summary reasons at the time, and said that fuller reasons would be included in the final decision along with the parties' submissions; these are set out below.

Within grounds of appeal?

60. Mr Blakely submitted that there was no reference in the Grounds of Appeal to what is now the Appellant's "primary" point. HMRC had relied on those Grounds when the Statement of Case was drafted; this had been filed and served on 25 November 2022, almost a year previously, and it clearly stated:

> "The dispute in this appeal is solely as to if the documents request by HMRC's notice is reasonably required by the officer for the purpose of checking the Appellant's tax position."

61. Mr Blakely said that HMRC's understanding of the issues in dispute was therefore clear from the Statement of Case, and if the Appellant had disagreed, it had had almost a year to do so.

62. Mr Afzal accepted that the Terms point had not been explicitly referred to in the Grounds of Appeal. However, he submitted that:

(1) it had been included in Mr Ellinor's letter to HMRC of 21 June 2021 (see §49), and that letter had been appended to the Grounds;

(2) the Appellant's case was that the Notice was invalid, and the Terms point was simply another reason why this was the case; and

(3) the Grounds focused on HMRC's failure to meet their "reasonably required" obligation, and a Notice cannot be "reasonably required" if no documents are specified or described at all.

Discussion

63. I first considered whether the Grounds of Appeal had incorporated the Terms point by reference to Mr Ellinor's letter. I noted that:

(1) the only mention of that letter in the main body of the Grounds is the sentence "PHGB…provided further written representations by letter dated 21 June 2021";

(2) the letter was instead one of nine appendices annexed to the Grounds to explain the history of the dispute between 17 September 2019 (when the Notice was issued) and the notification of the Appellant's appeal to the Tribunal over two years later; and

(3) in the course of that correspondence numerous different points were made by the Appellant.

64. It is commonplace for issues to be raised and abandoned by both parties in the course of pre-hearing discussions, and the opposing party is not required to trawl through pages of earlier correspondence (even those attached to the Grounds) in order to identify additional points. I decided that the Terms point was not imported into the Grounds by reference.

65. I also rejected Mr Afzal's other two submissions. Although it is true that the Appellant's case was that the Notice was invalid, grounds of appeal must set out *why* an appellant considers the other party to be wrong. As Saville LJ said in *British Airways Pension Trustees Ltd v Sir Robert MacAlpine and Sons Ltd* [1994] WL 1062346:

> "The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it."

66. The Terms point was a separate and different reason why the Appellant considered the Notice to be invalid, and is additional to any of the points made in the Grounds of Appeal. If the Appellant were to be allowed to put this argument at the hearing, the Grounds required amendment.

The application to amend

67. The Appellant applied to amend the Grounds of Appeal so as to include the sentence "the Notice is also invalid because it does not specify or describe the information or documents to be produced and instead only contains search terms".

68. The principles to be applied by a Tribunal deciding whether or not to allow an amendment were set out by Carr J (as she then was) in *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm) ("*Quah*") at [36] to [37], and can be summarised as follows:

(1) The application is to be refused if the proposed amendment has no real prospect of success; the new ground must be better than merely arguable.

(2) Assuming that is the position, whether to allow an amendment is a matter for the discretion of the Tribunal, which must apply the overriding objective so as to balance "the injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted".

(3) The party seeking a "very late" amendment must show the strength of the new case and "why justice to him, his opponent and other court users requires him to be able to pursue it". A "very late" amendment is one which causes the trial date to be lost.

(4) More generally, lateness "depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done.

69. Having heard both parties' submissions, I allowed the application because:

(1) The new ground is better than merely arguable.

(2) The issue is a concise single point of law; no evidence is required.

(3) Although the amendment was made less than two weeks before the hearing, it did not jeopardise the hearing date. The parties agreed that the Terms point could be considered during the time already allocated for the case; in particular, the original timetable had allowed for Mr Wallace to give evidence and be cross-examined, and this was no longer required. Allowing the amendment would therefore not delay the appeals of other tribunal users.

(4) HMRC has been aware of this point since 21 June 2021, and it was also considered by Ms Henshaw in her statutory review decision of 21 September 2021.

(5) HMRC had had the two weeks since the service of Mr Afzal's skeleton to consider the issue, and had identified *Ulster Bank* as a relevant authority.

(6) It engaged a fundamental issue of principle as to how a Sch 36 Notice may be framed, which had not previously been considered by the Tribunal.

THE GROUNDS OF APPEAL AND THE BURDEN OF PROOF

70. I next set out the Appellant's grounds of appeal as amended. They were made in the alternative as follows:

(1) The Notice was invalid because it did not "specify or describe" the information or documents to be produced, but instead only contained search terms.

(2) Documents identified by PwC as irrelevant were not "reasonably required", and the Notice should either be set aside in its entirety, or varied so that only those documents identified as relevant by PwC were in scope.

(3) The Notice should be varied so to (i) limit the dates for which documents must be provided to HMRC, (ii) exclude items which HMRC is no longer seeking, and (iii) (for completeness) make it clear that legally privileged materials are excluded.

71. Both parties accepted that HMRC had the burden of showing that the Notice met the relevant statutory conditions, see the analysis in *Cliftonville Consultancy Ltd* [2018] UKFTT 231 (TC) at [22]-[39].

THE USE OF SEARCH TERMS

72. As set out above, the Appellant's primary ground was that the Notice was invalid because it only contained search terms.

The case law

73. The only case referred to by the parties was *Ulster Bank*; Morritt LJ gave the leading judgment with which Neill LJ agreed; Simon Brown LJ delivered a concurring judgment.

74. The background facts were that HMRC had served draft ("precursor") notices under the predecessor legislation in Taxes Management Act 1970 ("TMA") s 20, requiring Ulster Bank ("the Bank") to provide information relating to transactions effected through its "sundry parties accounts". Those accounts were mostly used for isolated transactions with parties who were either not customers, or were customers without a current account. The information sought by HMRC included the names and addresses of all persons on whose behalf those transactions had been effected.

75. TMA s 20(3) provided as follows:

> "Subject to this section, an inspector may, for the purpose of enquiring into the tax liability of any person (the taxpayer), by notice in writing require any other person to deliver to the inspector or, if the person to whom the notice is given so elects, to make available for inspection by a named officer of the Board, such documents as are in his possession or power and as (in the inspector's reasonable opinion) contain, or may contain, information relevant to any tax liability to which the taxpayer is or may be, or may have been, subject, or to the amount of any such liability…"

76. TMA s 20(8A) enabled a notice to be given without naming the taxpayer concerned if a Special Commissioner gave his consent, and subsection (8D) provided that "references in this section to documents and particulars are to those specified or described in the notice in question".

