



Neutral Citation: [2023] UKFTT 907 (TC)

Case Number: TC08975

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Location: Taylor House, London

Appeal reference: TC/2021/13090
TC/2022/01712
TC/2022/11863

*PROCEDURE - application for closure notice - section 28A(6) Taxes Management Act 1970–
appeals against information notices - paragraph 1(1) Schedule 36 Finance Act 2008 – whether
information provided – whether information reasonably required appeal allowed in part –
application for closure notice refused*

Heard on: 9 August 2023
Judgment date: 24 October 2023

Before

**TRIBUNAL JUDGE GREG SINFIELD
TRIBUNAL MEMBER CAROLINE SMALL**

Between

APSLEY WAY PROPERTY HOLDINGS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Peter Vaines, counsel

For the Respondents: Daniel Hickey Baird, litigator of HM Revenue and Customs’
Solicitor’s Office

DECISION

INTRODUCTION AND SUMMARY OF DECISION

1. The Appellant, Apsley Way Property Holdings Limited ('AWPH Ltd') applies to the First-tier Tribunal ('FTT') for a closure notice in respect of an enquiry by the Respondents ('HMRC') into the years ended 5 April 2018 and 5 April 2019 which was opened on 12 June 2020. Section 28A(6) of the Taxes Management Act 1970 ('TMA') provides that, where a taxpayer has made such an application, the FTT must direct that HMRC issue a closure notice unless satisfied that there are reasonable grounds for not issuing the closure notice within a specified period.

2. AWP Ltd also appeals against two information notices issued by HMRC on 11 October and 6 December 2021 under paragraph 1(1) of Schedule 36 to the Finance Act 2008 ('FA 2008'). The information notices required AWP Ltd to provide specified information and documents relating to the years which are the subject of the enquiry. Paragraph 1(1) of Schedule 36 provides that HMRC can only require a taxpayer to provide information and documents if they are reasonably required by HMRC for the purpose of checking the taxpayer's tax position, in this case in relation to the 2017-18 and 2018-19 tax years.

3. For the reasons set out more fully below, we have decided that the appeals against the information notices are allowed in relation to certain items but are otherwise dismissed and the application for a closure notice is refused.

LEGAL FRAMEWORK

Closure notice applications

4. Once HMRC has opened an enquiry there is no statutory time limit or obligation to close the enquiry and thus an enquiry could last for an indefinite period creating uncertainty and anxiety for the taxpayer. Section 28A TMA provides protection for a taxpayer against a protracted enquiry into their tax affairs and a defence for HMRC where a continuation of the enquiry is justified.

5. Section 28A TMA is set out in the Appendix to this decision but, in summary, the relevant points are as follows. Section 28A(4) TMA provides that a taxpayer may apply to the FTT for a direction requiring HMRC to issue a partial or final closure notice within a specified period. Section 28A(6) TMA provides that the FTT must direct that HMRC issue a closure notice unless satisfied that there are reasonable grounds for not issuing the closure notice within a specified period.

6. I agree with and gratefully adopt the summary of the relevant principles set out by Judge Falk, as she then was, in *Beneficial House (Birmingham) Regeneration LLP & Anor v HMRC* [2017] UKFTT 801 (TC) at [15]:

“(1) The procedure is intended as a protection to a taxpayer against enquiries being inappropriately protracted, providing a ‘reasonable balance’ to HMRC’s substantial powers to investigate returns (*HMRC v Vodafone 2* [2006] STC 483 at [33] and [34]) and protecting the taxpayer against undue delay or caution on the part of the officer in closing the enquiry (*Eclipse Film Partners No 35 LLP v HMRC* [2009] STC (SCD) 293 at [17]). The Tribunal is required to exercise a value judgment, determining what is reasonable on the facts and circumstances of the particular case (*Frosh and others v HMRC* [2017] UKUT 320 (TCC) at [43]). This involves a balancing exercise.

(2) The reasonable grounds that HMRC must show must take account of proportionality and the burden on the taxpayer (*Jade Palace Limited v HMRC* [2006] STC (SCD) 419 at [40]).

(3) The period required to close an enquiry will vary with the circumstances and complexity of the case and the length of the enquiry: complex tax affairs and large amounts of tax at risk are likely to extend an enquiry, but the longer the enquiry the greater the burden on HMRC to show reasonable grounds as to why a time for closure should not be specified (*Eclipse Film Partners*, and *Jade Palace* at [42] to [43]). It may be appropriate to order a closure notice without full facts being available if HMRC have unreasonably protracted the enquiry: see *Steven Price v HMRC* [2011] UKFTT 264 (TC) at [40].

(4) A closure notice may be appropriate even if the officer has not pursued to the end every line of enquiry. What is required is that the enquiry has been conducted to a point where it is reasonable for the officer to make an ‘informed judgment’ of the matter (*Eclipse Film Partners* at [19]).

(5) If it is clear that further facts are or are likely to be available or HMRC has only just received requested documents and may well have further questions, then a closure notice may not be appropriate: see for example *Steven Price*, and also *Andreas Michael v HMRC* [2015] UKFTT 577 (TC). The Tribunal should guard against an inappropriate shifting of matters that should be determined by HMRC during the enquiry stage to case management by the Tribunal. However, the position will turn on the facts and circumstances of each case: *Frosh*.

(6) The Supreme Court’s comments on the subject of closure notices in *HMRC v Tower MCashback LLP* [2011] UKSC 19, [2011] 2 AC 457 are highly relevant. In particular, Lord Walker commented that whilst a closure notice can be issued in broad terms, an officer issuing a closure notice is performing an important public function in which fairness to the taxpayer must be matched by a ‘proper regard for the public interest in the recovery of the full amount of tax payable’, although where the facts are complicated and have not been fully investigated the ‘public interest may require the notice to be expressed in more general terms’ (paragraph [18]). Lord Hope also said at [85] that the officer should wherever possible set out the conclusions reached on each point that was the subject of the enquiry. In *Frosh* the Upper Tribunal commented at [49] that a closure notice in broad terms is ‘not the norm’ and so should not be taken as an appropriate yardstick for assessing whether HMRC’s grounds for not closing the enquiry are reasonable.”

Information notices

7. An information notice is how HMRC can require a person to provide information or produce a document that is reasonably required for the purpose of checking the taxpayer’s tax position or for collecting a tax debt of the taxpayer. Information notices may be issued to the taxpayer or a third party. In this case, we are concerned with a taxpayer notice issued under paragraph 1(1) of Schedule 36 FA 2008. The relevant provisions of Schedule 36 FA 2008 are set out in the Appendix to this decision.

8. There are some restrictions on the information that can be required by an information notice. For example, paragraph 18 of Schedule 36 provides that a person cannot be required to produce a document that is not in their possession or control and paragraph 19 provides that a person cannot be required to produce information relating to the conduct of a pending tax appeal. Paragraph 20 impose a time limit in that a person cannot be required to produce a document, the whole of which is more than six years old, unless the information notice is issued with the agreement of an authorised HMRC officer. None of these restrictions is relevant in this case.

