[2019] UKFTT 603 (TC)

TC07386

PROCEDURE – HMRC application to amend its statement of case – application allowed- directions given

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal numbers: TC/2017/05544
TC/2017/07972
TC/2018/03918
TC/2018/05308

BETWEEN

KASHIF MEHRBAN **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE NIGEL POPPLEWELL

Sitting in public at Cardiff on 28 August 2019

Mr Rhys Thomas and Mr Nathaniel Monk, both of TM Sterling Ltd, for the Appellant

Mr John Nicholson, Officer of HM Revenue & Customs, for the Respondents

DECISION

INTRODUCTION

1. The respondents (or **"HMRC**") have made an application by way of a notice dated 5 December 2018 (the "**application**") for permission to amend their statement of case in these four conjoined appeals. The appellant (or "**Mr Mehrban**") objects to their application. For the reasons given in this decision I have decided to grant permission to HMRC to amend their statement of case with the effect that the amended statement of Case dated 21 December 2018 (the "**amended statement of case**") stands as their statement of case in these appeals. I shall give directions, separately, regarding the further conduct of these appeals.

BACKGROUND

2. The appellant's representatives had helpfully sent a number of relevant documents to the tribunal before the hearing. Mr Nicholson had, equally helpful, gathered these into a lever arch file, so I had the benefit of these documents at the hearing. In addition, the appellant gave evidence. I found him to be honest and truthful witness and I accept what he said. From this evidence I find the following facts for the purposes only of the application:

(1) By Directions made on 16 August 2018, these four appeals (against discovery assessments, civil evasion and other penalties, schedule 24 penalties, and VAT assessments) were directed to proceed and to be heard together.

(2) These Directions also directed HMRC to provide an amended statement of case within 30 days from the date of those Directions or to confirm that no amendment to their statement of case dated 16 May 2018 was required. I have not seen the original statement of case dated 16 May 2018, but I was told that it related only to the direct tax appeals. In response to those directions, HMRC submitted an amended statement of case dated 10 September 2018 (which I shall call the "**second statement of case**"). This second statement of case was compiled by an HMRC officer who I shall call "**Officer 1**".

(3) The tribunal gave further Directions on 5 July 2018.The copy of these Directions that I have seen appears to relate to only two of the four appeals, but it is clear that the parties have treated them as applying to all four of them.

(4) These Directions, in standard form, directed exchange of lists of documents and the documents themselves by 10 August 2018; exchange of witness statements by 7 September 2018; and exchange of listing information by 21 September 2018. They also dealt with bundles, skeletons and authorities.

(5) In August 2018 there was an exchange of correspondence between the appellant and Officer 1, as a consequence of which the appellant sent his list of documents to HMRC on or around 10 August 2018. He did not send the documents themselves at that time. The appellant was under the clear impression that Officer 1 would reciprocate and send to the appellant the documents on HMRC's list. This list, identified as document 74 in the bundle, is the only list of documents which I understand HMRC to have produced in any of these four appeals, and it seems to relate only to appeal TC/2017/07972. My understanding, however, is that this list of documents is the list which HMRC says relates to all four appeals and that they have no intention of revising this list of at the present time – notwithstanding the application, see [6] below.

(6) The appellant sent his documents to HMRC on 15 October 2018 following concerns, which stemmed from the tribunal's direction note, that if he did not provide his documents to HMRC he might not be able to use them in the appeal proceedings.

(7) The appellant did not receive copies of HMRC's documents until March 2019 when HMRC were preparing the bundle for the tribunal hearing. The appellant told me that that bundle did not contain any of his documents.

(8) Officer 1 then left HMRC and conduct of these appeals was delegated to another officer ("**Officer 2**"). This happened some time between September 2018 and December 2018. Officer 2 thought that the second statement of case was inadequately detailed. She compiled the amended statement of case which she sent to the appellant on or around 21 December 2018. I do not have a copy of any covering correspondence which was sent with that amended statement of case. However, a copy was sent to the tribunal on 11 February 2019 along with an explanatory email. That explanatory email (explaining why the second statement of case had been amended) was copied to the appellant.

(9) Prior to that, however, by way of the notice dated 5 December 2018, HMRC had made an application to the tribunal for permission to amend the second statement of case. The amended statement of case was not appended to that application.