77. The Bank accepted that it could be required to produce "specified" documents, but submitted that it could not be "made to produce documents so loosely described as to require

it, at its own expense, to carry out the investigation on behalf of the Revenue by a process akin to discovery of documents".

78. Morritt LJ rejected that submission. He held (at page 841) that:

> "The word 'described' is wider than the word 'specified'; it connotes the recitation of the characteristics of that which is referred to rather than its details or particulars. Thus it is appropriately used for the indication of classes or categories of documents as opposed to a single document. The context in which the words are used is that of an inquiry by the Revenue into the tax liability of a person and a desire to obtain documents 'relevant to' that liability."

79. He went on to say:

> "In my view it cannot have been the intention of Parliament, in those circumstances, to restrict the description permissible in a notice under sub-s (3) or sub-s (8A) to one which excludes classes or categories of document or documents which are not known to exist or to be in the possession or power of the recipient of the notice and which are to that extent conjectural. Such restrictions would reduce the efficacy of the statutory power so greatly as to leave the Revenue with little more than the ability to obtain the original of a document which they have already seen. Accordingly I do not agree…that a notice…may not include by description…conjectural documents or classes of documents identified only by description. Of course a description may be more or less informative depending on the number of characteristics incorporated in the description."

80. He added:

> "the description must be genuinely directed to the purpose for which the notice may be given, namely to secure the production of documents which in the reasonable opinion of the inspector may contain information relevant to the Revenue's inquiries...If it is not then the notice will not come within the purview of sub-s (3) or (8A) anyway. Accordingly I see no reason for restricting the meaning of the words 'specified or described' in sub-s (8D) to less than their normal meanings. The safeguards against the misuse of the extensive powers conferred by s 20 lie not in the construction of these words but in the other statutory conditions which Parliament has ordained."

81. In his concurring judgment, Brown LJ said:

> "I see no objection to the use of the s 20 powers for 'what is essentially a discovery exercise, whereby the applicant is seeking production of documents with a view to ascertaining whether they may be useful' …provided only and always that it is a *specific* discovery exercise and that in the inspector's reasonable opinion the documents 'may contain information relevant to any tax liability' (see s 20(3)."

82. Thus, the Court held that HMRC could seek "classes or categories of documents" including "conjectural documents or classes of documents identified only by description"; the restriction on the exercise of HMRC's power was instead effected by the statutory requirement that the documents be "relevant" to the person's tax liability.

The parties' submissions

83. The parties rightly noted that Sch 36 para 6(2) contains a similar definition to that in TMA s 20(8D; it provides:

> "An information notice may specify or describe the information or documents to be provided or produced."

84. Both parties also agreed that the term "specify" was narrower than "describe", see *Ulster Bank* cited at §79 above.

85. Mr Blakely submitted that *Ulster Bank* was highly persuasive as to the approach this Tribunal should take in relation to the use of the Terms in the Notice, because:

(1) the purpose of TMA s 20 was essentially identical to the purpose of Sch 36;

(2) both sets of provisions provided that a notice may "specify or describe" the documents;

(3) Morritt LJ had said that the word "described" meant "characteristics of that which is referred to rather than its details or particulars", and the Terms met that requirement because they set out "characteristics" of the documents required by HMRC;

(4) the Terms had plainly been sufficiently informative because the Appellant had been able to carry out the search, and identify the documents in question.

86. Mr Afzal sought to distinguish between the position in *Ulster Bank*, and the use of Terms in the Notice. He said that in *Ulster Bank* the notice described what it required, namely the "names and addresses" of those whose transactions were recorded in the "sundry parties" accounts; the issue here was instead whether HMRC could require compliance, given that they did not know which *particular* names and addresses were in existence. In contrast, the issue in the Appellant's case was whether the Notice "specified or described" any documents *at all*, and in the Appellant's submission, no documents had been so specified or described.

The Tribunal's view

87. I accept of course that *Ulster Bank* related to the previous statutory provisions, but I agree with Mr Blakely that it is highly persuasive, and I also agree with his other submissions, for the following reasons:

(1) Morritt LJ said that "described" connotes the recitation of the characteristics of that which is referred to, rather than its details or particulars.

(2) The Terms set out key characteristics of the documents sought by the Notice; only documents with those characteristics are required.

(3) There is an obvious parallel between the use of search terms to identify the particular documents, and Morritt LJ's rejection of the Bank's submission that it could not be required "at its own expense, to carry out the investigation on behalf of the Revenue by a process akin to discovery of documents". Brown LJ similarly held that a notice could be used for "what is essentially a discovery exercise, whereby the applicant is seeking production of documents with a view to ascertaining whether they may be useful".

(4) Of course, the way the documents are described in a Sch 36 notice must be comprehensible to a recipient, and must be capable of being applied. However, as Mr Blakely said, the Appellant was able to carry out the search using the Terms, and the documents so identified are those described by the Notice.

88. As the Court held in *Ulster Bank*, the protection for a taxpayer or third party lies not in giving a narrow meaning to the words "specify" or "describe"; instead the documents identified by the notice must be "relevant", or using the terminology of Sch 36, must be "reasonably required".

89. I therefore decide this issue in favour of HMRC.

WHETHER REASONABLY REQUIRED

90. The Appellant's second ground of appeal was that the great majority of the documents which resulted from the application of the Terms were not "reasonably required", and that as a result the Notice should be struck out in its entirely, or varied so it encompassed only the emails already provided to HMRC. I have structured this part of the decision as follows:

(1) The key statutory provisions.

(2) HMRC's submission that this ground of appeal was invalid.

(3) The mechanics of the Notice, in other words, how the Terms operated.

(4) Whether it is ever acceptable for a third party to review documents for relevance, or whether HMRC always has to be provided with all the output.

(5) How PwC categorised the documents it identified as not relevant.

(6) Whether the PwC exercise to separate relevant and irrelevant documents could be relied upon.

(7) HMRC's reasons for not accepting some of the conclusions of the PwC exercise.

The statutory provisions

91. Sch 36, para 1 provides:

> "(1) An officer of Revenue and Customs may by notice in writing require a person ('the taxpayer')--
>
> (a) to provide information, or
>
> (b) to produce a document,
>
> if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.
>
> (2) In this Schedule, 'taxpayer notice' means a notice under this paragraph."

