Neutral Citation Number: [2026] EWHC 733 (Admin)

Case No: AC-2023-LON-002226

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2026

Before :

MRS JUSTICE FOSTER

- -

Between :

THE KING (ON THE APPLICATION OF CHRISTOPHER ROKOS)	**Claimant**
- and –	
COMMISSIONERS FOR HM REVENUE AND CUSTOMS	**Defendant**

- -
- -

Mr. Sam Grodzinski KC and **Mr. Sam Brodsky** (instructed by **Simmons & Simmons LLP**) for the **Claimant**
Mr. Christopher Stone KC and **Mr. Sam Way** (instructed by **HMRC Legal Group**) for the **Defendant**

Hearing dates: 26 and 27 February 2025

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Approved Judgment

This judgment was handed down remotely at 15.00 on Thursday 26 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Foster:

Introduction.

1. Mr Rokos the claimant is a High-Net-Worth individual who became involved in a number of film finance schemes about 20 years ago, designed to minimise his exposure to tax and, eventually, there is no dispute, found to be ineffective to avoid tax. In very broad terms the purpose of the schemes was as tax avoidance schemes which were designed to raise money for the film industry, and to use the likely resulting early losses, as relief against other tax liabilities of the investors.

2. The schemes, one of which was notified under the direct tax Disclosure of Tax Avoidance Schemes ("DOTAS") rules, involved two entities (partnerships) which were established in 2006. HMRC say that they opened valid enquiries into the tax positions of the partners including the claimant, with the relevant entities in January 2008 for one, and in December 2008 in respect of the other.

3. The claimant challenges two decisions of HMRC

> "(a) the decision to issue Mr Rokos with a notice of amendment under s28B(4) Taxes Management Act 1970 for the tax year 2005/06.
>
> (b) HMRC's decision to issue Mr Rokos with a notice of amendment under s28B(4) Taxes Management Act 1970 for the tax year 2006/07."

on the grounds that each of the above notices of amendment was unlawful by reason of the fact that the *prior* notices of amendment made to the relevant tax returns of the claimant's partnerships were themselves unlawful. Those partnerships are:

(a) For 2005/06: Trojan Film Partners ("Trojan")

(b) For 2006/07: Invicta Film Partnership No.41, GP ("Invicta41")

The Partnerships

Trojan

4. In more detail, in the 2005/06 tax year, Mr Rokos invested money as a partner in Trojan Film Partners ("Trojan"). In the 2006/07 tax year, he invested money separately as a partner in Invicta Film Partnership No.41, GP ("Invicta41"). Each of Trojan and Invicta41 was, and is, a general partnership. Each partnership reported substantial trading losses in their tax returns for 2005/06 (in the case of Trojan) and 2006/07 (in the case of Invicta41).

5. The tax history, which includes a later move offshore, is set out by Mr Skerrett, who at the time the claim was brought was a partner at Simmons and Simmons LLP ("Simmons and Simmons"), acting for the claimant. There is no statement from the claimant. Mr Skerrett swore the statement in support of the claim. He set out a summary of the claimant's relevant tax position with regard to Trojan in that statement (omitting references) it included that:

> *"15. Trojan was a tax planning opportunity promoted by an organisation known as Ingenious Films or Ingenious Media ("Ingenious") for the benefit of high-net-worth individuals. The Claimant was introduced to the opportunity through an advisory firm known as Dominion Fiduciary Services Group* …[there is an] *engagement letter between the Claimant and Dominion dated 8 February 2006*
> *16. On or around 9 March 2006, the Claimant executed the partnership deed for Trojan and became a partner. The Claimant made a capital contribution to Trojan of £4,816,346. Of this amount the Claimant contributed £1,050,445 from his own capital and funded the remainder with a loan from the Bank of Ireland…*
> *17. Before the end of the tax year on 5 April 2006, Trojan incurred expenditure acquiring rights in respect of certain films from the film producers. These film rights qualified as 'master versions' of the films in question, which meant that Trojan was able to treat the expenditure on the film rights as revenue expenditure in accordance with the rules in Chapter 9 of Part 2 Income Tax (Trading and Other Income) Act 2005 ("ITTOIA 2005"), when it would otherwise have been capital expenditure subject to relief through the capital allowances regime. The films in question were classified for the purposes of ITTOIA 2005 as 'limited- budget films', and as a result Trojan was able to take the expenditure on the film rights into account in full when computing its profits and losses for the tax year 2005/06.*
> *18. The Trojan partnership tax return for 2005/06 recorded a trading loss of £15,990,705. The partnership statement recorded that the Claimant's share of that trading loss was £3,522,727."*

6. The statement also detailed how for year 2009/2010 Dominion took over control and management of Trojan who arranged to migrate the partnership offshore. Mr Rokos' profits were then non-UK source income and taxable on a remittance basis; he did not remit any income.

Invicta41

7. In respect of Invicta41 the following was set out.

> *"27. Invicta41 was a tax planning opportunity promoted by an organisation known as Invicta and introduced to the Claimant by Dominion …*[there is an] *engagement letter between the Claimant and Dominion dated 19 December 2006.*
> *28. The Invicta41 partnership deed was executed on 8 September 2006 between two corporate members: Anglo Film Nominees (GP) Limited and Sovereign Film Nominees (GP) Limited … the Claimant became a member of Invicta41 in around January 2007. The Claimant made a capital contribution to Invicta41 of £20million. Of this amount the Claimant contributed £4.6million from his own capital and funded the remainder with a loan from the Royal Bank of Scotland (the "RBS Loan") …*
> *29. Before the end of the tax year on 5 April 2007, Invicta41 incurred expenditure acquiring rights in respect of certain films from the film producers. Similarly to Trojan above, the film rights qualified as 'master versions' of 'limited-budget films' and*

> *Invicta41 was able to take the expenditure into account in full when computing its profits and losses for the tax year 2006/07.*
> *30. The Invicta41 partnership tax return for 2006/07 recorded a trading loss of £30,927,802. The partnership statement recorded that the Claimant's share of that trading loss was £19,656,689.88.*

8. In similar fashion Invicta41 was offshored.

Samarkand and Follower- Notices

9. Each of Trojan and Invicta41 were among a number of partnerships which were film finance schemes, promoted and administered by Ingenious Media Plc ("IMIL") and Invicta Capital Ltd ("ICL") respectively, as part of marketed tax avoidance schemes.

10. There were many such arrangements and partnerships, and they were similar to those considered by the courts in respect of other film partnerships. The time came when in *Samarkand, Proteus v HMRC* [2017] STC 926, [2017] EWCA Civ 77 the Court of Appeal decided that arrangements similar to those in this case were not entitled to film trading tax relief. The effect of the decision in *Samarkand* was that any partnership losses were to be treated as non-trading losses. Non-trading losses have different tax consequences from trading losses: in particular, partners are in general entitled to sideways loss relief only in respect of partnership trading losses. It is not in dispute in these proceedings that the two partnerships here are in a materially similar position to the *Samarkand* and *Proteus* partnerships, and it is not contended that the decision in *Samarkand* was wrong.

11. The claimant taxpayer accepts that in these circumstances it was in principle open to HMRC to take steps to amend the Partnerships' historical tax returns, to reflect this position and "amend out" the claimed sideways relief against personal income (pursuant to ss. 380, 381 of the Income and Corporation Tax Act 1988 ("ICTA 1988")). HMRC say they have successfully achieved that position under s.28B(1B) TMA 1970. Mr Rokos argues that they cannot show they did. He says that HMRC did not have the statutory power to do so, because enquiries were never validly opened into the relevant Partnership Returns in the first place, due to a failure properly to notify such enquiries in accordance with the requirements in section 12AC TMA 1970. The effect of this is that the personal returns retain the benefit of the partnership losses because, if there had been no initial enquiry opened, it was not possible for the amendment mechanism to operate in order to deny relief. A valid amendment would be carried across to the partners' own returns: ss. 12ABA(3), 28B(4) TMA 1970; Mr Rokos' personal tax returns for 2005/06 and 2006/07 had reflected his share of the Partnerships' losses for those years.

12. HMRC say that there was notification to the partners of the intention to enquire into the partnership returns that complied with the statute because there was notification to the agents of each of the partnerships, and those agents had authority to receive such notice. Further, in any event, there was indirect notification to this taxpayer, and/or the court can otherwise be confident that he did know/was notified according to statute of the intention to enquire within the appropriate time limit, given the manner in which HMRC interacted with these taxpayers in connection with their partnership returns.

Statutory Framework

13. There is no dispute as to the underlying taxation framework so that part of the statute whose meaning is under consideration, and the relevant mechanism, can be shortly set out.