9. There are some restrictions on the ability of HMRC to issue an information notice to a taxpayer in relation to a tax year where that person has, as in this case, made a tax return for

the period. Paragraph 21(3) provides that the restriction does not apply if one of four conditions applies. Condition A is that there is an open enquiry into the return for each year. HMRC had opened an enquiry AWP Ltd's tax return for the 2017-18 and 2018-19 tax years. AWP Ltd accepted that Condition A was met in this case and that HMRC are not precluded by paragraph 21 from issuing an information notice under Schedule 36.

10. AWP Ltd's case turns on whether the information notices satisfy the primary condition in paragraph 1(1) of Schedule 36 that the information and documents sought must be reasonably required for checking AWP Ltd's tax position for the years under enquiry. AWP Ltd submits that none of the information requested in the information notices is reasonably required by HMRC for the purpose of checking its tax position for the 2017-18 and 2018-19 tax years.

11. We approach our consideration of the information notices in this case in the same way as Judge Redston in *Joshy Mathew v HMRC* [2015] UKFTT 139 (TC) (*'Mathew'*) at [99]. In relation to each item in the information notices, we ask the following questions:

(1) Does the information or document form part of the taxpayer's statutory records? If so, the taxpayer has no right of appeal against the requirement to provide the information or document (see paragraph 29(2) Schedule 36 FA 2008) for the reason explained by Judge Cannan in *Holmes and Knight v HMRC* [2018] UKFTT 678 (TC) (*'Holmes and Knight'*) at [13].

(2) Has the taxpayer already provided the information or document to HMRC? If so then the information notice has been complied with and there is nothing further for the FTT to consider.

(3) If the taxpayer has not provided the information or document to HMRC and is unwilling to do so, is the information or document (not being part of the taxpayer's statutory records) reasonably required for the purposes of checking the taxpayer's tax position?

12. We can dispose of the first question immediately. Paragraph 62 of Schedule 36, as it applies to this case, provides that any information or documents that AWP Ltd is required to keep and preserve under or by virtue of the Taxes Acts or any other enactment relating to tax are part of its statutory records. In *Mathew* at [89], Judge Redston held that:

"In the context of a company, or even a self-employed business, it is usually relatively straightforward to identify statutory records. These will include a business[']s] bank accounts, invoices, purchase orders, till rolls etc."

13. Neither party suggested, and nor does it appear to us, that any of the items requested in the information notices form part of the statutory records of AWP Ltd. Accordingly, only the second and third questions are relevant, and we consider them in relation to each item in each information notice below.

14. The second question is a matter of fact and requires us to find whether the information or documents specified in the information notices have been provided to HMRC. It is for the taxpayer to show that they have already complied with the information notice, possibly before it was even issued, and it therefore unnecessary.

15. The third question raises two issues:

(1) Is the particular item of information or document required for the purpose of checking the taxpayer's tax position (in this case for the 2017-18 and 2018-19 tax years)?

(2) Is the requirement to provide the information or produce the document objectively reasonable?

16. The first issue is really whether there is a sufficient connection between the information or document sought and the taxpayer's tax position. Paragraph 64 of Schedule 36 defines "tax position" to include the person's position as regards past, present and future liability to pay any tax. The condition that the information or document must be required for the purpose of checking the taxpayer's tax position means that the information or document must enable HMRC to check the taxpayer's liability to pay tax for the relevant period or any future liability to pay tax and, by implication, ensure that the correct amount of tax has been (or will be) paid. If the information or document does not do that then it is not required for the necessary purpose and, not being part of the taxpayer's statutory records, HMRC are not entitled to demand it.

17. The second issue requires us to consider whether it is unreasonable to require the taxpayer to provide the information or produce the document. A requirement will be unreasonable where it is so broadly drafted or the class of documents is so large that the request is a 'fishing expedition', which is impermissible (see *Derrin Brother Properties Ltd v HMRC* [2014] EWHC 1152 (Admin) at [20] and *Jenner v HMRC* [2022] UKFTT 203 (TC) at [22] – [25]). That is not an exclusive test and there may be other reasons why a requirement is unreasonable, for example where it is disproportionate or excessively onerous.

18. Although HMRC may not engage in a fishing expedition, they do not have to show a reason to suspect an underassessment of tax. Mr Vaines, for AWP Ltd, submitted that it was relevant that HMRC had not argued that Condition B of paragraph 21 of Schedule 36 FA 2008 applied. Condition B applies where HMRC have reason to suspect that there has been an underassessment of tax which they had never suggested. We do not accept that is a relevant consideration where there are open enquiries, as there are in this case. HMRC are entitled to any documents or information reasonably required for the purpose of checking the taxpayer's tax position as that term is explained above.

EVIDENCE

19. We were provided with an electronic hearing bundle of 1053 pages which included a witness statement of HMRC Officer Scott Sibbald and numerous documents produced by him as exhibits. Officer Sibbald is the case lead with overall responsibility for the enquiries into AWP Ltd. There was no witness evidence for AWP Ltd.

20. On 2 August 2023, HMRC made an application under Rule 5(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('the FTT Rules') to introduce a supplementary witness statement by HMRC Officer Sibbald. HMRC stated that the reason for the application was that the parties had continued to correspond during the progress of the litigation and, as one of the issues in the appeal is AWP Ltd's application for a closure notice, HMRC considered that it was reasonable for the FTT to have the most up to date position regarding the matter.

21. Mr Vaines, on behalf of AWP Ltd, objected to parts of Officer Sibbald's original witness statement and to the admission of the supplementary witness statement. He submitted that the witness statements both contained opinion. There was no dispute about the recitation of facts in the original witness statement which was mainly setting out the correspondence, but Mr Vaines contended that all commentary on the correspondence, expressions of opinion and conclusions on the issues raised in the case were inadmissible. He also submitted that the supplementary witness statement was largely speculation or argument.

22. Mr Vaines referred to *Mungavin v HMRC* [2020] UKUT 11 (TCC), in which Nugee J, as he then was, explained at [82] that:

"Save insofar as they are able to give relevant evidence of their own, it is not the proper function of a witness's evidence to comment on documents, or on other witnesses' evidence, or to speculate on other persons' motives or

intentions; far less is it the proper function of a witness's evidence to raise points of law, or to argue a party's case."

23. We respectfully agree with that observation and we also agree with Judge Berner's comments in *CF Booth Ltd v HMRC* [2016] UKFTT 261 (TC) at [14] that:

"Tribunals will be astute to the difference between the factual evidence contained in a witness statement and inferences and conclusions that may be contained within it. The latter are not properly part of the evidence of a witness of fact; to the extent they are contained in a witness statement they should be disregarded and it is not necessary for the witness to be cross-examined in those respects."

24. However, the position of an HMRC witness such as Officer Sibbald in applications for closure notices and appeals against information notices is not the same as a witness for HMRC in an MTIC appeal, which *CF Booth Ltd* was, where the issue is whether the appellant knew or ought to have known that transactions were connected with fraud. Applications for closure notice and appeals against information notices both turn on whether, judged objectively, HMRC's opinion is reasonable. In the case of an application for a closure notice, the FTT must consider whether HMRC has reasonable grounds for continuing the enquiry. The issue in an appeal against an information notice, is whether HMRC's view that they require the specified information is reasonable in the circumstances. The evidence of Officer Sibbald, as the case lead with overall responsibility for the enquiries into AWP Ltd, is directly relevant to those issues in this case because he formed the relevant opinion or was responsible for those in HMRC who did. In so far as any witness statement contains submissions or conclusions, we shall apply the approach commended by Judge Berner in *CF Booth* and disregard them.