92. It was common ground that a document which "might be relevant" to the purpose identified by the Notice would generally be "reasonably required", but that a document which was not "relevant" to that purpose would not be "reasonably required". Both parties used the terms "not relevant", "irrelevant" and "not reasonably required" interchangeably and I have done the same.

Appeal valid?

93. Mr Blakely submitted in his skeleton that:

> "HMRC contend that, by virtue of their appeal rights, the Appellant must challenge the request contained within the information notice directly on the basis of the statutory test. More specifically, the Appellant must identify a specific request, or part thereof, that they say requires the production of e-mails that are not reasonably required rather than making broad assertions of relevancy."

94. In his oral submissions, Mr Blakely said the Appellant could only make a valid appeal against the Notice if it "identified one or more of the Terms which when combined would not be reasonably required".

95. As I understand his submission, HMRC's case is that where, as here, a notice describes the documents they require by setting out search terms, a taxpayer *only* has a right to appeal against the wording used in those terms, and cannot appeal on the basis that the documents

resulting from the search are not reasonably required. As the Appellant has not provided alternatives to the Terms, this ground of appeal must be struck out.

96. I have no hesitation in rejecting that submission, for the following reasons:

(1) Sch 36, para 29(1) provides that a taxpayer has the right to appeal against "the notice", and the Appellant has plainly appealed against the Notice as a whole.

(2) The taxpayer also has a right to appeal against "any requirement in the notice". The requirement in the Notice is that the Appellant provide all the documents which meet the Terms, and the Appellant can therefore appeal if one or more of those documents are not reasonably required.

(3) That conclusion is consistent with HMRC's submissions on the Appellant's first ground of appeal, namely that the Terms set out the "characteristics" of the documents required, and that the Notice was valid because the Terms "described" documents.

(4) If HMRC were to be correct, they would be entitled to every document within the scope of the specified search terms, whether or not a document was reasonably required, unless the taxpayer could put forward an amendment to the terms so as to narrow the output. That would:

(a) undermine the taxpayer's well-established right to appeal against a Notice on the basis that a document is not reasonably required;

(b) constitute an unjustified and unreasonable expansion of HMRC's right to access documents; and

(c) place an unfair and unreasonable burden on the taxpayer to correct the mechanism chosen by HMRC themselves to describe the documents required under the Notice. As Mr Afzal rightly said, if HMRC issue a notice using this approach, it is not the taxpayer's role or obligation to "come up with the search terms" or to "pick up the Terms and start to cross out bits of them".

97. I therefore reject HMRC's submission that the Appellant only has a right of appeal on the basis that there is an error in one or more of the Terms. Instead, the Appellant has a right to appeal on the grounds that one or more of the documents identified by the Terms are not "reasonably required" by HMRC.

The mechanics of the Notice

98. I turn next to the mechanics of the Notice. It was the Appellant's case that the first two Headings in the Notice were invariably, or almost invariably, satisfied, and that as a result, only the Third Heading acted as a filter.

The First Heading

99. The First Heading is set out at §36 above[2]. The Heading was satisfied if any one of the specified Terms were within an email. Those Terms included "Parker Hannifin (GB) Limited OR Parker Hannifin Manufacturing Limited OR PHGB OR PHML".

100. It was the Appellant's case that:

(1) employees and directors of Parker companies ended their emails with their own name and the name of the company for which they worked;

(2) Mr Ellinor and Mr Elsey were directors of both the Appellant and of PHML;

[2] The Term was amended on 27 February 2020 to replace "Ernst & Young" by ""'Ernst' w/2 'Young", see §40(4) and §48, but nothing turns on that in the present context.

(3) all the emails sent by Mr Ellinor and Mr Elsey ended with their names and the words "Parker Hannifin Manufacturing Limited";

(4) the addresses of the great majority of the emails sent by other Parker Group directors and employees similarly included one of the Terms, so as to satisfy this Heading;

(5) even where that was not the case in relation to a particular email, once Mr Ellinor or Mr Elsey (or another employee or director of PHGB or PHML) replied to that email, the email chain would be within the Heading; and

(6) the Heading was thus invariably or almost invariably satisfied and so did not act as any kind of filter.

101. HMRC did not dispute that the Appellant was correct. I find the points in the previous paragraph to be facts.

The Second Heading

102. The Second Heading set out a list of names: if any one of those names was included in the email, the Heading was satisfied. The first two names were "Graham Ellinor" and "Jim Elsey". The Notice also included the following requirement:

> "Where you are aware that these entities are referred to differently in Parker Hannifin communications, please ensure that the search is appropriately expanded to include all variations."

103. Thus, all variants of Mr Ellinor's and Mr Elsey's names, such as "Graham" or "Jim" were also in scope. Mr Afzal said that as the search was carried out in Mr Ellinor's and Mr Elsey's email records, every single email satisfied this Heading. Mr Blakely did not dispute that this was the case. I find as a fact that the Second Heading was invariably satisfied and did not act as filter.

The Third Heading

104. As the result of the First Heading being almost always met, and Second Heading invariably satisfied, 10% of Mr Ellinor's and Mr Elsey's emails for the period 1 December 2013 to 31 January 2017 were identified as satisfying the Terms. This too was not in dispute and I find it to be a fact. The only filters were therefore the Terms contained in the Third Heading.

105. It was common ground that relevant documents had been identified using those Terms; this is clear from the 1,695 documents provided to HMRC on 17 December 2019. However, it was also not in dispute the Terms identified irrelevant documents. These included:

(1) Emails which included the Term "avoidance", such as the phrase "for the *avoidance* of doubt", and an email about a double tax treaty with Japan, which begins by saying that its purpose was "for the *avoidance* of double taxation…"

(2) All emails about HMRC guidance; one example concerned changes to HMRC's approach to pension costs.

(3) All emails which included the Term "Barbados", including references to holidays.

(4) All mails which included the Term "another table" encompassed any "table" of information or figures.

(5) Numerous words begin with "inter*" and "intra*", and emails with any of those words satisfy the Heading, as long as somewhere in the email chain there is also a reference to "loan" and "limited company".

(6) Many of the emails from employees in the Appellant's tax function; these ended by giving the employees' roles, which included the word "tax"; any email which also included "purpose" or "commercial" was identified by the search.

(7) Emails which included the word "purpose" in a general sense, such as an email which asked about the "purpose" of certain cheques issued by a linked company, and went on to say that the reply would be shared with the team which deals with "*tax* and compliance related matters". Another example was the template form for Directors of Irish companies, which stated that a "group company, for this *purpose*, includes…" and also contained the word "tax".

(8) Mr Afzal had calculated that, even ignoring "wild cards" triggered by the asterisks, there were 7,542 different permutations of the Terms in Heading 3(g). This was not challenged and I accept it.