(10) On 24 January 2019 HMRC sent copies of its witness statements with accompanying exhibits to the appellant. To date, the appellant has not sent his witness statements to HMRC.

THE LAW

3. In her decision, in the case of *Tersam Gekhal v HMRC* [2016] UKFTT ("*Gekhal")* 0356, Judge Bailey set out an excellent synopsis of the relevant law which relates to an application for permission to amend a statement of case. I gratefully adopt it and set it out below.

> **"Applications for permission to amend a document**
>
> **24.** It is clear that the Tribunal has the power to allow a party to amend its case. This is set out in Rule 5(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("Procedure Rules") which provides:
>
> > (1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.
> >
> > (2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.
> >
> > (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction permit or require a party to amend a document;
>
> **25.** Rule 2(3) of the Procedure Rules requires us to give effect to the over-riding objective when exercising any power under the Rules. The over-riding objective, as set out in Rule 2(1), is as follows:
>
> > (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

26. Following the decision of the Court of Appeal in *BPP Holdings v HMRC* [2016] EWCA Civ 121 we consider it acceptable for the Tribunal to have regard to the approach adopted under the Civil Procedure Rules as useful guidance when considering how to proceed in the Tribunal. In the recent decision of this Tribunal in *Moreton Alarm Services (MAS) Limited v HMRC* [2016] UKFTT 192 (TC), concerning an application made on the first day of the substantive hearing to amend the Respondents' Statement of Case, the Tribunal adopted a similar approach.

27. In Moreton Alarm Services the Tribunal considered and applied the principles set out in *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm). *Quah* concerned an application by the claimant, made three weeks before the first day of the trial, to amend her particulars of claim. At paragraphs 36 to 38 of *Quah*, Mrs Justice Carr set out the relevant principles in determining whether permission to amend should be granted:

36. An application to amend will be refused if it is clear that the proposed amendment has no real prospects of success. The test to be applied is the same as that for summary judgment under CPR Part 24. Thus the applicant has to have a case which is better than merely arguable. The court may reject an amendment seeking to raise a version of the facts of the case which is inherently implausible, self-contradictory or is not supported by contemporaneous documentation.

37. Beyond that, the relevant principles applying to very late applications to amend are well known. I have been referred to a number of authorities: *Swain-Mason v Mills & Reeve* [2011] 1 WLR 2735 (at paras. 69 to 72, 85 and 106); *Worldwide Corporation Ltd v GPT Ltd* [CA Transcript No 1835] 2 December 1988; *Hague Plant Limited v Hague* [2014] EWCA Civ 1609 (at paras. 27 to 33); *Dany Lions Ltd v Bristol Cars Ltd* [2014] EWHC 928 (QB) (at paras. 4 to 7 and 29); *Durley House Ltd v Firmdale Hotels plc* [2014] EWHC 2608 (Ch) (at paras. 31 and 32); *Mitchell v News Group Newspapers* [2013] EWCA Civ 1537.

38. Drawing these authorities together, the relevant principles can be stated simply as follows:

a) whether to allow an amendment is a matter for the discretion of the court. In exercising that discretion, the overriding objective is of the greatest importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted;

b) where a very late application to amend is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon. Rather, a heavy burden lies on a party seeking a very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it. The risk to a trial date may mean that the lateness of the application to amend will of itself cause the balance to be loaded heavily against the grant of permission;

c) a very late amendment is one made when the trial date has been fixed and where permitting the amendments would cause the trial date to be lost. Parties and the court have a legitimate expectation that trial fixtures will be kept;

d) lateness is not an absolute, but a relative concept. It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done;

e) gone are the days when it was sufficient for the amending party to argue that no prejudice had been suffered, save as to costs. In the modern era it is more readily recognised that the payment of costs may not be adequate compensation;

f) it is incumbent on a party seeking the indulgence of the court to be allowed to raise a late claim to provide a good explanation for the delay;

g) a much stricter view is taken nowadays of non-compliance with the Civil Procedure Rules and directions of the Court. The achievement of justice means something different now. Parties can no longer expect indulgence if they fail to comply with their procedural obligations because those obligations not only serve the purpose of ensuring that they conduct the litigation proportionately in order to ensure their own costs are kept within proportionate bounds but also the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately, and that the courts enable them to do so.