25. For those reasons, we decided to allow Officer Sibbald's supplementary witness statement to be admitted but we will be alert to disregard any matters in either witness statement that are not evidence of facts relevant to the issues in this case.

FINDINGS OF FACT

26. At the hearing, Officer Sibbald's witness statements were taken as read and he was cross examined by Mr Vaines. Based on Officer Sibbald's witness evidence and the evidence in the hearing bundle, we make the following findings of fact.

27. AWP Ltd is a company registered in the British Virgin Islands ('BVI') and managed and controlled by directors and shareholders in Jersey. AWP Ltd's directors are IQEQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd, both of which are corporate service providers and both of which have their registered offices in Jersey.

28. Around June or July 2012, AWP Ltd purchased a building at 1 Apsley Way, London ('the Property') from Vitabiotics Ltd for £5.85M. AWP Ltd and Vitabiotics Ltd share the same parent company, namely Vitabiotics Group Holdings Ltd ('VGH Ltd'), which also has a registered office in the BVI.

29. AWP Ltd let the Property to Vitabiotics Ltd. As a non-resident landlord, AWP Ltd makes tax returns each year to HMRC in respect of the rental income obtained from letting the Property after deduction of the relevant expenses. AWP Ltd has no other business and no other material assets.

30. HMRC opened an enquiry into AWP Ltd's affairs on 12 June 2020 to check the company's tax return for the year ended 5 April 2018 which had been submitted to HMRC on 31 May 2019. In a letter dated 12 June, HMRC requested documents and information about the figures of income and expenditure disclosed in AWP Ltd's tax return. A similar enquiry was opened and request for documents and information made by HMRC on the same day in

respect of the year ended 5 April 2019 which had been submitted to HMRC on 31 January 2020. Apart from the tax year in question, both schedules of documents and information required were identical and listed 17 items.

31. Officer Sibbald's evidence was that the potential risks identified at the outset of HMRC's enquiries were as follows:

(1) That AWPB was incorporated in the BVI and lay within an opaque structure and had unknown ultimate beneficial ownership. The taxation implications of this could not be determined or even properly appraised until HMRC knew where AWPB lay in the structure and what role it played.

(2) That AWPB had bought premises from a UK company that was owned by the same mutual offshore entity, which also lay within the opaque structure described at (1) above. This meant that there was a risk that the sale/purchase and rental valuations were non-arm's length transactions.

(3) At the time, Officer Sibbald did not know the source of the funding for the premises and whether AWPB had been involved in inter-entity lending and/or borrowing and, therefore, what the potential tax implications of such transactions might be.

(4) Since the offshore structure which AWPB lies within is opaque, the true locus of its central management and control may give rise to potential tax implications, especially if it had made or received loans for the benefit of its participators, which at the time were completely unknown.

32. AWPB Ltd's accountants, Ashworth Moulds, responded to HMRC's request for documents and information in two letters dated 3 August 2020. Ashworth Moulds provided the information and documents or a response to all 17 items in the schedules of information.

33. On 2 September, HMRC wrote to Ashworth Moulds again. With the letter, HMRC provided an inventory of the documents supplied and asked for a copy of the buildings insurance policy effective from 1 January 2019 which Ashworth Moulds has said was enclosed but seems to have been omitted. In their letter, HMRC also noted that Ashworth Moulds had not provided a complete response to points 5 and 6 in the schedules of information. HMRC asked that AWPB Ltd provide information and supporting documentation relating to all purchases and sales of land or property in the UK or abroad in prior periods as requested in items 5 and 6 in the schedules. Having requested those items, the author of the letter stated:

"Once these outstanding items are received, I will be able to complete my review and respond to you in full."

34. In a letter dated 23 September, Ashworth Moulds supplied a copy of the requested buildings insurance policy and confirmed that the only property transaction that AWPB Ltd had ever undertaken was the purchase of the Property.

35. On 9 October 2020, HMRC wrote again to Ashworth Moulds in two letters, one for each year under enquiry, to ask for the following information.

(1) Bank statement for seven dormant bank accounts to show they were indeed dormant.

(2) The name(s) of the individual(s) who instructed their corporate service providers who were directors of AWPB Ltd and the name(s) of the individual(s) who appointed those corporate service providers.

(3) The name(s) of the person(s) who negotiated the lease on behalf of AWPB Ltd.

- (4) The name(s) of the person(s) at VGH who had the right to make certain decisions or who had made certain decisions.
 - (5) Why interest was not charged on the late payment of rents, despite rents having been in arrears.
 - (6) Why it was the tenant and not the landlord who insured the Property which was owned by AWPB Ltd.
 - (7) Who within AWPB Ltd had decided to lend a BVI registered company called Marchwood International Holdings Ltd money and what the purpose of the loans were.
 - (8) The name(s) of the person(s) in AWPB Ltd who had decided to take out loans with a BVI company called Vitabiotics (CI) Ltd and a Jersey company called Omega – Meyer Ltd and the amounts borrowed etc.
 - (9) Who, within AWPB Ltd decided to increase the rent on the Property from the initial rate of £600,000 per annum to £753,000 per annum, during the tax year 2018/19.
36. HMRC commented in the letter relating to year ended 5 April 2019 that AWPB Ltd's valuation of the Property had been uplifted from its initial purchase price of £5.85M to £12.8M, during the year.
37. Ashworth Moulds responded in a letter dated 24 November 2020 enclosing copies of two loan agreements, each with an accompanying addendum. These agreements showed that:
- (1) AWPB Ltd had borrowed funds from VGH Ltd of £3M with an interest rate of 4% above LIBOR, in an agreement dated 19 July 2012 to assist with the funding of the purchase. There were no guarantors to the loan. The loan had a repayment date of 20 July 2022, via an addendum to the agreement dated 20 July 2017.
 - (2) AWPB Ltd and VGH entered into a further loan agreement dated 10 December 2013, which provided for further borrowing by AWPB from VGH of £3M at an interest rate of 4% above LIBOR, with an effective lending date of 26 June 2012. There were no loan guarantors. The repayment date of the loan was revised to 26 June 2022, via an addendum to the agreement dated 7 July 2017. The addendum confirmed that £1.59M of the loan had been repaid by AWPB Ltd to VGH on 2 June 2017.
38. In their letter of 24 November, Ashworth Moulds stated that the loans made by AWPB Ltd to Marchwood International Holdings Ltd and from Omega-Meyer Ltd and Vitabiotics (CI) Ltd to AWPB Ltd were all interest free, they had no bearing on AWPB Ltd's tax position. In his evidence, Officer Sibbald said that he did not know the full extent of the offshore structure and he was unable to make a decision about the tax effects of these loans until he knew and understood the full beneficial ownership of all the entities in the structure and the place of central management and control of AWPB Ltd, Marchwood International Holdings Ltd, which is resident in the BVI, and Omega-Meyer Ltd and Vitabiotics (CI) Ltd.
39. HMRC wrote again to Ashworth Moulds on 19 February 2021 in two letters, one for each tax year under enquiry. In the letter relating to the tax year ended 5 April 2018, HMRC stated that as the landlord (AWPB Ltd) and tenant (Vitabiotics Ltd) were mutually owned and the funds to buy the property had been lent by their mutual owner, at a rate of interest set by an unknown party, HMRC reasonably required to see the conveyancing documents relating to the property. In the letter relating to the tax year ended 5 April 2019, HMRC stated that they only had one outstanding item of information. HMRC noted that, in copies of correspondence between Elliot James of IQEQ and Graham Webb of Knight Frank which had previously been supplied, there was a reference to Mr James's "comments in red" but they were not included. HMRC asked for copies of those comments to be provided.

