



Neutral Citation: [2024] UKFTT 00413 (TC)

Case Number: TC09173

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal numbers. TC/2022/00177
TC/2022/00687**

PROCEDURE – application for third party disclosure – legitimate interest of appellants in another appeal – application granted

BETWEEN

**HUGH EDWARD MARK OSMOND
MATTHEW CHARLES ALLEN**

Appellants

-and-

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

Respondents

-and-

KPMG LLP

**Third Party
Applicant**

TRIBUNAL: JUDGE NIGEL POPPLEWELL

Application considered on the papers on 10 May 2024

DECISION

INTRODUCTION

1. In an application dated 2 April 2024 (the “**application**”) the applicant applied to the Tribunal for copies of the parties’ skeleton arguments and any supplemental written submissions in these appeals (together, the “**requested documents**”), to be provided to the applicant by the Tribunal from the Tribunal’s files in respect of the above-mentioned proceedings.

2. The application is made pursuant to Rules 2 and 5 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273) and to the inherent jurisdiction of the Tribunal itself.

BACKGROUND

3. The Appellants’ appeal (“**the Appeal**”) was heard by the Tribunal between 11 and 14 March 2024. Our decision in the Appeal was submitted to the Tribunal for release to the parties on 7 May 2024. At the time of considering this application and drafting this decision I do not think that the decision in the Appeal has been published.

4. After I had received a copy of the application, I asked the Tribunal to send it to the parties both of whom responded that they did not wish to make any representations and were content for me to exercise my discretion and to determine the application as I considered appropriate.

5. I have considered the application. The applicant submits that it would benefit from an understanding of the arguments which were raised before the Tribunal in the Appeal and how they were put forward in writing. This is for the purpose of giving advice to three appellants for whom they act in relation to appeals which have been stayed behind the Appeal and in respect of which there is overlap between the issues in those appeals and the Appeal.

THE LAW

6. In his decision in *Cider of Sweden Ltd* [2022] UKFTT 00076 (“**Cider**”), in which he considered the decision of Judge Poon in *JTI Acquisition Company (2011) Ltd* [2021] UKFTT 0446 (“**JTI**”), Judge Poole undertook a comprehensive review of the authorities from which he derived a number of general principles (at [39]) which are relevant to the exercise of my discretion when considering an application for third party disclosure.

7. The circumstances of *Cider* are very different from those in this application which are markedly more similar to the circumstances in *JTI*. I remind myself that the Appeal has been heard and it is very likely that by the time that the decision in this application is published, our decision in the Appeal will be in the public domain.

8. I therefore consider that the following principles are those which are most relevant to a consideration of the application:

(1) The concept of “open justice” is a constitutional principle which applies to all courts and tribunals including the FTT which has an inherent jurisdiction to determine what that principle requires in terms of access to documents.

(2) When access to those documents is requested, I must consider how to exercise that jurisdiction in light of the open justice principle.

(3) The overall purpose of open justice is to enable the public to understand and scrutinise the justice system of which the courts are the administrators. This extends to tribunals.

(4) To enable the public to understand how the justice system works and why decisions are taken, they have to be in a position to understand the issues and the evidence adduced in support of the parties’ cases.

(5) In response to a request for access to documents I should carry out a fact specific balancing exercise in which I should consider the purpose of the open justice principle, the potential value of the information in question in advancing that purpose, any risk of harm which the disclosure may cause to the maintenance of an effective judicial process or to the

legitimate interests of others. Also relevant are the practicalities and the proportionality of granting the request.

(6) An entirely private or commercial interest in a document can qualify as a legitimate interest (for example an interest in related litigation).

GROUND OF THE APPLICATION

9. Mr Laurent Sykes KC, for the applicant, submits in summary as follows.

(1) The Applicant has a clear and legitimate interest in the requested documents. In *JTI* the third party had a legitimate interest in seeking copies of skeleton arguments and supplemental submissions even though it was not engaged in related litigation but sought the documents for the purposes of advising clients generally.

(2) There has been a hearing in the Appeal and thus the principle of open justice is engaged (even if the decision has yet to be published).

(3) The parties' skeleton arguments are in the public domain and can thus be the subject of a third party application for access.

(4) Supplemental written submissions which may not have been read in open court are nonetheless to be considered as having passed into the public domain.

(5) There is no harm to the judicial process or to the legitimate interests of others in disclosing the requested documents.

(6) Even though our decision in the Appeal will set out the parties' legal arguments in some detail, the purpose of the open justice principle is to understand how that decision has been reached. To judge the judge not to judge the case.

(7) Disclosure of the requested documents is practical and proportionate. Any supplemental submissions which contain sensitive issues of fact can be redacted. They will be useful in understanding how the respective cases were finally put.

DISCUSSION AND DECISION

10. I am cognisant of the issues raised in the appeals in which the applicant is involved (I had considered an application concerning a postponement of those appeals prior to the hearing of the Appeal). And the "relevant consideration issue" (as defined in our decision in the Appeal) is one of the core issues in the appeals in which the applicant is involved.

11. It is clear to me therefore that the applicant has a legitimate interest in the relevant documents, and I have no hesitation in exercising my discretion in their favour and directing the Tribunal to release the requested documents to the applicant.

12. There were no supplemental written submissions, and therefore the only documents to which this direction applies are the parties' respective skeleton arguments.

13. The Appeal has been heard. It is likely that our decision will be in the public domain very shortly. Those skeleton arguments are therefore very much in the public domain and available for third party disclosure. It is proportionate and practical for them to be disclosed. It will further the open justice principle in that it will enable the public to understand the decision that we have reached in the Appeal. It will enable the public to judge the judges. There is no harm to the judicial process or to the legitimate interests of others in sanctioning disclosure.

14. I therefore Direct that within 21 days from the date of release of this decision, the Tribunal shall send to the applicant copies of the parties' respective skeleton arguments in the Appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

15. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision 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.

**NIGEL POPPLEWELL
TRIBUNAL JUDGE**

Release date: 20th MAY 2024