28. In her submissions on behalf of the Respondents, Ms Lemos took us to extracts from the White Book on civil procedure, setting out guidance in relation to the Civil Procedure Rules ("CPR") Part 17.3 (concerning amendments to statements of case) and CPR Part 24 (concerning the grounds for summary judgment).

29. Applying the principles set out in *Quah* to the two applications before us, we consider the factors which we should take into account here are:

a) whether the proposed new ground has real prospects of success (and if it does not then that is determinative of the application);

b) the reasons given as to why the application is made now and the explanation given for any delay in making the application;

c) the prejudice which might be caused to the other party if the application is permitted (recognising that there is a limited costs regime and so it would not ordinarily be possible for an award of costs to be made); and

d) the prejudice which might be caused to the applicant if the application is refused.

30. In weighing those four factors our principle objective is to deal with the case fairly and justly.

31. We do not ignore the comments in *Quah* that a heavy burden lies upon an applicant who comes very late in the day to seek permission to amend, and that any application which causes the substantive hearing date to be lost should be considered as being very late. Here the day which was to have been spent hearing the substantive appeals was spent hearing both parties "

4. *Gakhal* was decided before the Upper Tribunal decision in *Martland v HMRC* [2018] UKUT 178 ("*Martland* "). But the principles reflected in the decision are aligned very closely with those set out in *Martland*. I therefore propose to adopt the principles set out by Judge Bailey in *Gakhal*, and I shall bear in mind that when I am considering the balance of prejudice, which equates, in my view, to the third *Martland* criterion of an evaluation of all the circumstances of the case, and the balancing exercise which essentially assesses the merits of the reasons given for the application and the prejudice which might be caused to both parties by granting or refusing permission, I shall take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate costs, and for statutory time limits to be respected.

DISCUSSION

5. In its notice of application, HMRC explained the reasons for seeking permission to amend their statement of case. They said that Officer 1 had left HMRC and Officer 2, had reviewed the appeal and identified that the second statement of case did not fully plead HMRC's position nor did it address the legal framework on which the assessments had been made and which HMRC bear the onus of proving.

6. They also sought permission to amend the list of documents previously filed to ensure that a full and complete list of all documents relied upon as before the tribunal.

7. It is HMRC's view that that the amended statement of case will not prejudice the appellant but make clearer HMRC's position at an earlier stage in the proceedings than would have otherwise been the case without the amended statement of case. This will assist both the tribunal and the appellant in better understanding HMRC's case on the issues involved.

8. In his oral application, Mr Nicholson explained that one of his roles within HMRC, in relation to this appeal, was to consider the VAT position. He had decided that HMRC's position

as regards the VAT assessment was untenable and so had decided to withdraw that aspect of the case against the appellant. This required an amendment to the second statement of case.

9. Furthermore, when reviewing that statement of case, HMRC were in something of a dilemma. Whilst the witness statement have covered most of the evidence which HMRC was intending to adduce, the legal framework needed to have been adequately covered in the statement of case and Mr Nicholson and Officer 2 did not consider that to be the position. So the appellant would be prejudiced as he would not understand the case against him, in detail, until much later in the process. Perhaps only at skeleton argument stage. So they took what they consider to be the unusual step of seeking to amend the statement of case to explain the legal basis of the case and provide more detailed background. So the whole purpose was to put the appellant in a better position and make it clearer to him what HMRC's case really was. HMRC undertook no reanalysis of the case. The assessments have already been made and there was no intention of reassessing.

10. Indeed the appellant's objection to their application has caused some surprise to HMRC.

11. Mr Nicholson, however, frankly, honestly, in my view realistically, recognised that this was not HMRC's finest hour. The application contains an apology to the appellant for any inconvenience caused as a result of their application. He was not able to explain why the second statement of case was poor. But given that it was, in his view, less than satisfactory, and that the amended statement of case sets things out a great deal more clearly, it is his view that the appellant is not prejudiced by the amended statement of case. He is now fully aware of the case against him and can thus better prepare for the hearing than would have been the case based on the second statement of case.