40. On 31 March 2021, Ashworth Moulds replied to HMRC in relation to the tax year ended 5 April 2018. They stated that AWPB Ltd's transactions with its tenant, Vitabiotics Ltd, were all at arm's length. In a letter of the same date relating to the tax year ended 5 April 2019, Ashworth Moulds said that Mr James's comments in red were included in the email provided to HMRC but they were not in red. They finished that letter by stating that they trusted that now brought the enquiry to a close.

41. On 5 May 2021, HMRC wrote to Ashworth Moulds requesting further information in relation to the year ended 5 April 2018. HMRC asked for the names of specific individuals who were responsible for making specific decisions in relation to major events in the history of AWPB Ltd. In the letter, HMRC asked for "copies of any correspondence including those with agents, lawyers, financial institutions or other 3rd parties whether within or outside the UK that relate to the purchase of 1 Apsley Way". HMRC said that the reason they required that information from years prior to the years under enquiry was to assist them to establish the true nature of the sale and rental transactions relating to the Property. HMRC said that if the information was not provided, they would consider issuing a formal notice. In relation to the year ended 5 April 2019, HMRC asked for a colour version of the email exchange between Mr James and Mr Webb.

42. Ashworth Moulds wrote to HMRC on 29 June 2021. In relation to the tax year ended 5 April 2018, they explained that the how the current directors of AWPB Ltd had been appointed, that they had full authority to act and how their remuneration was determined. Ashworth Moulds also stated that they believed that HMRC had full details about the lease and surrounding circumstances. They also said that they could not understand how the information requested could have any possible relevance to the tax position of AWPB Ltd for the year under enquiry. In relation to the tax year ended 5 April 2019, Ashworth Moulds provided HMRC with a colour copy of the email showing Mr James's comments.

43. HMRC responded to the accountants' letter of 29 June in their letter of 30 July. HMRC asked further questions. In relation to the year ended 5 April 2018, HMRC asked:

- (1) To whom are IQEQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd answerable?
- (2) Who decides that IQEQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd are to be retained as corporate directors of AWPB Ltd?
- (3) If, as stated in the letter of 29 June, there is no contract between AWPB Ltd and the corporate directors,
 - (a) does AWPB Ltd have a contract with any entity which authorises the corporate directors to act on its behalf or, if not, does AWPB Ltd have in their possession contracts between the corporate directors and any other entity?
 - (b) Where is any agreement of the corporate directors' remit recorded?
 - (c) Where are the terms of the corporate directors' remuneration or fees recorded?
 - (d) If no written contract or other text exists between the corporate directors and either AWPB Ltd, VGH Ltd or any third party for them to act on behalf of AWPB Ltd,
 - (i) under what circumstances did any arrangement or agreement for them to act on their behalf come about; and
 - (ii) how were the fees and/or remuneration set and agreed?

(4) What is/are the name of the person(s) who hold(s) office in AWPB Ltd and its parent company, VGH Ltd, and agreed the terms of the loan between the two entities?

44. In relation to the year ending 5 April 2019, HMRC stated they had not received the comments of Mr James in response to Mr Webb's email and asked for a further copy of Mr James's response to the email.

45. Ashworth Moulds replied on 26 August 2021. They stated that they had answered all HMRC's questions over a long period and done their best to provide all the relevant information. As far as they could see, all issues relating to AWPB Ltd's tax position for 2018 and 2019 had been dealt with fully. The letter concluded by observing that the questions raised in HMRC's letter of 30 July had nothing to do with AWPB Ltd's tax position for 2018 and 2019 and that it was now appropriate for the enquiry to be ended, failing which AWPB Ltd would apply to the FTT for a closure notice.

46. On 8 October 2021, HMRC responded to Ashworth Moulds's letter of 26 August. In the letter, HMRC set out their view of the risks in relation to AWPB Ltd's tax position and why they considered that the documents and information requested were reasonably required. In summary, HMRC stated that the rate of interest on the loan to AWPB Ltd might not have been set at a commercial arm's length rate which might have the effect of increasing the deductions claimed by AWPB Ltd and thereby reducing its tax liability with no corresponding increase to the UK tax liability of the lender. HMRC said that the that over deduction of interest would apply to every tax year since 2012 when AWPB Ltd purchased the Property.

47. As foreshadowed in their letter of 8 October, HMRC issued an information notice under paragraph 1 of Schedule 36 FA 2008 on 11 October 2021. The information notice sought the following information and documents:

"1. Directors

1) With regard to IQ- EQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd:-

1a) State the name of the person(s) who holds office within Apsley Way Property Holdings Ltd (AWPB), Vitabiotics Group Holdings Ltd (VGH) or elsewhere, who decided to appoint and retain IQ- EQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd on the board of directors of AWPB.

1b) Provide a copy of any contract(s), which authorises IQ- EQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd to act on behalf of AWPB.

1c) Provide a copy of any agreement(s) or other document(s) which describes the remit of IQ- EQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd in relation to their actions and decision, on behalf of AWPB.

1d) If no written contract, agreement or similar document exists between IQ- EQ Corporate Services (Jersey) Ltd & Winter Hill Financial Services Ltd with either AWPB and/or VGH or any other third party for them to act on behalf of AWPB, describe the circumstances under which: -

1di) Any arrangement(s) or agreement(s) for IQ- EQ Corporate Services (Jersey) Ltd & Winter Hill Financial Services Ltd to act on behalf of AWPB came about.

1dii) How the fees and/or remuneration were set and agreed.

1diii) State the name and role of the person(s) who sets or agrees the fees and/or remuneration paid to IQ- EQ Corporate Services (Jersey) Ltd & Winter Hill Financial Services Ltd.

2. Loan

2)With regard to the loan provided by VGH to AWPB: -

2a) State the name of the person(s) within VGH who decided or agreed the amount of the loan to be granted.

2b) State the name of the person(s) within AWPB who decided or agreed the amount of the loan to be taken.

2c) State the name of the person(s) within VGH Ltd who set/agreed the repayment terms of the loan.

2d) State the name of the person(s) within AWPB who set/agreed the repayment terms of the loan.

2e) State the name of the person(s) who set the interest rate for the loan.

2f) State the name of the person(s) within AWPB, who agreed to the interest rate for the loan.