Third party certification?

106. Given that some of the output from the search was plainly irrelevant to the purpose of the Notice, the next issue was whether it was ever possible for a third party to carry out an exercise to separate the relevant from the irrelevant documents, or whether HMRC always had to be provided with the whole of the output.

The parties' submissions

107. Both parties referred to *Syngenta Holdings Ltd v HMRC* [2021] UKFTT 236 (TC). Syngenta had appealed HMRC's decision that certain group transactions had an "unallowable purpose" and HMRC subsequently applied for a direction that Syngenta disclose certain documents and information. Syngenta carried out its own exercise to identify relevant documents, but as Judge Popplewell put it "HMRC did not trust the appellant's self-certification". He went on to find at [36] that:

> "self certification is not, *per se*, objectionable and indeed is commonplace in high value commercial litigation, its efficacy in any particular circumstance depends on the relevance of the material. The greater the relevance, the less satisfactory self certification becomes."

108. HMRC's skeleton cited *Syngenta*, apparently with approval, but also said that "it would be a severe restriction" on HMRC's powers under Sch 36 if a taxpayer was allowed to "self-certify" whether documents were irrelevant. In opening Mr Blakely distinguished *Syngenta* on the basis that it related to a disclosure application rather than a Sch 36 Notice. He said that "self-certification" was "not permitted in any circumstances" in the context of Sch 36, and this extended to cases where a third party, such as PwC, carried out the review exercise.

109. Mr Afzal said he understood it to be factually incorrect that HMRC did not allow self-certification in relation to Sch 36 notices, and had the Appellant understood that this formed part of HMRC's case, it would have filed related witness evidence. He went on to say that HMRC had not explained why they accepted self-certification in disclosure cases, but not in Sch 36 cases, pointing out that both had a similar purpose, namely to provide HMRC with documents relevant to the issue being considered. He added that under the Civil Procedure Rules the selection of documents to be disclosed rested on the party giving disclosure, unless the other party could show that disclosure to be incomplete.

110. Having taken time to seek instructions, HMRC's position changed: at the very end of his Reply, Mr Blakely said that HMRC did accept the principle of self-certification.

Conclusion

111. By the end of the hearing, and despite HMRC's earlier statements to the contrary, the parties were therefore in agreement. I subsequently noted that Mr Morely of PwC had similarly said during the meeting on 15 April 2020 that the type of filtering applied to the Appellant's emails was "a tried and tested process" which large accountancy and law firms had carried out in other cases, and that statement was not disputed by the HMRC attendees.

112. Taking into account the final position of both parties, and the other evidence, I find as a fact that HMRC does permit third party professional firms to carry out exercises to identify relevant documents for disclosure to HMRC, including in relation to Sch 36 cases.

The Categories

113. Having carried out the exercise described at §40 to §42, on 26 May 2022 PwC provided HMRC with an analysis of the documents marked as 'not relevant'" during their review. On 23 January 2023, the numbers were slightly amended (there had been some double counting). The Table below sets out the Categories, using the amended figures:

	Category	**Total**
1.	Correspondence with lawyers	553
2.	Correspondence with statutory auditors	403
3.	Correspondence relating to routine administrative matters, e.g., advisor fees, AML checks, etc.	541
4.	Correspondence relating to HR / employee matters, including pension related matters, company car scheme, bonuses, redundancies, recruitment, training	1,673
5.	Correspondence relating to external transactions and subsequent legal entity simplification exercises	1,869
6.	Correspondence relating to other internal restructurings undertaken involving intragroup loans	755
7.	Correspondence relating to meetings, including internal finance meetings and meetings with advisors	269
8.	Correspondence with HMRC relating to routine matters and other enquiries, e.g., VAT, payroll, including related internal and external correspondence	1,547
9.	Correspondence relating to VAT and other indirect taxes	479
10.	Professional updates received from third party advisors	304
11.	Financial/treasury data shared as part of regular internal updates, such as statutory accounts, loan schedules and/or financial data shared for the purposes of other restructurings	1,024
12.	Other	300
	Grand Total	9,717

Whether reliance could be placed on the PwC exercise

114. In deciding whether reliance could be placed on the results of the PwC exercise, I considered the factors set out below.

The scope of the exercise

115. I have already found as facts that:

(1) When HMRC issued the Notice, they were considering two issues:

(a) whether to refuse relief for some or all of the Eurobond interest under the "unallowable purpose" provisions; and

(b) whether the interest deductions should be denied, in whole or in part, under the transfer pricing provisions.

(2) Discussions between the parties before the Notice was issued concerned both of those issues.

(3) The purpose of the PwC exercise was to identify documents related "to the purpose of [the] Eurobond issued by Parker Hannifin (GB) Limited in 2014 and the subsequent transfer of the Eurobond receivable in 2016"; and it thus related only to the "unallowable purpose" issue.

116. I considered whether the PwC exercise had therefore been too narrow, because it focused on only one of the two issues HMRC were considering. I took into account that Ms Henshaw's statutory review letter said (my emphasis):

> "The words in Term 3 further restrict the result of the search to emails which include specific key phrases in relation to the enquiry matters, namely, purpose *and transfer pricing*."

117. However, Ms Rockley's covering letter which accompanied the Notice said:

> "Your returns for the APE 30/06/2014 to APE 30/06/2017 have claimed loan relationship debits for tax purposes.
>
> The key consideration for HMRC is therefore 'is the information we are asking for reasonably required for the purpose of checking the company's tax position?'– in this case the admissibility of the loan relationship debits."

118. Given those passages, Mr Blakely rightly did not submit that PwC's search should have covered transfer pricing, and I find that the PwC exercise was correctly limited to the unallowable purpose issue.

Whether PwC acted professionally and in good faith

119. The Statement of Case and Ms Wheeler's witness statement both said that the documents in some of PwC Categories "were unlikely to be reasonably required *if* the categorisation exercise had been performed properly and in good faith" (my emphasis).

120. However, Ms Wheeler accepted under cross-examination that in carrying out the exercise, PwC had acted "professionally and in good faith"; Mr Blakely said that this was also accepted by HMRC as a body. This issue was therefore no longer in dispute, and I find as a fact that PwC acted professionally and in good faith when carrying out the exercise.

121. As Mr Afzal said, that finding is supported by the fact that PwC had broadened one of the Terms from "Ernst & Young' to "'Ernst' w/2 'Young'", so as to ensure it picked up all relevant references. It was also common ground that the accounting firms providing advice on the Eurobond had been Deloitte and Ernst & Young, not PwC.