12. The appellant's objections to HMRC's application are twofold. The first concerns the amended statement of case itself. The second relates to the documentary evidence and HMRC's list of documents.

13. The appellant says that the amended statement of case is a misnomer. It has, effectively, been totally rewritten. Furthermore rewriting was based on information contained in the documents which the appellant had, in accordance with the Directions of the tribunal, sent to Officer 1 at the beginning of October 2018. It is the appellant's view that the revisions to the second statement of case could only have been made because of the information contained in those documents. By complying with the directions, therefore, the appellant has put himself in a worse position than would have been the case had he not so complied.

14. The appellant also says that some of the amendments will cause him prejudice since it will require additional work to review the assertions made by those amendments.

15. The second objection concerns the documents. HMRC's position set out in the amended statement of case. In his view, this sets out a case which can only be opposed if the appellant has access to documents which, given the passage of time, he is now no longer able to access. He is therefore prejudiced by the amended statement of case.

16. HMRC have also now served on him a very large number of additional documents, and the appellant brought with him three or four lever arch files, brimming with additional paperwork. His view was that this was additional documentary evidence which was necessary for HMRC's case as set out in the amended statement of case and which would not have been relevant if HMRC's case rested on the second statement of case. Perusing, analysing, and

responding to this additional paperwork will take considerable time and thus additional cost to the appellant. He is therefore additionally prejudiced.

17. I now turn to a consideration of the submissions in light of the legal principles set out in *Gakhal*.

Prospect of success

18. The appellant considers that the amended statement of case has been so radically amended that it is, to all intents and purposes, an entirely new statement of case. HMRC have, in his view, completely changed its position. I disagree. It is certainly true that the amended statement of case is a considerably longer and more detailed document than the second statement of case which it is intended to displace. But on examination, it seems to me that it is doing little more than, firstly, reflecting HMRC's decision that they are not pursuing the VAT assessments, and so excising anything relating to VAT from the statement of case; secondly providing greater detail of the background to the basis on which HMRC has issued the discovery assessments; and thirdly providing a more detailed explanation as to the way in which the penalties have been calculated. It does not change (apart from the VAT position) the essential elements of the case against the appellant.

19. This is a case in which HMRC say that the appellant has suppressed his takings. HMRC have not opened an enquiry into time, and so cannot assess pursuant to a closure notice. They must, and have, issued a discovery assessment. HMRC's position is that the suppression was based on deliberate behaviour by the appellant and therefore the extended time limit to issue a discovery assessment, applies. This much is set out in the second statement of case, so it is clear to the appellant from that statement of case that the respondents are alleging deliberate behaviour. The amended statement of case does no more than set out why HMRC consider that the appellant deliberately failed to fully declare his income. It seems to me that this is for the benefit of the appellant rather than to his detriment.

20. HMRC's prospects of success in establishing deliberate behaviour and that a valid discovery assessment has been determined and notified to the appellant does not change as a result of the amended statement of case. It is neither stronger nor weaker.

21. The same is true of other amendments made in the amended statement of case. If HMRC can establish that the discovery assessments are valid, then the burden switches to the appellant to establish the correct amount of tax due. Provided the discovery assessment is a best of judgment assessment, which the appellant can challenge, then the appellant must put forward a positive case as to the amount of his takings. In those circumstances the tribunal can adjust the assessments accordingly.

22. This has always been HMRC's position, and does not change as a result of the amended statement of case. It is absolutely clear to the appellant, and has been throughout this appeal, that HMRC are alleging suppression and that it was always going to be up to him to displace the assessments based on evidence that he would have to adduce.

23. HMRC's prospects of success, therefore, in this appeal are not changed by the amended statement of case. It is no more likely that they will succeed or fail because of the amendments.

24. And so as regards this legal principle, the position is neutral. HMRC's prospects of success should I admit the amended statement of case are the same as they would be were I not to.