2g) State the name of the person(s) within AWPB who agreed the repayment plan in relation to the loan interest.

3. Other

3a) What circumstances would be deemed exceptional enough by AWPB to trigger the clause in its tenancy agreement with Vitabiotics Ltd (its tenant) permitting charge(s) of interest on overdue rental payments?

3b) State the name of the person(s) in AWPB who would be responsible for deciding which circumstances are exceptional, in relation to the interest charging clause?

3c) State the name of the person(s) in AWPB who would be responsible for deciding when the exceptional circumstances have been triggered.

3d) Provide a visible and legible copy of the Email or other document sent by Elliot James (of IQ-EQ Corporate Services (Jersey) Ltd) at 11:42am on 19 November 2019, which includes a visible and legible copy of the comments made by Elliot James to Graham Webb of Knight Frank, referred to in the body of the Email as ‘Please see below my comments in red’.”

48. On 10 November 2021, Ashworth Moulds responded to both HMRC’s letter of 8 October and the information notice issued to the company on 11 October. The accountants said that HMRC were fully aware of the terms of the loan to AWPB Ltd and already had all the documentation relating to it and invited HMRC to say if they considered that interest paid should have been charged at some other rate. The letter also contained an appeal against the information notice of 11 October 2021.

49. On 12 November 2021, AWPB Ltd applied to the FTT for a closure notice under section 28A TMA 1970.

50. Following further correspondence HMRC issued another information notice under paragraph 1 of Schedule 36 on 6 December 2021. The information notice sought the following information and documents:

“1) Provide a copy of any organigrams, structure charts, letters or similar documents held by you, in respect of the beneficial ownership structure of the

company's parent, Vitabiotics Group Holdings Ltd, where they were created after 5 April 2016.

2) State when the directors of Apsley Way Property Holdings Ltd first became aware of the beneficial ownership structure of Vitabiotics Group Holdings Ltd.

3) Provide copies of all correspondence, including Emails, notes of telephone call, letters and meeting minutes etc. for the period 06/04/2017 to 05/04/2019, relating to, including, or referring to either Vitabiotics Group Holdings Ltd.'s or Apsley (sic) Way Property Holdings Ltd.'s beneficial ownership structure.

4) Provide copies of all correspondence, including Emails, notes of telephone call, letters and meeting minutes etc. for the period 06/04/2017 to 05/04/2019, relating to, including, or referring to any trusts, trustees or trust companies.

5) Provide copies of all correspondence, including Emails, notes of telephone call, letters and meeting minutes etc. for the period 06/04/2017 to 05/04/2019, relating to, including, or referring to IQ-EQ Corporate Services (Jersey) Ltd, Winter Hill Financial Services Ltd, IQEQ (Jersey) Ltd, Coverdale Trust Services Ltd and Vitabiotics Group Holdings Ltd, or any representative of any of those 5 entities.

6) State the name of the sole director who appointed IQ-EQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd as directors of Apsley Way Property Holdings Ltd.”

51. The information notice stated that if AWPB Ltd had already provided the items specified in items 3, 4 and 5 as part of its response to the information notice issued on 11 October 2021 then AWPB Ltd should state that explicitly and it was not required to provide the copy documents again.

52. Ashworth Moulds wrote to HMRC on 15 December 2021 to request a statutory review of the information notice of 11 October 2021 and to appeal in respect of the information notice of 6 December 2021. The grounds of appeal were that the information and documentation sought was not reasonably required and that the notice of 6 December 2021 was therefore not validly issued.

53. Following a review, HMRC confirmed the information notice dated 11 October 2021, apart from items 2a, 2c and 3d, in a review conclusion letter dated 3 February 2022. On 3 March 2022, AWPB Ltd appealed to the FTT against that decision on review. There was also a review in relation to the information notice of 6 December 2021 which confirmed the notice in a review conclusion letter dated 21 June 2022 and which AWPB Ltd appealed on 12 July 2022. In both cases, the grounds of appeal were “None of the information which has been requested by the information notice is required (reasonably or otherwise) for checking the company's tax position”.

DISCUSSION

54. One of the grounds on which HMRC argue that no closure notice should be issued for the 2017-18 and 2018-19 tax years is that AWPB Ltd has not provided the information and documents relating to those years requested in the information notices. It is logical therefore to consider whether information and documents specified in the information notices of 11 October 2021 and 6 December 2021 are reasonably required by HMRC for the purposes of checking the tax position of AWPB Ltd for the relevant years.

55. If we decide to confirm the information notices on the ground that some information and documents sought are reasonably required in order to check AWPB Ltd's tax position in the 2017-18 and 2018-19 tax years, then it must follow that the application for a closure notice in

relation to those years must be refused. Unless the material already in HMRC's possession is sufficient to allow them to issue a correct assessment, the fact that further information and documents are to be produced in response to the information notices would provide reasonable grounds for not issuing a closure notice until after the material has been provided and HMRC have had a reasonable chance to consider it. It does not follow, however, that the FTT must direct that a closure notice must be issued within a specified period if the appeals against the information notices are allowed. There may be other reasons why an enquiry should not be closed at that time even if HMRC are not entitled to any further information or documents.

56. We now consider the items in each information notice and ask whether they information and documents requested have been provided to HMRC and, if not, whether they are reasonably required for the purposes of checking AWP Ltd's tax position in the 2017-18 and 2018-19 tax years.

57. Neither party made any submissions on which party bears the burden of proof in relation to the issue of whether the documents and information are reasonably required and there is no binding authority on the point. As Judge Cannan observed in *Holmes and Knight* at [20]:

“The absence of any authoritative consideration of the issue is no doubt due to the fact there is no appeal from a decision of the FTT in relation to information notices.”

58. We follow the same approach as Judge Cannan in that case, Judge Redston in *Mathew* at [86] and Judge Aleksander in *Hackmey v HMRC* [2022] UKFTT 160 (TC) (*'Hackmey'*) at [34] in assuming, for the purposes of this decision, that HMRC have the burden of showing, on the balance of probabilities, that the documents and information in the information notices are reasonably required.

59. Finally, we agree with Judge Aleksander in *Hackmey* at [35] that, in reaching its decision, the Tribunal must take account of all matters that have come to light since the information notice was issued including material subsequent to the date of issue of the information notice (and, indeed, matters that are established at the hearing) in determining whether the information and documents remain reasonably required.

Information Notice 11 October 2021

60. The first matter to be decided is whether any items specified in the information notice dated 11 October 2021 have already been provided to HMRC.

61. The information notice sought specific information and documents relating to the directors of AWP Ltd, IQEQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd. AWP Ltd contended that the information sought about the directors of the company had already been provided. AWP Ltd relied on the letter from Ashworth Moulds dated 3 August 2020. That letter enclosed the register of directors of AWP Ltd which showed the names, addresses and appointment dates of the directors. In a letter dated 31 March 2021, Ashworth Moulds provided some further information and documents, including the register of directors of IQEQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd. That letter stated:

“There are no contracts with the named corporate service directors. There are no individual person(s) representing Apsley Way Property Holdings Ltd.”