Omissions?

122. I have already found as facts that:

(1) on 17 December 2019, Ms Rockley was provided with the 1,695 documents identified as relevant;

(2) she did not look at any of those documents before she replied the same day, requiring all the documents to be provided; and

(3) on 21 January 2020, Mr Wallace instructed Ms Rockley to "review the information already provided critically, checking for gaps. If gaps are found highlight them and refer to the customer".

123. I further find that HMRC have not identified any gaps in the documents identified as relevant by PwC so as to indicate the existence of further relevant documents which had not been handed over, for the following reasons:

(1) Further to Mr Wallace's instruction, HMRC exchanged correspondence and held meetings with the Appellant, but at no point did they say that having reviewed the documents which had been provided, they had identified lacunae which indicated that other relevant documents existed but had not been supplied.

(2) Ms Wheeler, who has been working the case since November 2021, did not say in her witness statement that HMRC's consideration of the documents provided had flagged up that there were further additional relevant documents.

(3) HMRC's Statement of Case similarly did not submit that there were any omissions, and Mr Blakely made no such submission at the hearing.

The third party law firm

124. In an attempt to resolve the dispute about the Notice, on 21 June 2021 Mr Ellinor offered HMRC a number of options, one of which was as follows:

> "HMRC to choose a third-party law firm that Parker Hannifin would appoint to work with HMRC, so that the law firm can review a sample of the documents excluded at second level review. That level of independence in verifying the approach we have taken to identifying the material that relates to the tax position being checked should resolve the question of whether the material reasonably required has been provided to HMRC."

125. That offer was repeated by PwC on 26 May 2022; PwC explained that the offer had been limited to a sample because further significant cost would be involved if a third party law firm reperformed the entire exercise. HMRC rejected the offer on the basis that only a sample would be considered. On 15 September 2022, the Appellant extended the offer to cover all the documents, but HMRC refused that offer the following day, without giving reasons.

126. Mr Afzal submitted that:

> "If HMRC had any concerns about the accuracy of PwC's review then it could easily have allayed these by accepting the Appellant's offer. HMRC's failure to accept the offer reinforces the fact that it is sensible for the Tribunal to rely on the results of PwC's review."

127. Mr Blakely did not directly respond to that submission, but as recorded above, his position until the end of the hearing was that in Sch 36 cases, HMRC never allowed a third party to certify the results of a document search.

128. I find that the Appellant's willingness to pay an independent third party law firm *chosen by HMRC*, to carry out a further review of the documents identified as irrelevant demonstrates that the Appellant was confident that the PwC exercise had been completed accurately, fairly and completely.

HMRC accept that documents in four Categories are not reasonably required

129. In their letter to Mr Ellinor of 5 August 2022, HMRC said:

> "We agree that categories 3-4 and 8-9 are unlikely to be relevant for checking the group's purpose in respect of the 2014 Eurobond re-financing and, therefore, we would not seek to obtain these in Tribunal…We have considered the results of the revised categorisation exercise and agree that categories 3-4 and 8-9 are not reasonably required for checking the tax position in respect of the 2014 Eurobond refinancing."

130. Mr Blakely's skeleton argument said:

> "HMRC no longer seek the emails that satisfy the requirements of the information notice and fall within categories 3, 4, 8, and 9. HMRC ask the Tribunal to vary the scope of the notice to remove these withheld emails accordingly."

131. There were 4,240 documents within those four Categories; this is 44% of the total withheld by the Appellant. For ease of reference, the Categories are as follows:

3.	Correspondence relating to routine administrative matters, e.g., advisor fees, AML checks, etc.
4.	Correspondence relating to HR / employee matters, including pension related matters, company car scheme, bonuses, redundancies, recruitment, training
8.	Correspondence with HMRC relating to routine matters and other enquiries, e.g., VAT, payroll, including related internal and external correspondence
9.	Correspondence relating to VAT and other indirect taxes

132. Mr Afzal submitted that HMRC had therefore accepted that PwC had correctly identified the documents which fell within those four Categories, and that it was entirely inconsistent for HMRC to refuse to accept the rest of the PwC exercise.

133. Mr Blakely sought to distinguish these four Categories from the others. I consider his submissions below, but I agree with Mr Afzal that by accepting that the documents in these four Categories were not "reasonably required", HMRC also accepted that PwC had (a) correctly determined the parameters of those Categories and (b) accurately identified the documents which fell within them.

Summary and conclusion on the PwC exercise

134. Taking into account the foregoing, I make the following findings about the PwC exercise:

(1) PwC correctly identified the scope of the exercise as being limited to the unallowable purpose issue;

(2) HMRC accepted that in carrying out the exercise, PwC had acted "professionally and in good faith";

(3) having reviewed the documents identified as relevant, HMRC did not identify any omissions or lacunae indicating that relevant documents had not been handed over;

(4) the Appellant's offer to have an independent third party law firm, chosen by HMRC, review all the withheld documents identified as irrelevant indicates that the Appellant was confident that the PwC exercise had been completed accurately, fairly and completely; and

(5) HMRC themselves accepted that PwC correctly determined the parameters of four of the Categories and had accurately identified the documents which fell within them.

135. Those findings strongly support the Appellant's submission that reliance should be placed on the PwC exercise in determining whether the withheld documents were not

reasonably required. However, it is also important to consider the reasons why HMRC sought to distinguish the other Categories from those they had agreed were irrelevant.

HMRC's reasons for not accepting the other Categories

136. Mr Blakely put forward two over-arching submissions as to why the Tribunal should find that the documents in the other Categories were reasonably required. The first was this:

> "As regards the remaining categories, on the basis that the e-mails satisfy the search strategy within the information notice, HMRC submit they are reasonably required."

137. The second submission was that the documents in these Categories were "reasonably required" because they provided "contemporaneous evidence" of the Appellant's purposes, and if that evidence were to be withheld, HMRC would be unable to use it to challenge oral evidence given by way of witness statements during a future Tribunal hearing on the unallowable purpose issue, and this would "hamper" HMRC's ability to make their case.

138. I reject both submissions.

(1) In relation to the first, documents within Categories 3, 4, 8 and 9 also "satisfy the search strategy", but are not reasonably required; there are there are other examples at §104 above. Documents which are irrelevant to the purposes of the Notice do not become "reasonably required" simply because they "satisfy the search strategy".