14. Section 12AA TMA 1970 provides relevantly:

> *(1) Where a trade, profession or business is carried on by two or more persons in partnership, for the purpose of facilitating the establishment of the following amounts, namely—*
> *(a) the amount in which each partner chargeable to income tax for any year of assessment is so chargeable and the amount payable by way of income tax by each such partner, and*
> *(b) the amount in which each partner chargeable to corporation tax for any period is so chargeable, an officer of the Board may act under subsection (2) or (3) below (or both).*
> *…*
> *(2) An officer of the Board may by a notice given to the partners require such person as is identified in accordance with rules given with the notice or a successor of his—*
> *(a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and*
> *(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.*
> *(3) An officer of the Board may by notice given to any partner require the partner or a successor of his—*
> *(a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and*
> *(b) to deliver with the return such accounts and statements as may reasonably be so required; and a notice may be given to any one partner or separate notices may be given to each partner or to such partners as the officer thinks fit.*
> *…*
> *(6) Every return under this section shall include—*
> *(a) a declaration of the name, residence and tax reference of each of the persons who have been partners—*
> *(i) for the whole of the relevant period, or*
> *(ii) for any part of that period, and, in the case of a person falling within sub-paragraph (ii) above, of the part concerned; and*
>
> *(b) a declaration by the person making the return to the effect that it is to the best of his knowledge correct and complete. But see section 12ABZA. 12. A partnership may amend its return pursuant to section 12ABA TMA 1970.*

15. Section 12AC TMA 1970 permits the Defendants to enquire into a partnership return. That states, in relevant part:

> *(1)* ***An officer of the Board may enquire into a partnership return if he gives notice of his intention to do so ("notice of enquiry")—***
> ***(a) to the partner who made and delivered the return, or his successor,***
> ***(b) within the time allowed.***
> *(2) The time allowed is—*
> *(a) if the return was delivered on or before the filing date, up to the end of the period of twelve months after the day on which the return was delivered;*
> *(b) if the return was delivered after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;*
> *(c) if the return is amended under section 12ABA of this Act, up to and including the quarter day next following the first anniversary of the day on which the amendment was made;*
> *(d) if a dispute in relation to the return is referred to a tribunal under section 12ABZB(3) of this Act, up to and including the quarter day next following the first anniversary of the day on which HMRC received notification of the referral For this purpose the quarter days are 31st January, 30th April, 31st July and 31st October.*
> *...*
> *(7) In this section "the filing date" means the day specified in the notice under section 12AA(2) of this Act or, as the case may be, subsection (3) of that section.*
> [Emphasis added].

16. Thus, when a partnership files a tax return in time, HMRC have 12 months to open an enquiry into that return under section 12AC TMA 1970, and the statute contains notification provisions.

17. Once an enquiry is completed, HMRC issue a "closure notice" stating their conclusions and making any necessary amendments: s.28B TMA 1970. Such closure notice may only be issued in respect of an open enquiry. HMRC must then make any amendments flowing from the closure notice to the personal tax returns of the partners: s.28B(4) TMA 1970. Statute does not impose a time limit within which to make such consequential amendments. Both parties accept that, under statute, for amendments to be made, the closure notice itself must be validly made.

18. A partnership may make an amendment to its own return (a "self-amendment"), but any such amendment must be made within 12 months of the filing date, or it has no effect: section 12ABA(2) TMA 1970. If a valid self-amendment is made, then HMRC must make consequential amendments to the personal tax returns of the partners: section 12ABA(3) TMA 1970. There is also no time limit for making such consequential amendments in these circumstances, provided in both cases that the partnership self-amendment was itself validly made.

19. HMRC additionally have a power, of relevance in this case, to issue "Follower Notices" in certain circumstances under s.204 of the Finance Act 2014 ("FA 2014"). The purpose of a Follower Notice is to apply a ruling (such as that in *Samarkand)* to other taxpayers covered by the principles set down in that decision: (see s.205(4) FA 2014). A Follower Notice may only be issued if a tax enquiry is in progress in relation to the relevant return or a tax appeal is in train, see s.204(2) FA 2014. If there is no tax enquiry properly made, then the requirements for Follower Notice are not made out.

20. The Follower Notice provisions are transposed into the partnership context by Schedule 31 to the Finance Act 2014. A partnership Follower Notice is one given by reason of the tax enquiry being in progress into a partnership return.

21. Thereafter, if the Follower Notice is properly made, a notice to amend the taxpayer's self-assessment tax return may be issued under section 28B(4) of the Taxes Management Act 1970 – it is the issue of this notice, purporting to remove the reliefs that is challenged in this judicial review.

22. Put shortly, the claimant says the Defendants did not meet the statutory requirements to open enquiries into each of those partnerships' returns pursuant to the TMA 1970 which has the effect that no lawful enquiry was ever opened. They argue that notices of enquiry into the relevant partnership returns were not given by HMRC "*to the partner who made and delivered the return, or his successor*" as required by section 12AC(1)(a) TMA 1970, and nothing less will do.

23. Both parties agree there is no right of appeal and that judicial review is the appropriate remedy.

24. Whilst admitting that there were certain failures in respect of the paperwork directed at the taxpayer, and asserting that the partnership itself, in one case, seriously failed to comply with its statutory obligations, HMRC say that the relevant materials were lawfully notified pursuant to statute, properly construed. Furthermore, authority shows the Court will infer that notice was given in circumstances such as the present and, even if they are wrong, the court's discretion to refuse a remedy is sought to be invoked where the parties proceeded on the basis that the enquiries were properly notified at the time in 2008.

Issues

25. The parties helpfully prepared a detailed list of issues potentially arising. That list resolved itself in my view into the following broad categories of submission:

    (i) What did the statute require? (The statutory interpretation point);
    (ii) Is it more likely than not there was notification of an enquiry such that the statutory requirement at (i) was satisfied? (The agency point); if not
    (iii) Is it more likely than not there was other notification or knowledge that satisfies the statutory purpose of the section? (The indirect notification or knowledge point); even if not
    (iv) Will the court treat the notice as having been properly served because a taxpayer who themselves does not fulfil the statutory requirements, cannot require HMRC to do so, and/or will the Court decline to afford a remedy to a claimant in the present circumstances? (The remedy point).

Facts

26. The relevant basic chronology begins some twenty years ago.

Trojan and Invicta

27. The Trojan partnership began on 9 March 2006. On 13 March 2006 Ingenious Media Investments Limited signed an agency agreement with the partners of Trojan expressed to take effect from 9 March 2006. The Agreement, stated to be made between Trojan film partners (described as the "Partnership") and Ingenious Media Investments Ltd (described as the "Company") was signed on behalf of the partners by the nominated partner, Mr Andrea Perona.

28. The material paragraphs of that document are as follows:

INTRODUCTION

The Partnership is engaged in the purchase, development, production and exploitation of films and film rights and wishes to appoint the Company as its sole representative in the United Kingdom ("the Territory") for the term hereof to assist the Partnership in negotiating the terms of such purchases and the administration and conduct of the Partnership's business generally.

OPERATIVE PROVISIONS

1. Appointment of Company

1.1 Subject to and upon the terms hereafter appearing the Partnership hereby appoints the Company to be its sole representative in the Territory to:

(a) assist the Partnership in seeking films for the acquisition and exploitation of the same in connection with the business of the Partnership and negotiating the terms of the same on the best terms reasonably available and in such form as the Partnership may from time to time approve;

(b) act as partnership secretary and arrange for the holding of meetings by the Partnership to conduct the business of the Partnership and to circulate agendas therefor and to draft minutes of such meetings for approval by the Partnership;

(c) at the request of one or more executive partners of the Partnership prepare annual budgets for approval by the Partnership, lease profiles, and such other reports on profitability, cash flow and budgetary forecasts in accordance with the business plan for the Partnership approved by the current partners of the Partnership from time to time;

(d) "hold meetings and conduct correspondence with the Partnership's solicitors and accountants and other agents of the Partnership on behalf of the Partnership as may be most expeditious for the conduct of the Partnership's business and render notes of advice and other correspondence and accounts received as may be appropriate for the members of the Partnership to conceive and execute the conduct of the Partnership's business";

(e) without prejudice to the generality of the foregoing, cause to be submitted in a timely manner to the relevant authorities such value added tax and other Partnership fiscal returns as may be required by law;

(f) monitor the performance of films acquired by the Partnership, the payment of lease rentals and any other secured arrangements and report on the same to the Partnership in such manner and fashion as the Partnership may require;

(g) maintain the assets, records and documents of the Partnership in such manner as the Partnership shall require, and monitor the payment of insurance premiums thereon as shall be appropriate."

[Emphasis added].

Subclauses (d) and (e) are particularly relied upon by HMRC as, when read with other provisions, conferring actual authority to receive the notices of enquiry, which is denied by the taxpayer.