62. In their letter of 29 June 2021, Ashworth Moulds stated that IQEQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd were appointed as directors of AWP Ltd by the previous sole director who subsequently resigned. They also explained that:

“Appointment to the office of Director provides a director with the full authority, within the constraints of the company's Articles of Association and the governing law, to act on behalf of the company.

The remuneration of the directors is determined by the company in general meeting.”

63. In their letter of 10 November 2021 in response to the information notice of 11 October 2021, Ashworth Moulds said in relation to the directors of AWPB Ltd that:

“We have provided you with all the details of the directors. We would add that the directors have authority derived from the office of director. This does not derive from a separate contract as you suggest but is set out in the company's Memorandum of Association and Articles of Association together with the applicable Company Law.”

64. Based on the correspondence provided and relied on by AWPB Ltd, it is clear that the company has not provided HMRC with all the items specified in the information notice dated 11 October 2021 that relate to directors of AWPB Ltd. We accept that Ashworth Moulds provided confirmation that there were no contracts with IQEQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd and they were authorised to act on behalf of AWPB by virtue of being directors of the company. Accordingly, we find that AWPB Ltd had provided the information specified in items 1b and 1c in the information notice. However, the correspondence between Ashworth Moulds and HMRC did not provide or even address items 1a and 1d in the information notice which remain outstanding.

65. The information notice of 11 October 2021 also sought information relating to the loan provided by VGH Ltd to AWPB Ltd for the purchase of the Property. Specifically, item 2 of the information notice asked for the names of various persons who made various decisions in relation to the loan. AWPB Ltd maintained that the information had been provided in the letter dated 24 November 2020 from Ashworth Moulds to HMRC. That letter did not provide the names of any persons who made decisions in relation to the loan. Accordingly, we find that AWPB Ltd has not provided the information specified in items 2b and 2d - 2g of the information notice.

66. The information notice also asked for information about when the interest clause in the tenancy agreement between AWPB Ltd and Vitabiotics Ltd would be applied and the name of the person or persons responsible for deciding when it applied. AWPB submitted that the reasons why interest had not been charged on overdue rents were explained in Ashworth Moulds's letter to HMRC of 24 November 2020. In that letter, the only reference to the ability to charge interest on overdue rent was the following:

“We note your comments but please note that the agreements were in standard form and included the conventional precautionary power to charge interest in the event of late payment. It is equally standard practice for the interest provision not to be enforced except in exceptional circumstances.”

67. That letter did not address the issue of when the interest charge would be applied, ie what was meant by ‘exceptional circumstances’ or provide the names of any person who made decisions in relation to the interest charge. In our view, AWPB Ltd has not provided the information specified in items 3a – 3c of the information notice.

68. In summary, we have found that the information specified in items 1b and 1c had been provided to HMRC and, to that extent, AWPB Ltd's appeal against the information notice dated 11 October 2021 is allowed. We have also found that items 1a, 1d, 2b, 2d - 2g and 3a – 3c have not been provided to HMRC.

69. Our decision that certain items specified in the information notice dated 11 October 2021 have not been provided does not determine AWPB Ltd's appeal against the information notice in relation to those items. We must now consider whether those items were reasonably required for the purposes of checking AWPB Ltd's tax position. If the information or document is needed to enable HMRC to check AWPB Ltd's liability to pay tax for the 2017-18 and 2018-19 tax years or any liability to pay tax in the future then AWPB Ltd is required to provide it.

70. Mr Hickey Baird, on behalf of HMRC, submitted that the purpose of the information notices was to check the tax position of AWPB Ltd in relation to the rate of interest and the repayment terms of the loan made by VGH Ltd to AWPB Ltd for the purchase and leaseback of the Property. HMRC wished to check that the loan was a commercial transaction on arm's length terms or whether the terms were affected by the mutual beneficial ownership of the purported offshore lender and borrower. HMRC also wanted to check whether AWPB Ltd was centrally managed and controlled in the UK which would affect AWPB Ltd's tax position in the years under enquiry and future tax liability when the property is sold. He contended that there were outstanding questions and, on balance, HMRC did not have enough information to make a decision in relation to AWPB Ltd's tax position until they received the information requested in the information notices.

71. In relation to the specific items that remain outstanding in the information notice of 11 October 2021, HMRC's position was as follows:

(1) Item 1a asked for the name of the person who decided to appoint and retain IQEQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd as directors of AWPB Ltd. HMRC contended that this information was required to establish the true locus of the management and control of AWPB Ltd and what bearing that had on its tax position.

(2) Item 1d asked for information on how certain matters were agreed if there was no written contract, agreement, or similar document between the directors and either AWPB and/or VGH or any other third party for them to act on behalf of AWPB. HMRC contended that this information was required to establish the true locus of the management and control of AWPB Ltd and what bearing that had on its tax position.

(3) Items 2b and 2(d) to 2(g) asked for the names of the person(s) who agreed various matters such as the interest rate and repayment terms for the loan provided by VGH Ltd to AWPB Ltd. HMRC contended that this information was required to establish whether the rate of interest for the loan and the repayment terms were arm's length transactions. They also maintained that the information was required to establish the true locus of the management and control of the AWPB Ltd and what bearing that had on its tax position.

(4) Item 3a asked about the circumstances in which interest would be charged on overdue rental payments under the clause 13.1 of the tenancy agreement between AWPB Ltd and Vitabiotics Ltd. HMRC contended that this information was required as the tenancy agreement was between connected parties and it would enable HMRC to understand when this clause would be invoked.

(5) Items 3b and 3c asked for the name of the person(s) in AWPB who would be responsible for deciding when clause 13.1 of the tenancy agreement between AWPB Ltd and Vitabiotics Ltd would be applied and which circumstances are exceptional in relation to the interest charging clause? HMRC submitted that this information was required to establish the true locus of the management and control of AWPB Ltd and what bearing this has on its tax position.

72. AWPB Ltd submitted that none of the items above were reasonably required to enable HMRC to check the company's tax position for the 2017-18 and 2018-19 tax years. AWPB Ltd contended that its directors were not resident in the UK, the company's shareholder was not resident in the UK and there was no reason to believe that the company could be resident in the UK on the basis of the information provided to HMRC thus far. This cannot be information reasonably required for checking the company's tax position. AWPB Ltd's income consisted of UK rents which were and are fully within the scope of UK tax and on which the company had paid tax. Mr Vaines submitted that whether AWPB Ltd was UK resident had no bearing on the liability of the company to tax. He pointed out that, as a non-resident landlord, AWPB Ltd had paid income tax on its profits at 20% whereas a UK resident company would pay corporation tax on the same profits at 19%. He submitted that it was inconceivable that HMRC had opened the enquiries and issued the information notices so that they could pay AWPB Ltd a tax refund. He contended that the information was being sought for some other reason and was therefore not reasonably required.

73. In relation to HMRC's assertion that details of the loan for the purchase of the Property may be relevant to future tax returns when the property is sold, Mr Vaines submitted that this showed that the reason for seeking the information was not to check AWPB Ltd's tax position for the years under enquiry and, he claimed, the idea that the information was needed because it might be relevant to a future tax year in the event that the property is sold was preposterous.