(2) In relation to the second, Mr Blakely is of course correct to say that contemporaneous evidence is "generally regarded as far more reliable than the oral evidence of witnesses", see for example *Simetra v Ikon* [2019] EWCA Civ 1413 at [43]. However, as irrelevant documents do not contain material of evidential value they would not assist HMRC at a hearing of the substantive issue.

139. Mr Blakely also made specific submissions about the other eight Categories, each of which I consider below.

Category 1: correspondence with lawyers

140. There were 533 documents in this Category. HMRC's position was that:

> "The Appellant's lawyers were involved in the 2014 Eurobond Refinancing so reviewing correspondence with them is relevant as it may provide insight into the commercial purposes for the 2014 Eurobond Refinancing. Correspondence with lawyers is therefore relevant as to establishing the purpose of the 2014 Eurobond Refinancing and is reasonably required to check the tax position."

141. In making that submission, HMRC have not taken into account that Sch 36, para 23 provides:

> "(1) An information notice does not require a person–
>
> (a) to provide privileged information, or
>
> (b) to produce any part of a document that is privileged information
>
> (2) For the purposes of this Schedule, a document is privileged if it is information or a document in respect of which a claim to legal professional privilege…could be maintained in legal proceedings."

142. When the Appellant provided HMRC with the documents identified by PwC as relevant, it did not rely on para 23; it instead instructed PwC to provide HMRC with all relevant documents. In a letter dated 23 January 2023, Mr Whitehouse of PwC said:

> "…Parker elected to waive privilege over the advice delivered by Eversheds in respect of the 2014 Eurobond in order to be as transparent as possible with HMRC and ensure that all of the relevant material concerning the 2014 Eurobond was before HMRC, regardless of whether Parker had a legal right to withhold such material. For the avoidance of doubt, Parker does not waive privilege over advice delivered by Eversheds in respect of any other matter."

143. During the hearing, Mr Afzal similarly said that if the Appellant were to lose this appeal, it would rely on para 23 and as a result all or almost all of this Category of documents would not be provided.

144. I find as follows:

(1) on 30 August 2018, the Appellant waived LPP and Mr Ellison provided HMRC relevant legal correspondence with both Eversheds and Ogier;

(2) on 17 December 2019, the Appellant again waived LPP and Mr Ellison provided HMRC with all relevant correspondence with Eversheds which had been identified by PwC;

(3) Sch 36 provides a statutory exemption for "privileged information";

(4) the Appellant will not waive privilege in relation to correspondence with lawyers about matters other than the Eurobond;

(5) HMRC have failed to show that Category 1 contains any correspondence with lawyers which is both (a) not privileged and (b) reasonably required.

145. The Category 1 documents are therefore excluded from the scope of the Notice.

Category 2; Correspondence with auditors

146. In relation to the 403 documents in this Category, HMRC submitted that:

> "Correspondence with statutory auditors may provide insight into the purposes of the 2014 Eurobond Refinancing (whether they were achieved or not) and is therefore reasonably required to check the tax position."

147. In support of that submission, HMRC cited extracts from three of the Appellant's documents which referred to the advantages of the Eurobond restructuring, including consequences for working capital, balance sheets, and net asset values. However, one of these extracts is taken from a letter from Deloitte to *HMRC*, and the other two were provided to HMRC under the PwC exercise. These examples therefore do not show that there is any correspondence between the Appellant and its statutory auditors which (a) has not yet been provided and (b) is relevant to the Eurobond.

148. In deciding this issue, I took into account that:

(1) in the normal course of business, a company's correspondence with its statutory auditors will cover a wide range of issues. The Appellant will therefore have communicated with its auditors on many topics unrelated to the Eurobond;

(2) all communications with auditors have been reviewed for relevance by PwC;

(3) HMRC accepted that PwC had acted in professionally and good faith, and I have found this to be a fact; and

(4) no lacunae have been identified in the information which has been supplied.

149. HMRC have therefore failed to show that documents in Category 2 are reasonably required and I find that they are not.

Category 5: Correspondence relating to external transactions and subsequent legal entity simplification exercises

150. This Category contains 1,869 documents. HMRC make two points in support of their case, of which the first is:

> "such external acquisitions or legal entity simplifications would have been…considered by the PH group when the Appellant was setting out the commercial purposes for implementing the 2014 Eurobond Refinancing to assess whether they might alter the financial position of the Appellant or PHML to make the 2014 Eurobond Refinancing more or less desirable."

151. However, the whole point of the PwC exercise was to identify documents relevant to the Eurobond, and that plainly must have included interactions between the Eurobond refinancing and other acquisitions and restructuring. Again, HMRC failed to explain why, despite the PwC exercise, this Category nevertheless contains relevant documents.

152. HMRC's second submission is this:

> "if there is not a direct link between the external transactions or legal entity simplifications and the commercial purposes for the 2014 Eurobond Refinancing as set out above…such information would also provide useful context for the HMRC case team to analyse the approach taken by the group in respect of managing and monitoring the financial profile of the Appellant and PHML.
>
> This is important as the group has provided evidence that addressing the Net Asset Value and rectifying the negative distributable reserve position in PHML (as examples) were commercial drivers for the group in undertaking the 2014 Eurobond Refinancing. In this case, if the group have sought to achieve the same objectives using different approaches in other scenarios such as external acquisitions or legal entity simplifications, this would be important context for the HMRC case team to understand and consider."

153. HMRC are therefore arguing that documents relating to other restructuring exercises and acquisitions should be provided as "useful context", even though the transactions in question did not relate to the Eurobond; I note that a similar rationale was given by Ms Rockley in her letter to Mr Ellinor of 27 February 2020.

154. Mr Afzal characterised this as a "fishing expedition", and referred to *R (oao Derrin Brother Properties Ltd) v HMRC* [2014] STC 2238 ("*Derrin*") where Simler J (as she then was) stated at [26]:

> "Finally, HMRC may not use their Sch 36 powers for a fishing expedition – whether for their own or the purposes of another revenue authority. A broadly drafted request will not be valid if in reality HMRC are saying 'can we have all available documents because they form so large a class of documents that we are bound to find something useful'."

155. In *Bemal Patel v HMRC* [2017] UKFTT 0323 Judge Citron discussed that judgment, saying at [43]:

> "Simler J in the High Court came at this from the angle of requiring that there be a genuine exercise of checking the taxpayer's tax position through an investigation or enquiry of any kind – when she used the term 'fishing expedition', she meant a case where HMRC's request was not genuinely directed to that purpose."

156. Simler J considered Sch 36 again in *Kotton v FTT* [2019] EWHC 1327, holding at [62] that in deciding whether HMRC was justified in issuing a notice requires "a focus on whether

there is a rational connection between the information and documents sought and the underlying investigation".