29. On or about 31 January 2007 the Trojan partnership return, signed by Mr Andrea Perona, was sent to and received by HMRC. HMRC have not been able to locate a copy of this return for the 2005/6 year, but accept it was sent and it would have been correctly filled in.

30. On 11 January 2008 HMRC sent a notice of enquiry in respect of the Trojan return. It was sent not to Mr Perona but to a Mr Aniel Quiroga; it stated
"*I am writing to advise you that I intend to make some enquiries into the 2006 partnership return. I will contact Ingenious [IMIL] to explain the reasons for the above enquiry and to request the information I need.*
I enclose our Code of Practice, which I hope you will find helpful.
It explains your rights and obligations. Please read it carefully and if you require any further clarification please do not hesitate to contact me."

31. At the same time a letter was sent, say HMRC, to IMIL stating
"*I have today issued to your client, the Trojan Film Partners, a notice under section 12AC(1) TMA 1970 of my intention to enquire into the 2006 partnership return. A copy of my notice is attached.*
The notice is being issued to protect both HMRC and the partners interests and also to formalise matters pending the conclusion of the ongoing generic enquiries regarding film partnerships currently subject to negotiation between us."

32. The evidence of Mr Scholey of HMRC after examining the documents still on file, noted that
"*During this period, HMRC had been writing to both Mr Aniel-Quiroga as the purported nominated partner and IMIL to open enquiries for years ending 5 April 2006, 2007, 2008, 2009 without correction or challenge from IMIL or Mr Aniel-Quiroga …*
It is also important to note that the returns and notices to file were issued to Trojan Film Partners in April of each year at the IMIL address of 15 Golden Square and returned and signed by Andrea Perona without amending or correcting the partnership address. The return for the year ending 2007 was sent to HMRC on the same day that HMRC issued the 2007 S12AC opening enquiry notice to Mr Aniel-Qiroga."

33. On 17 July 2018 a Follower Notice was sent to Trojan.

34. On 19 October 2018 corrective action under the Follower Notice was taken by Trojan following a vote by the partners. All except Mr Rokos voted in favour of that motion.

35. On 6 December 2022 HMRC issued a closure notice to Trojan.

36. On 8 September 2006 the Invicta41 Partnership Deed had been completed.

37. This Partnership Deed was executed by Niall Bamford stated to be on behalf of Anglo Film Nominees ("Anglo") and Sovereign Film Nominees ("Sovereign") as sole partners. The partnership deed described the business of the partnership as the business of the

development, production and acquisition portfolio of films acquired in the course of trading with a view to gain and their exploitation by various means.

38. The Partnership Deed referred to a Services Agreement between the Partnership and ICL, and it named certain of the parties (Sovereign and Anglo, both private limited companies).

39. The Services Agreement stated in the recitals the following. Emphasis has been added:

Recitals

a) "The parties contemplate that certain services be provided by ICL to the Partnership in order to facilitate the Business of the Partnership."

b) "The Partnership and ICL desire to enter into this Agreement to provide for the provision of the Services (as defined below) by ICL to the Partnership pursuant to this Agreement."

c) "This Agreement is the Services Agreement as contemplated by the deed entered into by the partners of the Partnership on the even date herewith (the "Partnership Deed")."

40. The Services Agreement contained an Appointment section whereby under clause 2.1 the Partnership

"*…appointed ICL to be responsible for the services set out in schedule 1,* ***appoints ICL to be exclusively responsible for the provision to the Partnership of the services set out in Schedule 1 to this Agreement*** *(the "Services"), and ICL hereby accepts the appointment to provide the Services to the Partnership."*

41. Clause 2.3, to which the taxpayer points, stated the following:

" In addition to the Services, ICL shall, subject to clause 2.4,arrange and negotiate the terms of Partner's Loan Facilities and prepare all income tax information relating to each Partner's tax affairs following each Year End date"

It does not mention, the taxpayer submits, any power to receive notices of intention to enquire into returns. Clause 2.4 stated notwithstanding, 2.3 that ICL had no power to bind any partner to the execution of any loan facilities.

42. Clause 4.1 provided

"4 Powers and Duties of ICL

4.1 With effect from the Commencement Date, but subject to application of clause 2.1, the restrictions set out or referred to in this Agreement and/or matters specifically reserved for the decision of the Partners under the Partnership Deed, ICL shall exercise the powers and authorities conferred upon the Partners under the Partnership Deed and in performing the duties and exercising the powers and authorities referred to in this clause ICL shall have power to bind and/or commit the Partnership.

…

4.3 Subject to clause 44, no Partner shall exercise any of the powers exercisable by ICL which have been entrusted to and conferred upon ICL pursuant to this Agreement"

43. Clause 13 of the Services Agreement in Schedule 3, to which the taxpayer also points reads:

"13 No Partnership or Agency

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties hereto ***nor constitute any party the agent of another party for any purpose."***

44. Schedule 1 to the Services Agreement had a list of obligations of ICL; they included
"12 To provide such other services as may be necessary in pursuing the purpose of the Business.

13 To provide such other services as may be agreed in writing from time to time between the Parties."

45. Under Schedule 1 to the Services Agreement, describing the services, is a list of the obligations of ICL which include investigating and evaluating suitable films and carrying out due diligence to ensure the statutory and extra statutory criteria especially HMRC's tax treatment guidance, is satisfied, and the obligation to represent the Partnership at all negotiations and dealings with for example, producers and distributors and other aspects of expertise regarding film business.

46. After Invicta Capital Ltd "ICL" signed the Services Agreement with Invicta41, its purpose is also reflected in a later Deed of Termination to which HMRC makes reference, describing its purpose (by recital B) as being as follows:
"*Under the terms of a services agreement dated 08 September 2006 (the "Services Agreement") the Partnership appointed the Company as its sole representative in the United Kingdom to assist the Partnership in negotiating the terms of such purchases* ***and the administration and conduct of the Partnership's business generally."***

47. On 18 December 2008 HMRC gave notice of enquiry in respect of the Invicta tax return to a Mr Wadhwani. Mr Wadhwani was not the representative partner of Invicta. Indeed, the person who was the representative partner in respect of Invicta41, has never been identified, whether by HMRC or by the claimant. It was not that person who signed the return.

48. There was a letter also to ICL of the same date stating:
"I have today issued to your client, Invicta41 LLP [it should in fact have said "GP"] *a notice under section 12 AC (1) TMA 1970 of my intention to enquire into the 2007 partnership return. A copy of my notice is attached.*
The notices being issued to protect both HMRC and the partners interests and also to formalise matters pending the conclusion of the ongoing generic enquiries regarding film partnerships currently subject to negotiation between us."

49. On 29 January 2008 HMRC received in respect of Invicta, the partnership tax return for the 2006/2007 year which had been issued to "Invicta Partnership 41 GP C/o Invicta capital Ltd 33 St James's Square London". It was signed by Niall Bamford as the nominated partner (which he was not) and the box to indicate that he had signed for someone else was left blank, as was the box to indicate the name of the person for whom he was signing, to be completed together with his own name and address.

50. In the box in which these details were required, that is box 3.116, were listed the names of Anglo Film Nominees (GP) Ltd, and Sovereign Film Nominees (GP) Ltd. They were described as "non-participating corporate partners". As indicated, neither of these entities was the representative partner, Mr Perona was the nominated partner of Trojan.

51. During the 2009/10 year, Dominion (later known as "Yellow Film Management (Jersey) Limited") took over control and management of Invicta 41 and arranged to migrate the partnership trade from the UK to Jersey – to offshore it.

52. On 13 July 2018 a Follower Notice was sent to Invicta41. As stated, all partners except Mr Rokos, voted in favour of the corrective action under that Notice.

53. Latterly, correspondence was written asking about the position in respect of both Trojan and IMIL and Invicta41 and ICL, and for documentation remaining. This was instigated by the claimant's solicitors with Dominion who had taken over from IMIL and ICL. Pankaj Bedi at Dominion managed to obtain the letter of 18 December 2008 to ICL indicating that the Notice under section 12AC(1) had been issued that day. He could not trace other materials even though he had been pushed to press ICL for them. Invicta apparently had no more materials on file.

