Neutral Citation: [2025] UKFTT 01112 (TC)

Case Number: TC09638

PROCEDURE - CASE MANAGEMENT - Disclosure - Application allowed in part

PROCEDURE - REMARKS ON USE OF AI

Judgment date: 22 August 2025

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal references: TC/2022/02556
TC/2022/02557
TC/2022/02558
TC/2022/02560
TC/2022/02562
TC/2022/02563
TC/2022/02564
TC/2022/02565
TC/2022/02566
TC/2022/02567
TC/2022/02588

Before

TRIBUNAL JUDGE CHRISTOPHER MCNALL

Between:

(1) MRS V P EVANS (AS EXECUTRIX OF H B EVANS, DECEASED)
(2) MRS V P EVANS
(3) NICOLA J EVANS (AS EXECUTRIX OF A L EVANS, DECEASED)
(4) NEIL WILLIAM EVANS
(5) HOWARD RIGG
(6) ROBERT JOSEPH O'RYAN
(7) SHIRLEY ROBINSON
(8) IAN DAVID ROBINSON
(9) GERARD IVAN ROBINSON
(10) GWENNETH FAIRER-SMITH
(11) DONALD RICHARD HORNBLOW

Appellants / Applicants

- and -

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellants / Applicants: Quinlan Windle and Laura Ruxanda of Counsel
For the Respondents: Christopher Stone KC and Harry Sheehan of Counsel

By agreement of the parties, these applications were dealt with on the papers, without a hearing, on 12 August 2025.

DECISION

Introduction

1. The underlying eleven appeals each challenge Closure Notices issued by HMRC concerning Capital Gains Tax liabilities arising from tax planning arrangements involving offshore trusts and the application of double taxation conventions ("DTC"s) between the UK and New Zealand, and the UK and Mauritius.

2. This is an interlocutory case-management decision which concerns the appellants' consolidated application for the disclosure of documents by HMRC. It is being dealt with on the papers, pursuant to Rule 29(1)(b) of the *Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules* 2009.

3. The appellants seek disclosure under the Tribunal's general case-management powers, pursuant to Rule 5(3)(d).

4. The underlying appeals relate (variously) to tax years 1999/2000, 2000/01, and 2002/03.

5. In summary, the appeals involve trusts that were resident in the UK for part of the year, and in New Zealand or Mauritius for the remainder. Gains were realised during the period of non-UK residence. HMRC contends that the gains are taxable under section 77 of the *Taxation of Chargeable Gains Act 1992* unless relief would have been available to the trustees under the relevant DTC.

6. On 1 May 2024, the Tribunal directed that three issues be determined as preliminary issues:

   (1) Whether valid in-time claims were made ("In-time Claim Issue");

   (2) If not, whether HMRC is estopped from denying that valid claims for relief were made ("Estoppel Issue"); and

   (3) If the Appellants fail on (1) and (2)) whether valid consequential claims were made by the trustees or the appellants within TMA 1970 section 43C ("Consequential Claim Issue").

7. I considered the following documents and their enclosures:

   (1) Appellants' Application for Disclosure (3 September 2024)

   (2) HMRC's Response to Appellants' Application for Disclosure (11 November 2024);

   (3) Appellants' Reply to HMRC's Response (25 April 2025);

   (4) HMRC's Supplemental Submissions (28 May 2025);

   (5) Appellants' Reply to those Supplemental Submissions (4 July 2025).

The Application

8. The Appellants request disclosure of five categories of documents, namely:

   (1) Full tax returns and accompanying documents for the relevant tax years, and for the settlements of gains;

   (2) All Forms 41G(Trust) and 50(FS) submitted on behalf of the relevant settlements;

   (3) Correspondence and any enclosed documentation from 6 April 2000 and 31 January 2009, relating to round-the-world planning, passing between HMRC and:

(a) the Appellants;

(b) Lansbury's International Ltd (the Appellants' previous representative); and

(c) any trustees of the relevant settlements.

(4) Correspondence and any enclosed documentation for that same period referring to any of the Appellants between HMRC and accountants or other representatives;

(5) "If HMRC contend that they did not believe, in principle that relief under the UK/NZ DTC 1983 and/or the UK/Mauritius DTC ... applied to determine the amount on which the trustees would be chargeable to tax ... any internal HMRC documents that adversely affect HMRC's case or support the Appellants' case including correspondence with the NZ and Mauritian revenue authorities".