157. Having considered the parties' submissions and the above case law, I find as follows:

(1) HMRC issued the Notice on the basis that they reasonably required information about whether the interest on the Eurobond is allowable.

(2) There is no rational connection between that purpose and correspondence relating to entirely different "external transactions and subsequent legal entity simplification exercises".

(3) These documents are not "reasonably required" simply because they may provide "useful context" about the Parker Group's general approach to "managing and monitoring the financial profile of the Appellant and PHML" and about its objectives when undertaking other acquisitions and restructuring.

(4) This is instead a fishing expedition in the sense meant by Simler J in *Derrin*, in that HMRC have asked for 1,869 further documents, none of which relate to the Eurobond, on the basis that among them they "are bound to find something useful".

158. I therefore reject HMRC's submissions, and find that the Category 5 documents are not reasonably required.

Category 6: Correspondence relating to other internal restructurings undertaken involving intragroup loans

159. HMRC submit that the 755 documents within this Category are reasonably required because:

> "Such internal restructurings undertaken using intra-group loans may have influenced or impacted the Appellants or PHML's financial position, which in turn may have influenced or altered the commercial drivers of the Appellant in respect of the 2014 Eurobond Refinancing."

160. Again, PwC had already identified documents relevant to the Eurobond, and that exercise will have included interactions between the Eurobond and internal restructuring.

161. The other reason given by HMRC for requiring the Category 6 documents was as follows:

> "Where there is no direct link between the internal restructurings undertaken using intra-group loans and the financial position of the Appellant and/or PHML, information on these transactions could be informative in respect of:
>
> (a) The commercial drivers for these restructurings and whether this included consideration of the financial position of the impacted entities.
>
> (b) How the PH group manage (for example) the net asset value or distributable reserves position where such restructurings are being undertaken and the importance placed on these areas."

162. For the same reasons as set out in relation to Category 5, I agree with Mr Afzal that this is a fishing expedition, and therefore constitutes an invalid reason for requiring the Appellant to provide the Category 6 documents. I find that the Category 6 documents are not reasonably required.

Category 7: Correspondence relating to meetings

163. HMRC submitted that these documents were reasonably required because:

> "the 2014 Eurobond Refinancing would have been discussed at team meetings. Details of these meetings and/or invitations should therefore be

> informative in terms of what discussions happened and when in relation to the 2014 Eurobond Refinancing."

164. HMRC again failed to explain why they required the Category 7 documents, given that details of meetings at which the Eurobond was discussed had already been provided following the PwC exercise. I find that the Category 7 documents are not reasonably required.

Category 10: Professional updates from third party advisers

165. HMRC submit that the 304 documents within this Category "could include" communications from Ernst & Young and/or Deloitte in relation to their advice on the Eurobond and that:

> "HMRC therefore expect that the 2014 Eurobond Refinancing would have been discussed during update meetings, calls or emails and will likely provide insight in respect of the purpose of the Appellant prior to, during and/or after the transaction. The term 'professional updates' is ambiguous such [and] could include such communications."

166. I do not consider the term "professional updates" to be ambiguous, for the following reasons:

(1) Speaking generally, it is well known that professional firms send updates relating to legal and tax changes to clients and other contacts; these updates are generic; in other words not targeted at a particular individual recipient.

(2) The term is certainly not ambiguous in the context of the PwC exercise, because:

(a) the emails relevant to the Eurobond have already been identified and given to HMRC; and

(b) Category 7 separately contains, "correspondence relating to meetings, including internal finance meetings and meetings with advisors".

167. There is thus no reasonable basis for HMRC's view that the Category 10 documents include emails about the Eurobond. I find that the documents in this Category are not reasonably required.

Category 11: Financial or treasury data

168. This Category contains 1,024 documents; the full description is:

> "Financial/treasury data shared as part of regular internal updates, such as statutory accounts, loan schedules and/or financial data shared for the purposes of other restructurings."

169. HMRC's submissions relied on statements made by the Appellant that the commercial purposes of the Eurobond was "based on improving the financial position of PHML", which included "improving the net asset value and rectifying the negative distributable reserves position". HMRC said that in consequence:

> "…information or evidence which sets out the financial position of PHML and/or the Appellant before and/or after the 2014 Eurobond Refinancing is important to understand so as to enable the HMRC case team to form a view on whether the commercial driver existed, whether the commercial driver was anticipated to be achieved from the 2014 Eurobond Refinancing and subsequently whether the commercial driver was achieved as a result."

170. Mr Ellinor and Mr Elsey are directors of the Appellant and of PHML, the Appellant's trading subsidiary; Mr Ellinor is additionally the Finance Director of all the Parker Group's other entities in the UK, Ireland and South Africa. It is therefore self-evident that in the course

of the three year period covered by the Notice, both individuals will have sent and received a great many emails containing general financial data. PwC have already searched through these emails and identified those where the data relates to the "unallowable purpose" issue. HMRC also already have the Appellant's statutory accounts, and those of the other UK resident companies.

171. To the extent that the Category 11 emails contain information about "other restructurings", the position is the same as in relation to Categories 5 and 6.

172. I find that the Category 11 documents are not reasonably required.

Category 12: Other

173. This Category contains 300 documents. In their Statement of Case, HMRC submitted that the Appellant had provided only a "bare assertion that the documents are not relevant, unsupported by any reasoning"; the same phrasing was repeated in Mr Blakely's skeleton.

174. In making that submission, HMRC failed to take into account the letter from Mr Whithouse of 23 January 2023, which included the following:

> "When reviewing a population of nearly 10,000 documents and putting them into defined categories, it is inevitable there will be a small percentage of these which cannot be neatly categorised. We have set out below some examples of types of documents which fall into this category, which should hopefully help assuage HMRC's concerns in this regard:
>
> a. Email correspondence regarding personal matters such as family holidays, wills and/or trusts, etc.;
>
> b. Email correspondence with professional advisors concerning a variety of matters, such as new services offered by the advisors or IT difficulties with SharePoint access;
>
> c. Internal Parker email correspondence regarding the company automobile insurance arrangement;
>
> d. Internal Parker email correspondence regarding internal audit compliance testing;
>
> e. Internal Parker email correspondence regarding STO safety certificate renewal;
>
> f. Email correspondence with Verizon concerning an outstanding balance dispute;
> g. Internal Parker email correspondence regarding the move from using Barclays to JP Morgan;
>
> h. Various power of attorney documents; and
>
> i. Email correspondence with Citibank regarding disputed transactions."