54. The following is recorded in the statement of Mr Skerrett dated 20 July 2023 in para [80]:

> *"On 10 August 2018 I wrote again to Mr Bedi by email as follows* [the reference is given]*:*
>
> > *"Looking at these letters, they say that a notice of enquiry has been issued to Invicta No 41 LLP. A copy is supposed to be attached, but you/Dominion do not have copies of the notices. This raises a few questions:*
> > *Was Invicta No 41 LLP the representative partner that filed the 2007 partnership tax return?*
> > ***Was Invicta Capital Limited the authorised agent of Invicta No 41 LLP****?*
> > *What date was the return filed? Is a copy available? Was it paper or electronic? I note that you have not found any records of an enquiry notice having been issued in respect of Trojan."*
>
> *On 13 August 2018, Mr Bedi responded to my questions as follows*
>
> > *It was not a representative partner, but it had a service agreement with the partnership to complete and file the partnership tax returns prior to the emigration.*
> > ***Before the emigration yes. They had a service agreement for the work they were doing that was cancelled on emigration when DFM(J) Limited took over.***
> > *This was done by Invicta so unless they confirm it the date and format will not be known because a copy was not provided to Sundax. HMRC have previously been asked a few times to confirm the years that had open enquiries but did not respond.* ***That being said it was always the understanding from conversations with Invicta that enquiries had been opened into the partnership tax return.*** *The only way to get this information and/or a copy of the return will be direct from Invicta or HMRC.*
> > ***Regarding Trojan it was Ingenious*** *I will again try and get similar information as received from Invicta for GP41, but I doubt it very much that it would be much of a help."* [Emphasis added.]

55. When asked then who the representative partner was, if not Invicta LLP (in fact this was an error for " GP") Mr Bedi also answered on 13 August:
    "***It was still Invicta41 who was dealing with the tax returns as per the service agreement til the time of emigration.***".
    [Emphasis added.]

56. On 6 December 2022 HMRC issued a closure notice to Invicta41.

57. On 24 April 2023 HMRC issued the consequential amendments to Mr Rokos in respect of both Trojan and Invicta41, delivered in May 2023, which are the subject of the judicial review.

Consideration of The Arguments

(i) The statutory interpretation point

58. Mr Sam Grodzinski KC with Mr Sam Brodsky for the claimant expressed a single ground of challenge in terms of the Revenue's failure to meet what they described as the prescriptive and important statutory requirement of section 12AC of the TMA 1970 to give notice of the enquiry to the partner who made and filed the partnership tax return. Thus, if the court were to find that an enquiry was not lawfully opened then there was no way that the amendments to the claimant's personal tax returns could be regarded as lawful: invalidity follows any derogation from the strict requirements of notice under section 12 TMA 1970.

59. The notification requirements are expressed in mandatory terms and are "highly prescriptive," said the claimant. Section 12AC dealing with partnership returns is in the same terms as section 9A TMA 1970 regarding personal tax return enquiries – or indeed section 8A in respect of trustee returns. Reliance was put on what Mr Grodzinski KC submitted was the draftsman declining to provide a deeming provision in section 12AC, saying that if a notice of enquiry is served on any partner in the partnership that is good enough. Opening an enquiry by formal notice is an important step with serious and immediate consequences, accordingly, the statute should be construed as meaning that HMRC only has power to issue a closure notice at the end of an open enquiry, if an enquiry has been validly opened strictly in accordance with the rigorous and prescriptive statutory provisions.

60. Mr Grodzinski KC drew attention to the provisions with respect to a successor to the nominated partner, and powers given to the Revenue to nominate a partner in certain circumstances and submitted that this too exemplifies the highly prescriptive nature of the process and Parliament did not provide for a notice of enquiry by an officer of the Revenue to be given to *any* partner.

61. HMRC for their part accept that section 12AC states that notice of the intention to enquire into a return should be given to the partner who made and delivered that return, assuming that HMRC know who that person is. The statute is not, however, prescriptive as to *how* that partner is to be given notice. Here they submit, the requisite partners did come to have notice under the statute, whether as a matter of the direct authority vested in their agents IMIL and Invicta, or indirectly, which may be deduced from the facts of the case, by service

upon other named persons, and in light of what they submit is the real likelihood in all the circumstances that the claimant knew of the enquiry at the relevant time. Each of these ways would constitute sufficient notification under the statute.

62. HMRC accept that in respect of the Trojan partnership Mr Aniel Quiroga was served who, it turns out, was *not* the nominated partner for that partnership. The appropriate person was a Mr Perona since he met the description within the section, as *"the partner who made and delivered the return,…*" as required by section 12AC(1)(a). The original copy of the return no longer exists in HMRC's records, but it is agreed that it would have contained Mr Perona's address. However, HMRC rely on the fact that notice of the enquiry was provided to Trojan's agent IMIL, on 11 January 2008, and they argue that IMIL had actual authority to receive the document on behalf of each of the partners.

Sword Services

63. Mr Stone KC submits that in respect of the exercise of statutory interpretation, the question of the statutory purpose of section 12AC has already been decided in the case of *Sword Services v HMRC* [2016] 4 WLR 113, [2016] EWHC 1473 (Admin). He described the authority as the only case on section 12AC, and notes that issues of indirect notification and notification by means of an agent were also the subject of decision in that case.

64. One of the two matters before the court in *Sword Services* was as to the validity of enquiries into tax returns which are a precondition of the issue of (in that case) partner payment notices. Cranston J agreed with Pickin J (who had considered the matter at an earlier hearing), that where courtesy letters about a tax enquiry had been sent to members of a general partnership or LLP, the courtesy letters gave the requisite notice to the recipients that HMRC intended to enquire into the partnership tax returns of the relevant partnerships. It made no difference, the court held, that the partner received a letter in its capacity as one of several partners, rather than because HMRC realised he was the relevant filing partner.

65. The nominated or "filing" partner was not listed in the tax returns and so had received neither the primary notice nor a courtesy letter, the question then arose as to whether a valid notice of enquiry into the tax returns of the partnership had been given. This point, described in *Sword Services* as the "*second challenge: notices of enquiry invalid*" was argued for the taxpayer on the basis that section 12AC(1) of the TMA 1970 required a notice of enquiry into a given return to be given to the partner who made and delivered the return – as it is argued in the present case. There, that had not been done in respect of certain of the general partnerships and the limited liability partnerships in the case.

66. In *Sword Services* the notice from HMRC requiring a tax return had been addressed to "Dean Street Productions No 6 GP" and another to "Dean Street Productions No.7GP" not to a named partner. The taxpayer acknowledged that the relevant partner (FCPPS) had not been notified to HMRC as the managing partner for either partnership. They were, however, responsible for the tax returns. In fact, with respect to certain of the partnerships, the relevant partner was FFMS who had been identified, properly, to HMRC. HMRC had served the notice on another entity instead, who was not the nominated partner, (see the details encapsulated at paragraphs 66 and 67). The claimant says no analogy may be made given different facts in *Sword Services.*

67. Reliance is placed by HMRC upon the following paragraphs of *Sword Services* reflecting the court's approach to the requirements of statute, and to the sufficiency of service. Dealing first with construction of section 12AC, contrary to the submission that the requirements of the section were rigid, the court held the following at paragraph 71:

> *" ... there is section 12AC(1)(a) and its requirement that a notice of inquiry into a tax return is to be given to the partner who made and delivered the return.* ***To my mind, the parliamentary intention behind that provision is to ensure that the taxpayer knows in writing of the inquiry and so has the opportunity to put its case. There is no particular form prescribed for a notice of inquiry and so long as the taxpayer knows of HMRC's decision to conduct an inquiry that is sufficient****. In this regard Flaxmode Ltd v Revenue and Customs Comrs [2008] STC (SCD) 666 is, in my view, correct."*
> [Emphasis added].

68. The judge in fact began his consideration with the further point on which HMRC rely, as follows:

> "*69. The starting point in considering these submissions is the legislation. Two features are of note. First, there is the obligation in section 12AA(6) of the Taxes Management Act 1970 that a partnership tax return must contain the name and details of each of the partners and a declaration by the person making the return that it is to the best of his knowledge and belief correct and complete. As we have seen under the 2003 Regulations, tax returns submitted online to HMRC must have that declaration. The reason is obvious, so that HMRC knows from the face of the return who is taking responsibility for it. Thus contrary to the mandatory requirement of section 12AA(6) and the direction under the 2003 Regulations, there was no mention of FFMS in the case of the partnership tax returns for GPs 6–7, or of FFPS in the case of those for LPs 4–7, as either partners in those partnerships, or as filing partners attesting in box 11.3 to the accuracy and completeness of the returns.*

69. ***In my view it does not lie in the mouth of someone failing to comply with a legal obligation to identify its existence to a public authority, and to attest to the truth of what it is telling it, to complain when the public authority does not then send it a notice of inquiry into the information proffered****. It is perhaps an example of the principle operating in other parts of the law, ex turpi causa non oritur actio or, in new money, an action does not arise from a base cause. I cannot see that it makes any difference that at an earlier point FFMS was identified as the nominated partner of LLPs 4–7, and both FFMS and FFPS were identified as partners, in the forms SA400 and SA402. Disclosure in these non-statutory forms does not excuse a later failure to make the disclosure as required by law.*
[Emphasis added].