74. We do not accept Mr Vaines's submissions that the outstanding items in the information notice of 11 October 2021 are not reasonably required to enable HMRC to check AWPB Ltd's tax position and that the check can only relate to the years under enquiry. The fact that AWPB Ltd has a non-resident shareholder and directors and pays tax in the UK as a non-resident landlord does not necessarily mean that it is not resident in the UK. Mr Vaines accepts, as he must, that whether AWPB Ltd is resident or non-resident in the UK for tax purposes affects its tax position. It is irrelevant whether the result of checks carried out by HMRC reveal that AWPB Ltd has paid too much or too little tax. What matters in this context is that the information or documents enable HMRC to check AWPB Ltd's tax position. That includes checking that the correct amount of tax has been paid in the years under enquiry and any future liability to tax (see paragraph 64 of Schedule 36 FA 2008).

75. We have also considered whether any of the items in the information notice are so broadly drawn as to amount to an impermissible fishing expedition or the requirement to produce them is disproportionate or excessively onerous. Having considered the question, our view is that none of the items in the information notice of 11 October 2021 is a fishing expedition and the requirement to produce the specified documents and provide the information is not disproportionate or excessively onerous. Accordingly, we dismiss AWPB Ltd's appeal against the information notice dated 11 October 2021 in so far as it relates to the items described in [71] above.

Information Notice 6 December 2021

76. The information notice required AWPB Ltd to produce six items of information and documents set out in [50] above.

77. It is clear from the correspondence in the hearing bundle that Ashworth Moulds has never provided any organigrams, structure charts, letters or similar documents in respect of the beneficial ownership structure of VGH Ltd with any of those letters and they have never stated that AWPB Ltd does not hold such documents or have access to them. Accordingly, we find that AWPB Ltd has not provided the information requested in item 1 of the information notice.

78. Item 2 of the information notice of 6 December 2021 asked AWPB Ltd when its directors first became aware of the beneficial ownership structure of VGH Ltd. We can find no reference

to this information in the correspondence and we find that AWPB Ltd has not provided the information requested in item 2 of the information notice.

79. Items 3, 4 and 5 of the information notice required AWPB Ltd to provide correspondence, emails, notes or minutes of meetings for the period of the 2017-18 and 2018-19 tax years that related to certain matters or companies specified in the information notice. The hearing bundle does not contain any emails, notes of telephone calls, letters and meeting minutes from the period 6 April 2017 to 5 April 2019 with the exception of the email exchange and Knight Frank reports in 2018 and 2019 relating to the lease and valuation of the Property. Accordingly, we find that AWPB Ltd has not provided the information requested in items 3, 4 and 5 of the information notice.

80. In item 6 of the information notice, AWPB Ltd was asked to provide the name of the sole director who appointed IQ-EQ Corporate Services (Jersey) Ltd and Winter Hill Financial Services Ltd as directors of AWPB Ltd. In an email of 14 July 2023, Mr Vaines, on behalf of AWPB Ltd, told HMRC that the sole director was Chaumont (Directors) Ltd, a professional services company in Jersey, which had resigned in 2016 after having appointed the current directors. Accordingly, AWPB Ltd has provided the information requested in item 6 of the information notice and it is not necessary to consider it further.

81. We have found that AWPB Ltd has not provided HMRC with the information or documents specified in items 1 – 5 in the information notice dated 6 December 2021 but, as in the case of the earlier information notice, that does not determine AWPB Ltd's appeal and we must now consider whether items 1 – 5 were reasonably required for the purposes of checking AWPB Ltd's tax position.

82. HMRC submitted that the Tribunal could be satisfied on the balance of probabilities that the information requested in the information notice of 6 December 2021 was and remains reasonably required for the purpose of checking AWPB Ltd's tax position. In relation to the specific items in the information notice of 6 December 2021 that remain outstanding, HMRC's position was that the organigrams, structure charts, letters and similar documents required by Item 1 were reasonably required to enable HMRC to consider AWPB Ltd's tax position fully. As to the other items, HMRC submitted that it is reasonable to request information and documents in the possession or power of AWPB Ltd to establish the structure through which VGH Ltd, AWPB Ltd and Vitabiotics Ltd are owned and where effective control of the companies is exercised. HMRC contended that three of the directors of Vitabiotics Ltd are the ultimate beneficial owners of VGH Ltd (and, therefore, of AWPB Ltd and Vitabiotics Ltd) via a complex offshore structure involving various Channel Island trusts. HMRC were seeking to establish whether AWPB Ltd's purchase of the Property from, and subsequent lease to, Vitabiotics Ltd were on an arm's length basis as that could affect the amount of income assessable and AWPB Ltd's tax position.

83. AWPB Ltd submitted that correspondence, emails and other documents "relating to, including, or referring to" the beneficial ownership structure of VGH Ltd or "any trusts, trustees or trust companies" has no bearing on the accuracy of AWPB Ltd's tax returns for the 2017-18 and 2018-19 tax years. Similarly, AWPB Ltd submitted that correspondence, emails and other documents relating to the directors of AWPB Ltd, IQEQ (Jersey) Ltd, Coverdale Trust Services Ltd and VGH Ltd or any representative of any of them has no bearing on the accuracy of AWPB Ltd's tax returns. As such, the information requested in the information notices was not reasonably required by HMRC for the purpose of checking AWPB Ltd's tax position.

84. In relation to HMRC's contention that the information is required in relation to the purchase of the Property by AWPB Ltd on the ground that it might affect the amount of income

assessable to tax, Mr Vaines submitted that AWPB Ltd had already dealt with that point when Ashworth Moulds explained that the purchase had been undertaken on the back of a professional valuation and it was wrong for HMRC to try to use an enquiry into 2018 and 2019 to open an enquiry into the year 2012. AWPB Ltd also maintained that the rent was set in accordance with the rental valuation carried out by Knight Frank which had been provided to HMRC in November 2020. AWPB Ltd's case was that the purchase price paid for the Property in 2012 is irrelevant to the rent charged for the Property in 2018 and 2019 which is set according to the market at the time and, therefore, that information could not be reasonably required. Mr Vaines also submitted that the identity of the ultimate beneficial owners of VGH Ltd (the parent of AWPB Ltd and Vitabiotics Ltd) has no bearing on AWPB Ltd's tax position in the 2017-18 and 2018-19 tax years.

85. We accept that HMRC are entitled to understand the beneficial ownership structure of AWPB Ltd and the connected parties with whom it has entered into transactions in order to check AWPB Ltd's tax position in the 2017-18 and 2018-19 tax years. It is reasonable for HMRC to have information to consider whether the relationships between the connected parties influenced the value of those transactions and thus AWPB Ltd's liability to tax in the relevant years. We conclude that items 1 – 5 are reasonably required for the purposes of checking AWPB Ltd's tax position in the 2017-18 and 2018-19 tax years.

86. We have also considered whether any of the items in the information notice are so broadly drawn as to amount to an impermissible fishing expedition or the requirement to produce them is disproportionate or excessively onerous. We were concerned that item 4 which sought documents "relating to, including, or referring to any trusts, trustees or trust companies" was extremely broad but find that it is not as it is limited to documents concerning emails, telephone calls, letters and meetings in the period under enquiry. We have concluded that the requirement to produce the specified documents and provide the information is not disproportionate or excessively onerous.