9. They argue that such documents are necessary to establish the factual basis of claims, to assess whether there is any estoppel, and to understand HMRC's historical position.

10. Should a direction for disclosure be made, the Applicants also apply for a stay pending compliance with any such direction.

HMRC's position

11. HMRC does not have any objection in principle to disclosing the documents in Categories (1) and (2), but says that all reasonable efforts have already been made to locate them, that all documents which could be located have been disclosed, and that "no purpose would be served by the Tribunal making the order sought".

12. It opposes the application on the following grounds:

(1) The appellants should request specific documents rather than broad categories;

(2) Categories (3) and (4) are overly broad - "unfocussed, and disproportionate" and constitute a "fishing expedition";

(3) Category (5) includes confidential state-to-state communications, in relation to which disclosure should not be ordered "because it may frustrate future co-operation between the UK and those states;

(4) Category (5), relating to internal correspondence, is not necessary.

13. HMRC observes that it has disclosed 417 documents, being the fruits of a review of 9 boxes of documents, and that the application "must be considered against the context of the parties already having provided extensive disclosure." The Appellants point out that HMRC, when asking for an extension of time to file its Statements of Case, remarked that it was reviewing 'well in excess of 300 documents'.

14. HMRC also relies on a previous decision of the First-tier Tribunal in *MacSween and Murphy and others* (TC/2019/05088) - said to be parallel proceedings involving the same scheme and the same representatives - where, it is contended, similar disclosure requests were refused, and say that this application is an impermissible attempt to "take a 'second bite of the cherry' and to mount a collateral attack.

Analysis

15. The Tribunal's general case-management powers, including relating to disclosure, are subject to the overriding objective of dealing with cases fairly and justly. This includes considerations of relevance and proportionality (in turn, a function of the overall amount at stake in the dispute, and the nature of the issues arising): see *RCC v Ingenious Games LLP* [2014] UKUT 62 (TCC) (Sales J, as he then was).

16. Here, it seems to me relevant:

(1) The amount at stake is about £15m (excluding interest);

(2) Whilst the Mauritius DTC has been judicially considered, the NZ DTC has not been;

(3) The Appellants say that they have lost some of the early correspondence, and, "given the number of accountants and trustees involved, may never have had some of it";

(4) There is some evidence in the extracts of correspondence relied on by Applicants from HMRC going to the In-Time Claim and the Estoppel Issue.

17. I do not consider there is anything useful or productive for the purposes of this decision can be derived from *MacSween.* I was not involved in the case, know nothing about it other than what I have been told by the parties, and judgment following a final hearing was reserved and it appears has not yet been handed down. Certainly, no such judgment has been placed before me, I have been shown extracts from a transcript of the oral evidence of one Officer John Bentley (described as the HMRC Compliance project lead for RTW avoidance scheme since May 2016) and submissions have been made - to me - about this evidence; but I do not know what the Tribunal hearing the substantive case made of this evidence. I am also shown an extract of what is said to have been a post-hearing decision concerning disclosure; but that does not bind me, and I cannot assess its persuasive weight. In short, nothing about *MacSween* takes me anywhere.

18. As to Categories (1) and (2), I acknowledge that HMRC contends that it has already conducted a reasonable search, and that no further search would yield anything to disclose. However:

(1) It is not really possible - from my standpoint, and from the information before me - to meaningfully segregate the integrity of the disclosure exercise in relation to Categories (1) and (2) from the disclosure exercise more generally;

(2) It seems to me that there are realistically arguable concerns as to the adequacy of the overall disclosure exercise conducted by HMRC.

19. As to the adequacy of the disclosure exercise:

(1) For 2002, the Appellants have eight documents which are not on HMRC's List of Documents at all;

(2) The Appellants refer to extracts from correspondence between HMRC and Lansbury's in 2009 and 2011 (ie, during the enquiries) which, at least on the face of it, is inconsistent with what is said to be HMRC's assertion in its Statement of Case (which I have not seen) that HMRC had never represented to any appellant that valid claims had been made;

(3) The Statement of Case is said not to refer to any of this correspondence. If so, this is striking. There are several potential reasons for this:

(a) HMRC has the correspondence in its possession custody or control, but does not regard it as relevant;

(b) HMRC has the correspondence in its possession custody or control, but does not seek to rely on it (meaning it would be outside the normal scope of disclosure in this Tribunal);

(c) HMRC has the correspondence, but has not disclosed it because it has not realised it has got it, because its search was inadequate;

(d) HMRC has the correspondence, but has not disclosed it because its analysis of the documents conducted during its search was inadequate;

(e) HMRC does not have the correspondence (or, more accurately, its own copies of its own letters). That is inherently implausible (especially given the existence of open enquiries); but HMRC has not said what documents it formerly had and what has happened to them.