70. *Flaxmode* was a Tribunal case on section 12AC holding that the section did not require particular formality about the giving of notice. Chambers English Dictionary (7th edn) was referred to which defined 'notice' as intimation, announcement, information, warning. The purpose of the notice was to warn the taxpayer that an enquiry was underway so that he knew questions might be asked and that time-limits might be affected, and to provide a mechanical activation of the enquiry procedure. That did not require something formal: all that was needed was something in writing which informed the taxpayer that an enquiry was underway.

71. The Parliamentary intention, therefore, says HMRC, of the statutory requirement that the notice of an intention to enquire must be given to the partner who made and delivered the return, *is to ensure the taxpayer knows of the enquiry in writing and has an opportunity to put its case*. They emphasise that there is no particular form that is required by statute, so long as the taxpayer knows of the decision.

Conclusions on the Statutory construction point

72. I agree with Cranston J in *Sword Services* on the correct approach to section 12AC TMA 1970 where he states:

> "*the parliamentary intention behind provision is to ensure that the taxpayer knows in writing of the inquiry and so has the opportunity to put its case. There is no particular form prescribed for a notice of inquiry and so long as the taxpayer knows of HMRC's decision to conduct an inquiry that is sufficient. In this regard Flaxmode Ltd v Revenue and Customs Comrs [2008] STC (SCD) 666 is, in my view, correct."*

Sword Services was also a case on partnership and film schemes, and anti-avoidance measures, with a challenge there to partner payment notices under Schedule 32 to the Finance Act 2014. The context was thus very similar although different provisions were under consideration.

73. I agree that the section does not prescribe a particular form of notice, on the other hand I accept there is a necessary degree of certainty required for a notification of importance such as the intention to enquire.

74. The statute itself says nothing about any derogation from the principles of the law of agency, and does not require in terms, only personal service. Therefore, statutory notification may in my judgement be done by the officer giving notice of his intention to enquire to the nominated partner by "notice" described as such, under the section, or to a particular partner ("P") directly, *or* to his agent.

75. Although, given my conclusions on the agency point below, the following is *obiter*, in my judgement notification would also be statutorily sufficient if came to P or his agent by means of writing showing that a notification has gone out to another person in the partnership, since that would communicate the intention on the part of the Revenue to enquire into the returns of that partnership in writing. That could be as here, a courtesy letter; it would however not, in light of authority, need to be in such a form if it was in writing, and notified the intention to enquire into the partnership return. The partnership situation is in my view different from the case of the individual taxpayer and his personal return. Notice that the partnership return is intended to be enquired into tells all members of that partnership if they see it, no matter that it is addressed to another of the partners and not personally.

76. In my view, following his examination of this section and findings by Cranston J in *Sword Services*, it is sufficient to fulfil the statutory purpose for the taxpayer to be notified, in time, of the intention to inquire either from HMRC if a written notification is given to the nominated partner – that binds all – or to the authorised agent, that also binds all – or to

him personally, or if he is notified by communication to another in writing. Such gives him the requisite knowledge, if in time, and an opportunity to put his case (see para [71]).

(ii) The Agency point

Trojan

77. In respect of the agency argument made by HMRC, Mr Grodzinski KC made submissions on what he characterised as obfuscation, or even a lack of candour on the part of HMRC, in revealing only late the names of the individual partners to whom the enquiry notices were actually sent. It is the case that documentation with blanked out names was exchanged at a relatively late stage. I accept as HMRC have sought to say that any delay and the lack of clarity was due to mistake and not malice. However, in my view there is no point of substance that I need to consider that derives from any difficulty or delay in communicating what is now accepted: which is to say that in respect of the Trojan transactions, the partner who made and filed the partnership return for 2005/6 was a Mr Andrea Perona, and that the document headed "*Notice under section 12AC(1)*" was sent to a different partner a Mr Aniel – Quiroga [his name was misspelt] and he was not the partner designated under section 12AC. That letter, on 11 January 2008 said:

> *"I am writing to advise you that I intend to make some enquiries into the 2006 partnership return. I will contact Ingenious to explain the reasons for the above enquiry and to request the information I need."*

78. A cover letter was also almost certainly sent, say HMRC, to IMIL on the same day. It said:

> *"I have today issued to your client, The Trojan Film Partners, a notice under Section 12AC(1) TMA 1970 of my intention to enquire into the 2006 partnership return. A copy of my notice is attached.*
>
> *The notice is being issued to protect both HMRC and the partners' interests and also to formalise matters pending the conclusion of the ongoing generic enquiries regarding film partnerships currently subject to negotiation between us."*

79. Because the letter before the court was not signed by HMRC the claimant called for proof that the letter was sent. Ms McFall of HMRC deposed that it was almost certainly sent, and that this would not have been unusual. HMRC submitted the requisite partners *did* come to have notice under the statute, as a matter of the direct authority vested in their agents IMIL and ICL.

80. HMRC rely upon the written terms of the Agency Agreements in the current case. The agreement dated 13 March 2006 (stated to be effective from 9 March 2006) they argue, gives authority to IMIL with regard to Trojan as the taxpayer's agent, to receive notification of the intention to enquire on behalf of all the members of the partnership for whom they act.

81. HMRC submit the context to these agreements as to "services" or "agency" was important and particular. The whole business was shot through with considerations of the investors' tax positions and their relationship with the Revenue was necessarily close and detailed – as is reflected in the direct evidence of HMRC's witnesses, deposing to the fact that opening enquiries into partnership returns was *routine* in each case of this nature, and their relevant

dealings at this time was with IMIL and with ICL. The scope of activities would they submit necessarily involve receiving taxation documentation: enquiries were regular and routine.

82. The subject matter and substance of these partnerships' businesses – indeed many if not all of the partnerships and business run through these promotors and others at this time, was the utilisation of the business and taxation model that benefitted High Net Worth individuals by affording them in the correct circumstances, the sideways relief of large initial losses against their personal tax positions. The history shows wholesale and continuous negotiation between the parties with, submit HMRC, there is no question, as a matter of fact but that the tax affairs of the partners were dealt with by IMIL and ICL under their relevant contracts of service. All of them were business arrangements entered into with the main or certainly *a* main objective of generating, at least in the earliest years, useable losses that might be written against personal gains as sideways relief. By reason of the development of the arrangements and the assessments of HMRC, the context developed, many were disallowed, all were the subject of continuous correspondence and negotiation between the promotors acting for the taxpayers, and HMRC. Thus the whole context to "business" here was the effective prudent management of the fiscal position: that is what drove the investments made. Necessarily, the business of these agencies involved correspondence and liaison with the Revenue on behalf of the High Net Worth individuals.

83. Mr Stone KC pointed to the evidence of the officers in place at the time. From this material a clear picture emerged he submitted: it was a matter of routine that enquiries were opened-into each year as a matter of course. There was a constant flow of discussion on behalf of the taxpayers by their agents liaising with HMRC. Once the partnerships appeared to be in profit or risked profit, they were offshored and the income treated only on a remittance basis for the purpose of tax. Until Ms McFall received correspondence from Dominion as the agent of the offshored partnership entity (2011/12) as she explained, she had dealt with the partnerships through their UK agents.

84. There was detailed and contemporaneous evidence from HMRC, through in particular Ms McFall who had started working for HMRC in August 1989. From 2006 to approximately 2015 she had been a member of the "Film Team" that carried out enquiries into both general and limited liability partnerships that had claimed statutory Film Relief.

85. She was clear about the standard practice which was that enquiries into partnerships were dealt with by HMRC with the promoters. That is to say with IMIL, or ICL in respect of these enquiries. She said she could

> *"6. … provide a general outline of the way the Film Team approached enquiries in the period in which I was a member of it.*
> *7. At the time I joined the Film Team it was standard practice for enquiries into the partnerships (including limited liability partnerships) to be conducted with the schemes' promoters, with meetings or record inspections covering multiple partnerships and often multiple enquiry years. I do not know when the practice first started or what the first communications with the promoters were,* ***but there is no doubt when I joined the team that the promoters were the parties that HMRC was dealing with for all these enquiries.*** *As far as I recall there was only one partnership where the partnership expressed dissatisfaction with a promoter and the partners dealt with the enquiries themselves. The promoter in question was neither Ingenious nor Invicta.*

> *8.* ***Partnerships promoted by Ingenious … and Invicta … were included within this arrangement****.*
> *9.* ***HMRC would be provided with details of film partnerships established by promoters each year either at its request or voluntarily as shown*** [references given] ***All partnerships acquiring new film and film rights in any year were enquired into as a matter of course for that year and the three years immediately following.***
> *10. In accordance with the standard practice described above,* ***I would have directed all questions or queries relating to partnerships, including Invicta 41 and the Trojan Film Partnership, to the scheme promoters unless and until I received information to suggest this was no longer appropriate,*** *such as the documents …"*
> [i.e. correspondence to her regarding Trojan dated 16 March 2012 from "Dominion Film Management Jersey", the first line of which was "Thank you for your letter dated 12 October 2011, which was addressed to Ingenious Film Media Ltd;" and correspondence to her dated 28 February 2011 regarding Invicta from Niall Bamford.]
>
> *"11.* ***Prior to receiving these documents my understanding was that Invicta and Ingenious were acting on behalf of their respective partnerships in their dealings with HMRC."***
> [Emphasis added.]

