



Neutral Citation: [2024] UKFTT 00414 (TC)

Case Number: TC09174

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appe:**

*PROCEDURE – application for third party disclosure – legitimate interest of both clients and the wider tax community - application granted*

**BETWEEN**

**HUGH EDWARD MARK OSMOND  
MATTHEW CHARLES ALLEN**

**Appellants**

**-and-**

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

**Respondents**

**-and-**

**STEWARTS LAW LLP**

**Third Party  
Applicant**

**TRIBUNAL: JUDGE NIGEL POPPLEWELL**

**Application considered on the papers on 10 May 2024**

## DECISION

### INTRODUCTION

1. In an application dated 21 March 2024 (the “**application**”) the applicant applied to the Tribunal for copies of the parties’ skeleton arguments in these appeals (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 they act for three clients who are considering challenging the assessments under the Transaction in Securities legislation, and one aspect of that challenge is whether the assessments are out of time. This is one of the issues which was raised in the Appeal, and thus the arguments in the Appeal on this point are directly relevant to their clients. Secondly, the arguments set out in the relevant documents are of interest to the wider tax community.

### 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. In summary the Applicant submits as follows:

(1) The Applicant has a clear and legitimate interest in the requested documents. The limitation period point is relevant to their client's position. Their clients will be able to understand the arguments which are likely to be raised both against them, and which were raised by the appellants in the Appeal. This will assist the clients to decide on the most appropriate strategy. It would also assist the applicant in advising those clients in connection with that strategy.

(2) Simply wishing to understand the legal basis of the arguments being advanced in the Appeal is a perfectly legitimate reason for seeking access to the requested documents.

(3) There is also a legitimate interest in enabling accurate and meaningful professional commentary on an important tax issue which is of interest to the wider tax community.

(4) There has been a hearing in the Appeal. Even though the parties' respective arguments might be reflected in the decision in that Appeal, the requested documents will provide a better insight into those arguments which may not be fully reflected in that decision.

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

(6) Disclosure of the requested documents is practical and proportionate. It will be simple for the requested documents to be sent to the applicant.

#### **DISCUSSION AND DECISION**

10. I am told that the applicant is advising three clients on the Transactions in Securities legislation and in particular on the limitation period point. That point was fully argued in the Appeal and is dealt with in the decision where it is described as the "limitation period issue". I agree, however, that the detail which is set out in the parties' skeleton arguments may describe their respective positions in more detail than is set out in the decision. Access to those skeletons, therefore, may assist the applicant, and their clients, and indeed the broader tax community, to understand those respective technical arguments.

11. It is clear to me therefore that the applicant has a legitimate interest in the relevant documents as far as those three clients are concerned.

12. 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.

13. I had initial misgivings concerning the application based on the interest of the wider tax community. And of course, the applicant may have confidentiality and privilege issues regarding the relevant documents themselves and the information therein, which I leave it to them to resolve. But as a matter of principle, I cannot see any principled reason why an application which is made in a "representative" capacity on behalf of the wider tax community, where the information in the requested documents will be put into the broader public domain (albeit restricted I suspect to technical tax publications) should be treated differently than an application on behalf of specific clients. The principles are the same. And in that regard, I repeat what I have said at [12] above.

14. At [27] of *Cider* there is reference to a High Court decision dealing with changes to the CPR indicating that the whole purpose behind the changes in those rules, to give access by

third parties, was to enable the media and any member of the public to be able to see how the courts were operating.

15. One purpose of the open justice principle is to allow the public to understand how the decision has been reached. There is no reason why the judges should not be judged by the public at large rather than just the three clients for whom the applicant acts. Furthermore, it would seem practically sensible for the applicant to put the requested documents into the public domain rather than have a number of other organisations (such as the CIOT) or individuals bringing separate applications.

16. Finally, neither party made any representations regarding this broader justification for third party disclosure. I have taken this as an acceptance that, if I exercise my discretion in favour of disclosure, then the relevant documents and the information therein is likely to be disseminated for the benefit of the wider tax community and will not be restricted solely to assisting the applicants' three clients.

17. 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**

18. 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: 20<sup>th</sup> MAY 2024**