20. HMRC's disclosure exercise is alleged to have been inadequate. For the above reasons, and looking at the entirety of the submissions, it seems to me that the allegation has some substance. A remedy for an inadequate disclosure exercise is for the disclosing party to undertake a further search.

DETERMINATION

Categories (1) and (2)

21. HMRC accepts these are relevant. I have addressed the point about undertaking a further search above.

22. The Tribunal directs HMRC to undertake a further reasonable search to locate any outstanding documents in these categories and to make disclosure by way of an Amended List of Documents.

23. Disclosure is to be made of documents whether or not those documents are to be relied on by HMRC, and whether or not they support HMRC's case.

24. I am aware that the provision as to 'adverse' documents is a departure from the usual Rule. However, as discussed above, I do have doubt as to the overall integrity of the exercise which has been conducted, and it seems to me fair and just that the Appellants should see documents, even if HMRC does not intend to rely on them and/or HMRC regards those documents as adverse to its case.

Categories (3) and (4)

25. I disagree that these categories are unfocussed or disproportionate, and I respectfully disagree that ordering disclosure of correspondence between HMRC and any of the appellants or their proxies amounts to a 'fishing exercise'.

26. I do not fundamentally disagree with HMRC's view that the purpose of disclosure is not that both parties exchange all the documents in their possession, so that everyone can examine everything held at their leisure, and each form their own view of relevance and/or in the hope that "something might turn up".

27. However, standing back, it seems to me that this disclosure exercise was inadequate; and that it is neither fair nor just for the Tribunal to sit back and take no action in response to the application. It also seems to me that some of the criticisms which HMRC makes as to the potential scope of the disclosure sought in Categories 3 and 4 have some merit.

28. The parties' respective positions each give little quarter to the other. Fortunately, in a matter of case management as this, I am not constrained by the parties' respective, and somewhat polarised, positions, and I can seek - as I do below - to adopt a middle course where doing so seems the best way of effectuating the Tribunal's overriding objective.

29. HMRC shall disclose correspondence and any enclosed documentation, from 6 April 2000 and 31 January 2009, relating to the DTC and CGT issues in the relevant years for any individual appellant, and (for the avoidance of doubt) to round-the-world planning in the

relevant years for each individual appellant, but not relating to the valuation of assets or to any Appellant's affairs in other tax years, passing:

(a) between HMRC and the Appellants;

(b) HMRC and Lansbury's International Ltd or any other agents or representatives of the Appellants (but only where that correspondence relates to the Appellants; and not where that correspondence relates to other scheme users); and

(c) HMRC and any trustees of the Appellants' settlements (but only where that correspondence relates to the Appellants; and not where that correspondence relates to other scheme users).

30. Such disclosure is to be made of documents whether or not they are to be relied on by HMRC; and whether or not they support HMRC's case.

31. If documents existed but no longer exist, HMRC shall say when they were last in HMRC's possession, custody or control, and what has happened to them. In this regard, an assertion in a submission to the effect that papers have been transported across many HMRC offices and HMRC do not have all the enquiry correspondence (i) is not evidence; and (ii) does not answer to this requirement in any event.

Category 5

32. I decline to make any order for disclosure in this category. There are several reasons for this.

33. Firstly, I do not see the obvious relevance of what is sought. This dispute concerns these taxpayers and HMRC. The issues (which govern the scope of disclosure) and the disclosure have to be appropriately focussed. The ultimate issue in these appeals is whether the gains are taxable or not. The Tribunal's jurisdiction is to determine these appeals, as between HMRC and these taxpayers. The above directions deal with the position in correspondence between HMRC and the appellants (etc). The appeals are not a roving inquiry into HMRC's own internal musings as to these schemes, or whether the revenue authorities in HMRC, NZ and/or Mauritius might or might not have thought that the schemes worked.

34. It is not clear to me whether these documents will shed any light on the primary facts which the Tribunal will have to decide. The Applicants' position is that these documents may (not "will") be "of significant relevance by giving important and useful insight into HMRC's views about whether a claim has been made". But, in my view, the Applicants' ultimate position that, if HMRC did request information from other tax authorities, this would suggest "that HMRC believed that the relevant DTCs were in issue" is just speculative and an insufficient basis for ordering disclosure.