86. She recalls corresponding with ICL and IMIL until at least February 2011 in respect of Invicta41, and with IMIL, regarding Trojan, until at least October 2011, so covering the relevant periods in this case.

87. She also said it was a standard procedure that the return of any film partnership that purchased product in any year would be enquired into, and in the three years following the initial product purchase.

88. She was the officer responsible, but it was most unlikely she would herself have seen or reviewed any of the letters or signed them. The fact that there is an unsigned letter of 11 January 2008 she describes as not unusual. It was unlikely given the volume of enquiry notices that the relevant person would have allocated resources to signing agent copy letters or courtesy letters particularly as HMRC would retain copies in their files.

Invicta

89. It was submitted in respect of this partnership that HMRC had to accept that they sent the notice of enquiry to Mr Wadhwani, although he was not the nominated partner who made and filed the return. The person who filed the return was a Mr Niall Bamford, but Mr Bamford was not identified as a partner, he it was claimed was signing on behalf of two of the founding corporate partners who were Anglo, and Sovereign. In box 3.116, he put as additional information "*Anglo Film Nominees (GP) Ltd and Sovereign Film Nominees (GP) Ltd are nonparticipating corporate partners*".

90. In this case a cover letter was sent to the Agent, Invicta ("ICL"). That letter says "*I have today issued to your client, Invicta number 41 LLP* [in fact it was a GP not an LLP] *a notice under section 12 AC… A copy of my notice is attached*". The taxpayer points out that there appears to be no surviving notice that was attached.

91. Against HMRC's argument, Mr Grodzinski KC pointed to the definition in the ICL agreement of "business" which was important for the interpretation of all of the services agreement:

> "*Business means the business of the development, production and acquisition of a portfolio of Films acquired in the course of trading with a view to gain and the exploitation of the same including by means of Leases in consideration of the rental revenues arising there from to be carried on by the Partners in the Partnership."*

He made reference to Clause 2.3 cited above, which mentions income tax, but says nothing about receipt of notification of an enquiry.

92. The court's attention was drawn to the fact that there was no express reference in the powers under the agreement, to ICL having any authority to receive notices of enquiry. Nothing constituted any party the agent of another party for any purpose: this was a services agreement and was not an agency agreement, it was submitted. The services provided were set out in schedule one. It was submitted that the definition of business was not either obviously or by implication the same as receiving notices of enquiry from the Revenue: that was a quite different category of activity. Providing other services as may be agreed in writing from time to time likewise.

93. By contrast HMRC made reference to two other parts of Schedule 1 to Schedule 3 (i.e. the ICL services agreement) in particular which set out the obligation:

> *"12. To provide such other services as may be necessary in pursuing the purpose of the Business.*
>
> *13. To provide such other services as may be agreed in writing from time to time between the Parties."*

Clause 12 was clearly broad enough to encompass the tax functions of receipt of notice of enquiry given the context, said Mr Stone KC.

94. The taxpayer referred to a clause in the Partnership Deed

> *"13 No Partnership or Agency*
>
> *Nothing in this Agreement shall be deemed to constitute a partnership between the Parties hereto nor constitute any party the agent of another party for any purpose."*

Plainly, this was not an agency agreement in light of this clause in the Partnership Deed, said Mr Grodzinski KC so ICL could not be regarded as agent of the partnerships in any way- this was purely a services agreement.

95. Mr Grodzinski KC argues that sub paragraph (d) of the Partnership Deed confers no power expressly to receive notices of enquiry. Holding meetings and conducting correspondence and so forth is not the same thing, nor does it imply authority to receive notices of enquiry. As to any authority to receive notice of enquiry, causing the submission of materials for tax purposes to the authorities does *not* include that they will have authority to receive notice of enquiry. It was necessary he submitted to read these agency agreements in the light of documentation that, the court should accept, it was more likely than not was a part of the central context of the relationship between the partnerships and their agents.

Form 64-8 and Agency

96. Mr Grodzinski KC placed particular reliance upon a type of document which was central to the case of *Tinkler v HMRC* [2022] AC 886, [2021] UKSC 390. That document, known as the Form 64-8, contained, by reference, a protocol which IMIL (or other agent) and HMRC could agree on the direct service of section 12AC notification upon a nominated partner. It incorporated by reference materials on the internet setting out HMRC Guidance. It had become part of the terms of service/agency in *Tinkler*. In the present case no such document for either partnership had been found for the relevant time, nor was any such document purported to be incorporated anywhere by reference, it was admitted. Mr Grodzinski described it in terms that IMIL" *regularly, but not invariably, executed Forms 64-8 in respect of partnerships with which it was involved*". There was evidence in a list of received documents by HMRC, that in January 2009, *after* the Invicta Enquiry was opened, ICL had filed a Form 64-8 but not at the time in issue. Otherwise there was nothing.

97. Although there is no completed form for either agent in this case at this time, the taxpayer said the Court should infer that they were indeed signed as in *Tinkler* they were. The court should take it into account in this case as relevant to an interpretation not only of the agency/service agreements, but also to the communications between the parties.

98. HMRC pointed out that unlike in the case of *Tinkler*, the closest to any mention here of an actual Form 64-8 was (in the case of Trojan) after the event two months later when Deloittes were on the scene. The evidence suggests that one was later signed by Deloittes.

99. In the *Tinkler* case, the parties had agreed and signed and, it was suggested, if it was standard that suggested they knew HMRC would not consider them to have authority to receive notices of enquiry. On principles of construction, the context and materials known and reasonably available to the parties at the time included this guidance submitted Mr Grodzinski KC. He referred to an email exchange in October 2024 from Simmons and Simmons to IMIL, which said as follows, materially:

100. The letter to IMIL asked as follows

> *"Requests 1. The Partnership Deed dated 9 March 2006 describes IMIL as the 'agent' of the Partnership, and at clause 11.6 refers to an agreement between the Partnership and IMIL. Do you hold any signed or unsigned copies of this agreement? If so, please would you provide copies.*
> *2. If the agreement between the Partnership and IMIL cannot be located, was there a standard form of services or agency agreement entered into between IMIL and Ingenious Media administered film finance partnerships at the relevant time? If so, please would you provide a copy.*
> *3. HMRC say that they were authorised to correspond with IMIL in relation to the tax affairs of the Partnership, but have been unable to locate a copy of the standard authorisation form 64-8, or any other document by which they were authorised to correspond with IMIL and/or by which IMIL was appointed as the agent of the Partnership. Do you hold a copy of any form 64-8 authorisation given by the Partnership to HMRC, or any other document by which IMIL's alleged authority/appointment as agent of the Partnership was communicated to HMRC? If so please would you provide copies.*

4. If no form 64-8 or other authorisation/appointment can be located, please would you confirm:
(A) Whether it was usual practice at the relevant time for Ingenious Media administered film finance partnerships to complete and submit forms 64-8 to authorise HMRC to correspond with IMIL in relation to the tax affairs of those partnerships i.e. is it likely that a form 64-8 would have been submitted even if it cannot now be located?
(B) Whether it was usual practice at the relevant time for Ingenious Media administered film finance partnerships to authorise or appoint IMIL to act as its agent in any other manner? If so what form did that authorisation or appointment usually take, and do you hold any relevant documents?
5. HMRC have provided an unsigned copy of a letter that they allegedly sent to IMIL on 11 January 2008 in relation to the Return, but have been unable to locate or provide a signed copy. Please would you confirm whether the letter was in fact received by IMIL. If so, please would you provide any signed or unsigned copies of the letter that you might hold."