Reasons for the application

25. I now turn to the reasons for this application and for any delay in making it. HMRC's reasons for seeking permission to amend their statement of case are set out above. Mr Nicholson has first-hand experience of the process, so he was in the position of being not just the presenting officer, but also be able to give evidence as to the process. The appellant, not without reason, thanks there is some Machiavellian ulterior purpose to the amendments which, contrary to the somewhat altruistic motives suggested by Mr Nicholson, is the real reason why HMRC are making this application. And I agree with the appellant that it is unfortunate, to put it mildly, that it seems to him, as a result of his compliance (or at least greater compliance) with the tribunal's directions that he is left with the impression that the amendments have been caused by documents that he has given to HMRC when there has been no reciprocation of the provision of those documents until earlier this year.

26. But I am sympathetic to HMRC. It seems to me that, strictly speaking, and subject to the excision of anything relating to VAT, the second statement of case adequately pleads HMRC's position. There is no real need for HMRC to plead evidential points (more of which below). But they have done so. It is commendable, frankly, that HMRC have reviewed the appellant's case, having come to the conclusion that the second statement of case was inadequate, and have now provided a revised document in the shape of the amended statement of case which does provide a great deal more detail about the evidence on which the allegation of suppression is based and details of the way in which the penalties had been calculated. This is to the appellant's advantage. I deal with this under the balance of prejudice, below, but at this stage of the analysis, when considering the reasons given by HMRC for the application, I am satisfied that these reasons are as described by Mr Nicholson. And that these are good reasons for making the application.

27. As regards delay, I do not think that there has been any significant delay in HMRC making its application. It is not clear when Officer 1 left HMRC, but it seems to me that Officer 2 has acted within a couple of months of assuming the reins. The application was made on 5 December 2018 and was followed up by the amended statement of case itself on 21 December 2018. This does not demonstrate any tardiness on behalf of HMRC. Indeed to the contrary, I think they have moved with surprising alacrity.

Prejudice and an evaluation of all the circumstances

28. I now turn to the balancing exercise. In *Gakhal* terms this involves a consideration of the prejudice to each party of admitting the amended statement of case. In *Martland* terms, it involves an evaluation of all the circumstances which includes taking into consideration the prejudice which might be caused to either party.

29. It is the appellant's view, for the reasons given above, that he is materially prejudiced by this amended statement of case. In his view it introduces new issues which will take considerable time and cost to analyse properly, and his position is prejudiced since HMRC's revised position now requires him to obtain documents which might no longer be available given the passage of time.

30. I am afraid that I disagree with the appellant. The fundamental issues in this case, and HMRC's position in regards to them has not changed throughout the conjoining of the appeals nor the evolution of HMRC's statements of case. The amended statement of case, on examination, does not change HMRC's fundamental position as regards the appellant. It is HMRC's position that as a result of a number of exercises that they have carried out, they

consider the appellant to have suppressed his takings. It is, and has always been the case, that they must show that they have made a best judgment assessment, and that this assessment has been made in time, based on the appellant's deliberate behaviour. If HMRC can establish these, then the burden switches to the appellant to show that HMRC's assessment is wrong and he then must lead a positive case as to the level of takings which is more likely to be correct. These fundamental issues are unaffected by the amended statement of case.

31. It is true that the amended statement of case contains considerably more detail regarding the basis on which the best judgment assessment has been and the basis on which the penalties have been assessed. But, frankly, to the extent that this is necessary in a pleading (I am not wholly convinced that it is) it puts appellant in a better position than in a case where the detail is not so included. As HMRC have said, it enables the appellant to be forewarned, earlier than might otherwise have been the case, of details of the case which HMRC are bringing, and thus enables him to prepare his case rather better than if HMRC had not pleaded the detail. In particular, the appellant will now be able to deal with these matters in his witness statement, something that might not have been the case if HMRC had not made their position clear in the amended statement of case.

32. It has always open, of course, for the appellant to seek further and better particulars of an inadequately pleaded statement of case. But there is no indication that the appellant sought to avail himself of that opportunity before the amended statement of case was served on him. But had he done so, it is likely that HMRC would have produced a document much like the amended statement of case. Something to his benefit.

33. One particular instance of prejudice was raised by the appellant in connection with the basis on which the assessing officer, who was involved in making the best judgment calculations, Officer Russon, made her assessments. In the amended statement of case, it is said that one element of the evidence which lead Officer Russon to conclude that there was a loss of tax by suppression was an analysis of the appellant's bank statements and "other lifestyle factors provided by the appellant". No such detail had been included in the second statement of case, nor indeed was the issue of lifestyle factors referred to in correspondence between HMRC and the appellant, and in particular correspondence from HMRC explaining the basis on which they were alleging suppression.