35. At very best, it seems to me that these documents are unlikely to be probative of primary facts, meaning that the relevance of any of these documents is low and/or that they are 'train of inquiry' documents: see the discussion of the UT in *McCabe v HMRC* [2020] UKUT 266 (TCC) at Paras [35]-[38]

36. Moreover, and even if that were not the case, it seems to me that there are legitimate concerns regarding the confidentiality of state-to-state communications, especially in relation to mutual consultation as to the working of a DTC. It seems to me that the importance of preservation of confidentiality of such discussions finds some support in the provisions of the current OECD Model Tax Convention, albeit I note the caveat (drawn to my attention by the Applicants) that disclosure of such discussions may be given, or ordered.

37. I note that confidentiality is not a bar to disclosure. It is simply something to which some weight should appropriately be given; as it was by the FtT in *McCabe* [2019] UKFTT 317 (TC) (Judge Jonathan Richards, as he then was) at Paras [42]-[55]; and in that same case by the UT (Fancourt J, and UTJ Thomas Scott) at Paras [60] and following.

38. Ultimately, taking all the above into account, it seems to me that "the just balance" comes down against disclosure in relation to this category.

CONCLUSION

39. The Tribunal grants the application in part.

40. Disclosure is to be effected by HMRC by way of an updated List of Documents, clearly identifying documents not hitherto disclosed, to be served by no later than 4pm 30 October 2025. By that same time and date, inspection of documents not hitherto disclosed is to be done by way of the provision of copy documents. HMRC shall inform that Tribunal that this has been done. I have directed 30 October of my own initiative, and on the footing that (i) HMRC is not dealing with this ab initio; (ii) a second-sweep is likelier to be quicker and easier than the first time round.

41. All other directions are stayed pending disclosure. Within 28 days of the date of disclosure, the parties shall contact the Tribunal informing it as to any further directions, or consequential timings, agreed if possible.

THE USE OF AI

42. I have used AI in the production of this decision.

43. This application is well-suited to this approach. It is a discrete case-management matter, dealt with on the papers, and without a hearing. The parties' respective positions on the issue which I must decide are contained entirely in their written submissions and the other materials placed before me. I have not heard any evidence; nor am I called upon to make any decision as to the honesty or credibility of any party.

44. In his Practice Direction on Reasons for Decisions, released on 4 June 2024, the Senior President of Tribunals wrote:

> "Modern ways of working, facilitated by digital processes, will generally enable greater efficiencies in the work of the tribunals, including the logistics of decision-making. Full use should be made of any tools and techniques that are available to assist in the swift production of decisions."

45. I regard AI as such a tool, and this is the first decision in which I have grasped the nettle of using it. Although judges are not generally obliged to describe the research or preparatory work which may have been done in order to produce a judgment, it seems to me appropriate, in this case, for me to say what I have done.

46. The Senior President's guidance has recently been endorsed by the Upper Tribunal: see *Medpro Healthcare v HMRC* [2025] UKUT 255 (TCC) at [40] et seq (Marcus Smith J and UTJ Jonathan Cannan).

47. In April 2025, the senior Courts and Tribunals judiciary published "AI: Guidance for Judicial Office Holders". It is available online. It updated and replaced a guidance document originally issued in December 2023. The stated aim of the guidance was to assist judicial office holders in relation to the use of AI. It emphasises that any use of AI by or on behalf of the judiciary must be consistent with the judiciary's overarching obligation to protect the integrity of the administration of justice. The guidance mandated the use of a private AI tool, Microsoft's 'Copilot Chat', available to judicial office holders through our platform,

eJudiciary. As long as judicial office holders are logged into their eJudiciary accounts, the data they enter into Copilot remains secure and private. Unlike other large language models, it is not made public.

48. Principally, I have used AI to summarise the documents, but I have satisfied myself that the summaries - treated only as a first-draft - are accurate. I have not used the AI for legal research.

49. I am mindful that "the critical underlying principle is that it must be clear from a fair reading of the decision that the judge has brought their own independent judgment to bear in determining the issues before them": see *Medpro* at [43]. This decision has my name at the end. I am the decision-maker, and I am responsible for this material. The judgment applied - in the sense of the evaluative faculty, weighing-up the arguments, and framing the terms of the order - has been entirely mine.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

50. 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.

Release date: 22nd AUGUST 2025