101. The answer was in the following form:

*"**The partners had day-to-day control of the partnerships**. In accordance with the Partnership Deed, **the partners authorised the Agent to undertake certain functions and administrative activities.***
Please see enclosed a copy of the Agency Agreement, which is the agreement referred to in clause 11.6 of the Partnership Deed. This sets out the scope of the Agent's activities.
I'm afraid I have been unable to locate a Form 64-8. However, it was standard practice in the case of the Ingenious film sale and leaseback partnerships for Forms 64-8 to be completed by the Agent and sent to HMRC.
The only letter I have located that is dated 11 January 2008 was an enquiry notice issued under s12 AC TMA 1970** into the partnership's tax return for the year ended 5 April 2006 (I also have the enquiry notices for 2007, 2008 and 2009). I have redacted the address of the partner to whom this was sent to**. I have been unable to locate the Agent correspondence HMRC are referring to. The only HMRC follow up correspondence I have is the attached letter dated 12.10.2011 raising the enquiry questions. I hope that is helpful."
[emphasis added]

102. The court should deduce that there would have been a 64-8 here it was said, as this speaks of it being standard.

Conclusions on the Agency point

103. I accept as Mr Grodsinski KC submitted that section 12AC notice is a notification with a time implication and consequences, and requires an element of formality. On this analysis an assertion to the effect that the taxpayer "must have known" absent any proof that they saw written notification, is in my judgement insufficient.

104. This is not inconsistent with the case of *Tinkler v HMRC* [2019] 4 WLR 138, [2019] EWCA Civ 1392 an authority prayed in aid by the taxpayer. That was a case about receipt of a notice of inquiry (there) into a personal tax return under section 9A TMA 1970. It was

a case on different facts from the present, where a specific form of agreement as to service was incorporated into the dealings by means of HMRC's "Form 64-8". Relevantly here, on the issue of statutory construction, in both the FTT and the UTT it was held that notice could be validly given to the taxpayer via his agent provided the agent had actual or apparent authority to receive it on his behalf. The Court of Appeal in *Tinkler* decided there was neither actual nor apparent authority on the facts and so did not need to decide the point and the Supreme Court ([2022] AC 886, [2021] UKSC 390) dealt only with estoppel by convention which HMRC do not argue here.

105. *Tinkler* was, as stated, different in that it was a personal return case, not partnership. In *Tinkler* the Court of Appeal resolved the issue by reference to the authority of the agent, rather than by reference to indirect notice, which HMRC did not seek to re-argue.

106. I find as a fact that the letter of 11 December 2008 was more than likely sent to IMIL as HMRC submit. The evidence of the system of communication, of the retention of electronic copies of some correspondence, and the evidence of the *modus operandi* of Ms McFall together with the absence of any suggestion at the time (or thereafter until recently) that there had been no courtesy letter to the agents, supports this view.

107. Statutory notice may, under the wording in the statute, be given to an agent, HMRC argued. The section does not prescribe notice in a particular form that must be communicated. This is reflected it is submitted in the findings of *Sword Services* reflected also in the later case of *Marano.* I accept this submission.

108. I am clear that there was actual authority in both IMIL and in ICL to receive the notification of intention to make an enquiry from HMRC. This derives from the natural meaning of the contractual words read in context.

109. The context to the contractual arrangements between the promoters and the taxpayers was I find, as submitted by Mr Stone KC. By the time of the entering of the IMIL and the ICL agreements, the pattern of the relationships between promotors and Revenue was well-established. The whole context to the arrangements was utilisation of lawful tax avoidance mechanisms with a view to maximising the benefit to high-net-worth individuals which required careful liaison and negotiation on a regular and detailed basis. I find that the background against which the services/agency agreements was made was one whereby HMRC communicated as a matter of course on the taxation implications and obligations with (in these cases) IMIL and ICL and sent them the relevant documentation including courtesy letters and in some cases direct individual notification.

110. There was an established relationship, under the agreements to deal with fiscal matters, the recitals (d) and (e) to the Partnership Agreement, and the scope of the services described in the Schedules as set out above easily comprehend receipt of enquiry notices.

111. As it was put by Ms McFall , and as set out above,

> "*there is no doubt when I joined the team that the promoters were the parties that HMRC was dealing with for all these enquiries."*

Likewise

> ***"****Partnerships promoted by Ingenious ... and Invicta ... were included within this arrangement."*

112. The evidence of Mr Scholey as to the operation of the schemes emphasised the longevity of the relationships:

> "*11. HMRC was aware of and dealing with issues around these partnerships from 1997 onwards once they were introduced. Statement of Practice 1/98 was published January 2001. The earliest file notes for Ingenious schemes are for the tax year ending 5 April 2002, and for Invicta the year ending 5 April 2004.*
>
> *12. From 2004 onwards, HMRC introduced the Disclosure of Tax Avoidance Schemes, which film partnerships fell under. As such Trojan and Invicta 41 both have separate DOTAS references as well as their partnership names, however, by the time these two particular partnerships were set up, HMRC had a standing relationship with both Ingenious and Invicta in which they were notified on any new partnerships.*
>
> *...*
>
> *"14.In almost all cases, the vast majority of enquiry correspondence was with the relevant promoter. These included Matrix, Ingenious, Future, and Invicta, as well as a number of other smaller promoters.* ***This correspondence generally started before the partnership tax returns were filed – I have seen letters from the larger promoters listing their partnerships and relevant members sent to HMRC during the initial tax year to enable HMRC to select them for enquiries, see for example*** *[reference given]"*

113. He also deposed to the fact that

> "*The operation of a film partnership generally turns on signing a handful of contracts at the outset, primarily sale & purchase agreements and distribution agreements, which then result in an initial loss followed by a fixed income stream."*
>
> and
>
> "*These contracts were almost exclusively arranged and* ***signed by the promoters on behalf of the partnerships, and the conversion of the figures into accounts either for Companies House (in the case of LLPs) or HMRC tax returns, was done by the promoters. … HMRC enquiries when raised therefore dealt almost entirely with the promoters"***
>
> [Emphasis added throughout].

114. As to courtesy letters he said:

> "*In some cases, 'courtesy letters' were sent to all partners when the enquiries were opened, but we do not hold copies of these letters for the majority of partnerships. It is therefore possible that courtesy letters were sent for Trojan and Invicta 41, but relevant notes and copies have not been kept.*"

115. In my judgement this shows a pattern of behaviour against which the contracts in question were entered, and clear support for the proposition that the concept of "business" extended to the tax affairs of the partnerships which were the subject of regular, routine debate with HMRC by IMIL and ICL on behalf of the partners. Under the Invicta contract the services contracted for by ICL included "*such other services as may be necessary in pursuing the purpose of the Business."* In my view this is apt plainly to include the receipt of notices of enquiry as required.

116. This witness described the materials from the time and prior as showing a general pattern of HMRC enquiring into all partnership returns then discussing matters with the promoters. He referred to correspondence that was representative showing (between HMRC and IMIL) that both parties fully expected that returns would be filed and enquired into, and were taking steps to smooth this process. ICL matters were very similar he stated. The notes refer to a "structured enquiry programme" for IMIL and the notes refer to the fact of enquiries generally being similar- as were the partnerships, as Mr Scholey said:

> "*each partnership was for the most part identical, with only minor variations by film and year. As promoters were working on broadly the same approach across their schemes, issues identified in one partnership often applied to all partnerships organised by that promoter. In practice, this meant by the time the enquiries relevant to this case were opened, new enquiries were being opened and paused while the general issues were worked through. This is why records were not immediately requested at the commencement of the enquiries."*

117. I do not accept as submitted for the taxpayer that the meaning of the contracts - either that with IMIL or with ICL in this context was other than that the promoters IMIL and ICL each had authority as part of their obligation to conduct business, to accept notices of enquiry on behalf of each of the partners, including the nominated partner, under section 12AC.

118. I also pay particular regard to the evidence as it emerged from the research of Mr Skerrett on behalf of the taxpayer. He was seeking over almost 10 years from the actions in issue, to discover how operations were conducted. The materials he set out, and the answers given him give rise to a clear inference that the agent of the partnerships for tax purposes were IMIL and ICL. He described the evidence he received as "confused". In my judgement it was in no material way confused. It gave a picture of the taxation channel of communication with HMRC, and of the deponent's actual experience and understanding about the operation of IMIL and ICL at the relevant time. Whilst not an instrument to construe the meaning of the contractual obligations, it is powerfully consistent with the reading given by HMRC to the agency materials. This information came direct from Dominion, who took over from the others, and was involved after the relevant time when the partnerships were being offshored, after the initial loss period when the partnerships were likely turning to profit. This material is also consistent with HMRC's evidence.

119. There was therefore actual authority in both agents to receive notification. It was by covering letter to the agent: it was in writing, it was good notice to all partners, including the nominated partner, of an intention to open an enquiry and it was unequivocal notice of the intention under statute to an agent with authority that is to IMIL and ICL. The statement that there should be no agency created under the Schedule of Services Clause 13 is in my view contradicted by the contents of the Schedule obligations on ICL on its face, where necessarily as a matter of analysis, the roles required of them would in law, constitute them on occasions the agents of the partnership.

120. I find that it is more likely than not that Form 64-8 was not part of the contractual materials at the relevant time.