175. HMRC's justification for requiring the documents within this Category was that "as the documents were identified by the specific search criteria the documents are reasonably required unless reason can be provided to the contrary". However, the "specific search criteria" produced over 4,200 documents which HMRC themselves have accepted were irrelevant; further examples are set out at §104 above. The documents categorised as "other" are thus not "reasonably required" simply because they fall within the Terms. PwC have confirmed that the withheld documents are not relevant; Mr Whitehouse has given specific examples of these "other" irrelevant documents, and HMRC have not submitted that any of those examples were in fact relevant. I find that the Category 12 documents are not reasonably required.

Conclusion on the withheld documents

176. For the reasons set out above, I reject HMRC's submissions, and agree with the Appellant that none of the withheld documents are reasonably required.

TO SET ASIDE OR TO VARY?

177. The next question was whether to strike out the Notice in its entirety, or whether to vary the Notice.

The parties' submissions

178. HMRC's position was that the Notice should be varied to remove the requirement that the Appellant provide documents within Categories 3, 4, 8 and 9, which they had accepted were not reasonably required.

179. Mr Afzal submitted that the Notice was fundamentally flawed for the following reasons:

(1) PwC, acting professionally and in good faith, had identified 9,717 irrelevant documents out of a total of 11,162; this was 87% of the total.

(2) HMRC themselves accepted that 4,240 irrelevant documents were within the scope of the Terms. This was 44% of the withheld documents and 38% of the total.

180. However, as use of the Terms had led to the identification of 1,695 relevant documents, Mr Afzal submitted in the alternative that the Notice should be varied by the Tribunal so that only documents which were *both* identified by the Terms *and* relevant to the Eurobond refinancing was in scope. He said that the Tribunal could rely on the PwC exercise for the reasons already considered at §114ff, and that if the Notice were to be varied in that way, the Appellant would already have complied with its requirements.

Discussion

181. Had the Appellant appealed the Notice before the PwC exercise had been carried out, I would have set the Notice aside. It is self-evidently far too broad, and as Simler J said in *Derrin*:

> "A broadly drafted request will not be valid if in reality HMRC are saying 'can we have all available documents because they form so large a class of documents that we are bound to find something useful'."

182. A similar issue arose in *Woolford and others v HMRC* [2019] UKFTT 349 (TC), a decision of Judge Greenbank. HMRC had become aware that an allegedly dormant company, HQLL, had entered into a land transaction, and by a Sch 36 Notice had asked for correspondence with any person relating to the purchase and subsequent transfer of that property. Judge Greenbank allowed the appellants' appeal, saying:

> "The request is too broad and too vague. The correspondence could cover any number of matters of no relevance at all to the tax position of HQLL."

183. However, as I am deciding this appeal after PwC had filtered HMRC's broad request so as to identify the relevant documents, the position has changed since the Notice was issued. I agree with Judge Robin Vos, who said in *Hargreaves & others v HMRC* [2021] UKFTT 80 (TC) at [56] that:

> "…the Tribunal's role is not simply to review the officer's decision by determining whether their belief that the information is reasonably required is a reasonable one; instead it is to come to its own conclusion as to whether the information is, objectively, reasonably required. In doing so, it follows in my view that the Tribunal must assess this based on the circumstances at the time of the hearing. There would be little point in basing its decision on the circumstances prevailing at the date the notices were issued as this could lead

> to taxpayers being required to produce information which was no longer relevant or no longer reasonably required."

184. Judge Aleksander similarly said in *Hackmey v HMRC* [2022] UKFTT 160 (TC) at [35]:

> "In reaching its decision, the Tribunal must take account of all matters that have come to light since the Information Notice was issued – so I need to determine not whether there was a reasonable basis for HMRC to be suspicious of Mr Hackmey's level and source of income in 2018 when the Information Notice was issued, but whether there is a reasonable basis for suspicion today (in light of all the evidence before me – including material subsequent to the date of issue of the Information Notice), and if so, whether the information and documents sought remain reasonably required."

185. Mr Afzal explicitly accepted that the above *dicta* were correct. Since Mr Blakely asked the Tribunal to vary the Notice to exclude documents within Categories 3, 4, 8 and 9, I have taken it that HMRC also accept that the Tribunal must decide the appeal based on the circumstances at the time of the hearing.

186. I considered the PwC exercise earlier in this judgment, and for the reasons set out at §134, concluded that reliance could be placed on PWC's separation of the relevant documents from those which were irrelevant, subject to considering HMRC's specific reasons relating to each of the remaining Categories. Having considered those submissions, I went on to find that none of the documents within those Categories were reasonably required.

187. It follows that I agree with the Appellant that reliance can be placed on the PwC exercise in deciding which of the documents identified by the Terms are reasonably required. I therefore vary the Notice as set out below.

188. The Notice begins as follows:

> "To help us with our check we need the following information and documents…
>
> **Information and documents**
>
> 1. All email records identified in the search described below…

189. I vary the Notice to replace these opening words by the following:

> "To help us with our check we need the following information and documents…
>
> **Information and documents**
>
> 1. All email records identified in the search described below which relate to the purpose of the Eurobond issued by Parker Hannifin (GB) Limited in 2014 and the subsequent transfer of the Eurobond receivable in 2016."

190. The Notice goes on to say that:

> "Please include all email records that meet the search criteria set out in this schedule, except any that have previously been provided to HMRC. You may include records that have already been provided to HMRC if it is less burdensome for you to do so."

191. I vary the Notice so as to replace those sentences with the following text:

> "Please include all email records that meet the search criteria set out in this schedule. In determining whether an email record meets the search criteria, the 'search process' determined by PricewaterhouseCoopers ("PwC") and set out in the Appendix to your letter dated 17 December 2019 is to be applied.

> Emails identified as irrelevant by PwC in accordance with that search process are not required by this Notice.
>
> You are also not required to provide any emails which have previously been provided to HMRC, although you may do so if this is less burdensome."

DECISION AND APPEAL RIGHTS

192. For the reasons set out above, I allow the Appellant's appeal on the second ground, and vary the Notice as set out at §188 to §191. It is therefore not necessary to consider the Appellant's final ground.

193. As the Appellant has already complied with the Notice as varied, it is not required to provide any further documents under the Notice.

Full decision and appeal right

194. This notice contains full findings of fact and reasons for the decision.

195. In accordance with paragraph 32(5) of Sch 36, HMRC have no right to appeal to the Upper Tribunal against this decision.

ANNE REDSTON
TRIBUNAL JUDGE

Release Date: 08th NOVEMBER 2023