

## **Gone fishing!**

*Mark McLaughlin looks at HMRC information notices and asks whether generic requests for email correspondence is permissible*

Taxpayers understandably do not relish receiving a tax return enquiry notice from HMRC. Aside from fearing an unhappy and expensive outcome, taxpayers (and their agents) are faced with a potentially time-consuming exercise, in terms of responding to communications from HMRC and dealing with requests to provide information and/or documents in support of the taxpayer's self-assessment.

Some taxpayers may feel indignant at HMRC's requests for copious information and documents, and instinctively wish to resist such requests, or alternatively seek to provide only the details that the taxpayer considers HMRC should be entitled to see. However, statutory information powers are a potent weapon in HMRC's compliance armoury.

### **Word searches in emails**

Most tax advisers will be all too familiar with HMRC's powers to obtain information and documents. Broadly, HMRC can issue an information notice requiring the taxpayer to provide information or produce documentation if it is reasonably required to check the taxpayer's tax position (FA 2008, Sch 36, para 1). An information notice may specify or describe the information or documents to be provided or produced (Sch 36, para 6(2)).

Of course, whether particular information or documents are 'reasonably required' for this purpose can be a major bone of contention. The lack of statutory definition and sufficient clarity has resulted in a number of cases on the subject. One area of potential dispute is the extent to which HMRC's requests for information should be specific and precise.

For example, in *Parker Hannifin (GB) Ltd v Revenue and Customs* [2023] UKFTT 971 (TC), the appellant company ('PH') was the holding company of a group. In 2014, PH became involved in a group refinancing exercise, and claimed tax relief on the interest paid on a Eurobond. Following enquiries, HMRC considered whether to refuse interest relief on the basis that the refinancing in 2014 and/or a subsequent transfer of the Eurobond in 2017 had an 'unallowable purpose' for loan relationship purposes (within CTA 2009, ss 441 and 442).

HMRC issued an information notice. However, unlike most information notices, it did not set out particular documents which HMRC required PH to provide; instead, it required PH to carry out an email search using a list of specified terms (e.g. 'avoidance'), and to provide all the emails identified as a result. PH engaged PricewaterhouseCoopers (PwC) to conduct 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, which were provided to HMRC.

HMRC responded the same day without looking at any of those emails, stating that PH was required to provide all the emails. PH appealed. PwC subsequently provided HMRC with an analysis of the withheld documents, split into twelve categories.

### **Too imprecise**

The First-tier Tribunal (FTT) decided that the information notice was not invalid simply because it was expressed by reference to HMRC's specified terms. Nevertheless, the documents must be 'reasonably required'. The FTT found that the notice requirements were "far too wide"; consequently, many of the documents produced by the HMRC's specified terms were not reasonably required (e.g. 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). The FTT found that reliance could be placed on the PwC exercise and varied the notice to exclude the documents PwC identified as irrelevant.

The FTT allowed PH's appeal, and as HMRC had already been provided with the documents within the scope of the information notice as varied by the FTT, no further compliance was required.

### **'Fishing expedition'**

Taxpayers and agents often become exasperated and increasingly animated if HMRC is considered to be conducting a 'fishing expedition' (i.e. broadly where HMRC is seeking to extend the scope of its enquiry without having any reason to suspect that anything was wrong). Some comfort can perhaps be found in HMRC's Compliance Handbook Manual (at CH229800), which points out: "An assurance has been given in Parliament that information powers will not be used for fishing expeditions (speculative enquiries)."

However, in *Spring Capital Ltd v Revenue and Customs* [2015] UKFTT 8 (TC), the FTT commented (in the context of an information notice and alleged fishing expedition): "There is nothing in [FA 2008, Sch 36, para 1] that requires HMRC to suspect that the return is incorrect before issuing an information notice. HMRC are entitled to check taxpayer's (sic) tax position and they are entitled to any documents or information reasonably required for the purpose of doing so. In other words, HMRC are entitled to undertake 'fishing expeditions' when checking returns: they do not need suspicion in order to check a tax return."

Whilst decisions of the First-tier Tribunal do not set a binding precedent, they will generally be persuasive in other cases. The conclusion in *Spring Capital Ltd* was subsequently followed in *Rankin v Revenue and Customs* [2016] UKFTT 541 (TC) and *Holmes & Anor v Revenue and Customs* [2018] UKFTT 678 (TC). However, it should be remembered that the documents or information requested must still pass the statutory test of reasonableness.

One category of documents requested in HMRC's information notice in *Parker Hannifin (GB) Ltd* was "correspondence relating to external transactions and subsequent legal entity simplification exercises". The FTT described this as a 'fishing expedition' as HMRC had asked for 1,869 further documents (none of which related to the Eurobond) on the basis that among them they "are bound to find something useful". Another category ("correspondence relating to other internal restructurings undertaken involving intragroup loans") comprising 755 documents was similarly found to be a 'fishing expedition', so was not reasonably required.

### **Too accommodating?**

The FTT in *Parker Hannifin (GB) Ltd* stated that had PH appealed the information notice before the PwC exercise was undertaken, the FTT would have set the notice aside on the basis that it was far too broad. Unfortunately, the FTT had to consider the position at the time of the hearing. Even so, PwC had identified that 87% of the emails requested by HMRC (i.e. 9,717 out of 11,162) were

irrelevant. On appeal, even HMRC accepted that 4,240 emails (i.e. four of the 12 categories) were irrelevant.

The conclusion to be drawn is perhaps that HMRC requests in information notices should be reviewed critically and objectively. While the FTT found that the use of search terms in information notices is acceptable, taxpayers and advisers should not be afraid to challenge information requests if they are considered not to be reasonably required to check the taxpayer's tax position due to the exceedingly wide scope of such requests.

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