34. The appellant says this introduces a new factor that he now has to counter and he is prejudiced accordingly. He is right when he says that this detail was not included in the second statement of case. It is however included in the witness statement of Officer Russon dated 21 January 2019. The appellant might say that this statement, as well as the amended statement of case, was based on information that he, the appellant, had supplied in his documents. But the basis on which Officer Russon made her best judgment assessments is a question of fact. And if lifestyle factors were something that she took into account, then it is up to the appellant to challenge that in cross examination. Indeed it is open for him to seek further and better particulars of the somewhat nebulous expression "lifestyle factors". But if indeed Officer Russon did take into account lifestyle factors when coming to her assessment, the fact that this is stated in the amended statement of case does not prejudice the appellant at all. He will have to challenge it when she gives her evidence, and, in all likelihood, he will deal with it too when setting out his positive case as to what the more likely amount of takings were. And having it spelt out for him at this stage via the amended statement of case puts him in a better position to prepare his defence than would have been the case had it not been so spelt out to him. As I say above, he can now deal with it in his witness statement.

35. In any event, the fact that this amended statement of case has been served on the appellant, means that it is clear to him what HMRC's detailed case is, and this is true even if I reject HMRC's application. So the appellant is already in a better position would have been the case had the respondents not made their application.

36. It seems to me that much of the prejudice of which the appellant complains relates not to the consequences of the amended statement of case, but relates to the additional documents which he suggests HMRC are now seeking to adduce. But I cannot see this, either. I appreciate that HMRC's application included an application to amend the list of documents mentioned at [6] above. But my understanding from Mr Nicholson is that they are not seeking to do so. And there was certainly no amended list put before me by HMRC on which I was asked to make a decision as to its admissibility.

37. As I say above, the appellant produced, at the hearing, three or four large lever arch files full of documents. But these turned out to be the witness statements of HMRC's witnesses with accompanying exhibits. I do not think that these witness statements are affected by the amended statement of case. Indeed the amended statement of case is based on the evidence which the relevant HMRC officers will give. And the appellant, having had advanced disclosure of that evidence, can prepare his case accordingly. That preparation is not affected by the amended statement of case. Indeed most if not all the detail which is now in the amended statement of case is also in those witness statements.

38. So I can see no prejudice to the appellant of giving HMRC permission to amend their statement of case so that the amended statement of case now stands as the statement of case in these four appeals. And indeed, like HMRC, I can see benefit to the appellant since it encapsulates HMRC's position, which is set out more diffusely throughout the respondents witness statements, in one document. This will enable the appeal to proceed more efficiently than would otherwise have been the case, and costs are more likely to be incurred on analysing relevant matters.

39. One further matter which was raised at the hearing concerns the listing information provided by the parties. On examination, the listing information supplied by HMRC to the tribunal in their letter of 11 February 2019 states that HMRC intends to call three witnesses and that the expected duration of the hearing as one day. This is a wholly unrealistic time estimate as Mr Nicholson was the first to acknowledge. I will give directions, separately, as to the further conduct of this appeal. One such direction will deal with the provision of updated listing information. The appellant is clearly now competently represented. I urge those representatives to liaise with HMRC and to agree a realistic time estimate. The appellant was somewhat dismayed to hear that it was my view that a three day hearing is more likely to be realistic. Since that will involve him in additional cost. But it is obviously important that sufficient time is allowed for all the issues to be canvassed. And given the amount of witness evidence, it seems inconceivable that those issues could be fully canvassed in a single day. This is the case irrespective of whether I give permission for the respondents to amend their statement of case. Which I do.

DECISION

40. I grant the respondents application dated 5 December 2018 to amend their statement of case, with the effect that the amended statement of case stands as the statement of case in these conjoined appeals.

41. For the avoidance of doubt I do not give HMRC permission to amend their list of documents, and their list of documents shall, unless permission is granted for it to be amended or replaced, be that set out at page 74 of the bundle of documents produced to me at the hearing.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

42. 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: 25 SEPTEMBER 2019