87. Accordingly, we dismiss AWPB Ltd's appeal against items 1 – 5 of the information notice dated 11 October 2021.

Closure Notice Application

88. Given our decision in relation to the information notices and as foreshadowed in [55], we do can deal with AWPB Ltd's application for a closure notice quite briefly. We agree with the views expressed by the FTT in *Stephen Price v HMRC* [2011] UKFTT 624 (TC) at [10]:

"HMRC is entitled to know the full facts related to a person's tax position so that they can make an informed decision whether and what to assess. It is clearly inappropriate and a waste of everybody's time if HMRC are forced to make assessments without knowledge of the full facts."

89. We accept that HMRC are not able to make a fully informed decision about AWPB Ltd's tax position for the 2017-18 and 2018-19 tax years without the documents and information which we have found the company is required to provide under the information notices. In the circumstances, we consider that the enquiries into AWPB Ltd's returns for the years ending 5 April 2018 and 2019 should remain open.

90. Accordingly, we refuse AWPB Ltd's application for a direction requiring HMRC to issue a partial or final closure notice within a specified period. Of course, once it has provided the documents and information which we have found that it must provide and HMRC have had a reasonable chance to consider it, AWPB Ltd may, if so advised, apply to the FTT again for a direction that HMRC issue a closure notice within a specified period.

DISPOSITION

91. AWP Ltd's appeal against the information notice dated 11 October 2021 is allowed in respect of items 1b and 1c but is otherwise dismissed.

92. AWP Ltd's appeal against the information notice dated 6 December 2021 in respect of items 1a, 1d, 2b, 2d - 2g and 3a – 3c is dismissed.

93. AWP Ltd's application for a direction that HMRC issue a closure notice in respect of their enquiry into the company's tax returns for the years ended 5 April 2018 and 5 April 2019 is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

94. This document contains full findings of fact and reasons for the decision. Paragraph 32(5) of Schedule 36 FA2008 provides that the FTT's decision on an appeal against an information notice under paragraph 29 of Schedule 36 is final and, therefore, there is no right of appeal against this decision in so far as it relates to the information notices.

95. Any party dissatisfied with this decision in so far as it relates to the application for a closure notice has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**JUDGE GREG SINFIELD
CHAMBER PRESIDENT**

Release date: 24th October 2023

**APPENDIX
RELEVANT LEGISLATION**

SECTION 28A TAXES MANAGEMENT ACT 1970

Section 28A provides:

“(1) This section applies in relation to an enquiry under section 9A(1) of this Act.

(1A) Any matter to which the enquiry relates is completed when an officer of Revenue and Customs informs the taxpayer by notice (a ‘partial closure notice’) that the officer has completed his enquiries into that matter.

(1B) The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a ‘final closure notice’)

(a) in a case where no partial closure notice has been given, that the officer has completed his enquiries, or

(b) in a case where one or more partial closure notices have been given, that the officer has completed his remaining enquiries.

In this section ‘the taxpayer’ means the person to whom notice of enquiry was given.

(2) A partial or final closure notice must state the officer's conclusions and -

(a) state that in the officer's opinion no amendment of the return is required, or

(b) make the amendments of the return required to give effect to his conclusions.

(3) A partial or final closure notice takes effect when it is issued.

(4) The taxpayer may apply to the tribunal for a direction requiring an officer of the Board to issue a partial or final closure notice within a specified period.

(5) Any such application is to be subject to the relevant provisions of Part 5 of this Act (see in particular section 48(2)(b)).

(6) The tribunal shall give the direction applied for unless satisfied that there are reasonable grounds for not issuing the partial or final closure notice within a specified period.”

EXTRACTS FROM SCHEDULE 36 FINANCE ACT 2008

Paragraph 1(1) of Schedule 36 FA 2008 provides:

“An officer of Revenue and Customs may by notice in writing require a person (‘the taxpayer’)

(i) to provide information, or

(ii) to produce a document

if the information or document is reasonably required by the officer for the purpose of checking the taxpayers tax position”

Paragraph 21 of Schedule 36 FA 2008 provides:

“(1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that person's income tax position or capital gains tax position in relation to the chargeable period.

(2) Where a person has made a tax return in respect of a chargeable period under paragraph 3 of Schedule 18 to FA 1998 (company tax returns), a taxpayer notice may not be given for the purpose of checking that person's corporation tax position in relation to the chargeable period.

(3) Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to D is met.

(4) Condition A is that a notice of enquiry has been given in respect of-

(a) the return, or

(b) a claim or election (or an amendment of a claim or election) made by the person in relation to the chargeable period in respect of the tax (or one of the taxes) to which the return relates ('relevant tax'),

and the enquiry has not been completed so far as relating to the matters to which the taxpayer notice relates.

...

(6) Condition B is that an officer of Revenue and Customs has reason to suspect that, as regards the person,

(a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,

(b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or

(c) relief from relevant tax given for the chargeable period may be or have become excessive.

(7) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking the person's position as regards any tax other than income tax, capital gains tax or corporation tax.

(8) Condition D is that the notice is given for the purpose of obtaining any information or document that is required (or also required) for the purpose of checking the person's position as regards any deductions or repayments of tax or withholding of income referred to in paragraph 64(2) or (2A) (PAYE etc).

(9) In this paragraph, references to the person who made the return are only to that person in the capacity in which the return was made."

Paragraph 29 of Schedule 36 provides that:

"(1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal against the notice or any requirement in the notice.

(2) Sub-paragraph (1) does not apply to a requirement in a taxpayer notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records."

Paragraph 32 of Schedule 36 provides:

"(3) On an appeal that is notified to the tribunal, the tribunal may-

(a) confirm the information notice or a requirement in the information notice,

(b) vary the information notice or such a requirement, or

(c) set aside the information notice or such a requirement.

(4) Where the tribunal confirms or varies the information notice or a requirement, the person to whom the information notice was given must comply with the notice or requirement—

(a) within such period as is specified by the tribunal, or

(b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the tribunal's decision.

(5) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 a decision of the tribunal on an appeal under this Part of this Schedule is final.

(6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

...”

Paragraph 58 defines various terms in Schedule 36 including the following:

“‘checking’ includes carrying out an investigation or enquiry of any kind,

‘the Commissioners’ means the Commissioners for Her Majesty’s Revenue and Customs,

‘document’ includes a part of a document (except where the context otherwise requires),

‘HMRC’ means Her Majesty’s Revenue and Customs,

‘tribunal’ means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.”

Paragraph 62 of Schedule 36 FA 2008 relevantly provides that:

“... information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of -

(a) the Taxes Act, or

(b) any other enactment relating to tax.”

Paragraph 64 of Schedule 36 FA 2008 defines “tax position” as including:

“(1) ... the person’s position as regards any tax, including the person’s position as regards—

(a) past, present and future liability to pay any tax,

...

(4) References in this Schedule to a person's tax position are to the person's tax position at any time or in relation to any period, unless otherwise stated.”