121. I do not accept that the remark of a later employee of the Ingenious group, without reference to the source of his knowledge about a practice to use Form 64-8 is sufficient to suggest there were such terms governing these parties. Likewise with ICL, the information is insufficient to conclude the terms were included in these cases. It is more likely than not such a form was not signed and incorporated into the terms on which IMIL and ICL worked in the present case particularly:
    (a) It is inconsistent with other evidence gathered by the claimant (from Mr Bedi) about the handling of notification
    (b) It is inconsistent with HMRC's evidence.
    (c) There is no hint of such a document being incorporated into these contractual arrangements as in *Tinkler* where the taxpayer was required in the engagement letter to sign and return the material and so was bound by it
    (d) The evidence is that there *was* one, at a later date. Otherwise, nothing at all had been found either by HMRC or others. This suggests to me it is not likely there were such documents at the relevant date as Mr Grodzinski KC sought to say.

122. Mr Grodzinski KC had relied upon a line in an email by a Mr Couplez of The Ingenious Group UK, sent in October 2024, in answer to Simmons and Simmons. Mr Couplez stated that the partnership was passed on to Dominion before he joined Ingenious. He had not been able to find a Form 64-8 but said it was standard practice to sign one in the case of Ingenious film sale and leaseback partnerships, but gave no date for when that was nor the source of his knowledge. He swore no statement, so did not refer to or exhibit any materials on this point. He did however find the 11 January 2008 enquiry notice and those for 2007, 2008, and 2009.

123. With respect to ICL, Simmons and Simmons asked the question in November 2024 of a Mr Yusef at ICL. His first answer was that it was customary "*for an LLP to present a signed form 64-8*". He gave this answer again a second time, a week later, when asked again, specifically about his answer regarding LLPs. There is then an email from him two weeks later saying it would apply to GPs too. I did not find this evidence very precise or compelling.

124. As stated above, I have come to the conclusion that notice under the statute is not properly effected by notice *other* than in writing to nominated partner, or to the individual taxpayer, or to his agent. That is not the same as saying that compliant notice (whether to a partner or to his authorised agent) may not be proved to have taken place as a matter of factual inference from other proven facts. There is no statutory requirement to produce the relevant piece of paper if it may be reliably inferred from other facts and circumstances that notice was more likely than not given.

(iii) The indirect notification or knowledge point

125. On the part of the taxpayer it was submitted that it is insufficient for a nominated partner, or another, to acquire *indirect* knowledge of the fact of an enquiry: this does not constitute notice under the statute. Mr Grodzinski KC relied upon the case of *Tinkler v HMRC* [2022] AC 886, [2021] UKSC 390 at the level of the Upper Tribunal decision. It had been contended in that case that the taxpayer had acquired knowledge indirectly through his PA or as a result of his agent BDO informing him of it. The submission had been that no particular form was required for notification. But the Upper Tribunal decided that section

9A of the TMA was prescriptive in that it required HMRC to give the notice of an intention to open an enquiry to the taxpayer – or his properly authorised agent. Notification indirectly through his PA (or any other person, not his agent with authority) was insufficient.

126. Mr Grodzinski KC notes that although the matter went to the Court of Appeal and thence to the Supreme Court, HMRC did not seek to argue on appeal against this conclusion. In the Court of Appeal it was submitted unsuccessfully that the tax agent BDO had apparent authority to receive notice of enquiry on behalf of the (individual) taxpayer. There however, such authority was inconsistent with HMRC Form 64-8 which was expressly signed and incorporated into the relevant materials. It was agreed before the Court of Appeal that the scope of BDO's (apparent) authority depended on construing that document (para [35]), which in its terms stated that notice *had* to be sent directly to the taxpayer.

127. The taxpayer in any event disputes that indirect notice to Mr Bamford may be spelt out of what happened in respect of Invicta 41. Again, following *Tinkler*, it was submitted that in any event, mere indirect knowledge, was insufficient. There was no evidence that Mr Bamford would have received the cover letter or seen it; he was not mentioned in that letter, and he is not the person who replied to it; it cannot be treated as notifying under section 12AC. It was also submitted that even if the cover letter to ICL had come to Mr Bamford's attention, of which there was no evidence, that would not have been enough, following the undisturbed findings of the Court of Appeal in *Tinkler*.

128. Mr Stone KC referred to the fact that Cranston J had expressed himself as in no doubt in *Sword Services* that the agent FCP was aware of the notices of enquiry into the partnership returns of general partnerships 6 to 7 and LLPs 4 to 7 since it had written to HMRC acknowledging them. The designated members, the partners making and delivering the tax returns, he held were on notice of the enquiries – namely that it was sufficient for the purposes of the legislation, even though they did not receive formal notices of the enquiry, that their agents with sufficient authority knew of it.

129. Similarly here, submits Mr Stone KC, aside from notification to the authorised agent, there was correspondence and discussion from which the Court might equally deduce that the taxpayer must have come to know of the intention to enquire. HMRC submit that that sort of indirect notification is sufficient under the statute. Knowledge also came to this claimant indirectly in any event which may be deduced from the facts of the case, and the real likelihood in all the circumstances that the claimant knew of the enquiry in time.

130. They rely on evidence showing that opening enquiries at this time for these partnerships was routine. There are reliable inferences to be drawn that these individual partners would have come to know the position from IMIL and from ICL who handled their business and their tax affairs for them. Mr Stone KC suggested that here the reality from early on was that the relevant people always knew HMRC would be enquiring into the tax returns of the partnerships. Correspondence referring to the enquiries and to the intention to open an enquiry into the returns was apparent in *Sword Services*, and the same deductions could be made in this matter.

131. In *Sword Services* the judge had said this at paragraph 73:

> "*…73. The service of courtesy notices on all partners listed in return gave notice of HMRC's intention to inquire regarding LLPs 4–7 after their tax returns were submitted.*

> *After that, there was Mr Philson's e-mail to HMRC on 21 June 2012, referring to the opening of inquiries into the tax returns for LLPs 3–8, and FCP's subsequent engagement with HMRC about LLPs 4–7.* ***As the result of these contacts and the correspondence over a number of years, it simply is not open to the GPs and LLPs, to the claimants who were members of these partnerships, or*** *to members of the FCP corporate group (including FCPPS, the filing partner of GPs 6–7 and FFMS, the filing partner of LLPs 4–7)* ***to deny reality****: they knew of HMRC's inquiries and of the section 12AC(1)(a) notices."*
> [Emphasis added]

132. The judge had referred variously in that case to courtesy letters, to an email from the agent, referring to enquiries, and HMRC's correspondence indicating they were carrying out enquiries. However, Cranston J held in addition that in *Sword Services* the position was also correct as a matter of formal legal analysis by refence to the agency position.

133. He described the partnership deeds as giving, "*wide authority*" as regards the partnerships' tax affairs. The judge further expressed himself as in no doubt that FCP was aware of the notices of enquiry into the partnership returns of general partnerships since it had written to HMRC acknowledging them. The designated members, the partners making and delivering the tax returns, he held were on notice of the enquiries – namely that it is sufficient for the purposes of the legislation, even though they did not receive formal notices of the enquiry, that their agents with sufficient authority knew of it.

134. Mr Grodzinski KC referred to a letter written on 31 May 2017 when Simmons and Simmons first came on the scene for Mr Rokos. It asks HMRC to clarify their position, explaining the various dates when personal returns were made and certain enquiries opened.

135. It stated:

> "*our client understands that there are no outstanding issues or enquiries relating to his 2006 return, either in connection with the Trojan partnership or otherwise*".

This says Mr Grodzinski KC indicates that Mr Rokos did not believe there was an open enquiry in respect of his partnership return. It is not that he must have known about an enquiry notified to IMIL.

136. HMRCs told Simmons and Simmons that Mr Rokos had used sideways relief to reduce his personal taxation obligation; and that they had opened such enquiries at a meeting in 2018 recording:

> "*HMRC had open enquiries into the Partnership returns as follows:*
> *- In relation to the Trojan Partnership for the years of assessment 2005/06, 2006/07, 2007/08, 2008/09, 2010/11 and 2011/12. 30*
> *-In relation to the Invicta Partnership for the years of assessment 2006/07, 2007/08, 2008/09 and 2012/13.*

Mr Skerrett asked for proof in respect of the Trojan Partnership return for the year of assessment 2005/06; and for the Invicta Partnership return for the year of assessment 2006/07.

137. These exchanges says Mr Grodzinski KC, show it cannot be inferred that Mr Rokos knew about any partnership enquiry.

138. There is of course, as HMRC pointed out, not a word of direct evidence from the claimant himself, so no evidence as to what he knew and when. There is no statement from him to say he did not know of the enquiries or did not receive notification either directly or through his agents.

139. HMRC also relies upon the following recent expression of the law in *Marano v HMRC* [2023] UKUT 00113 (TCC), per Fancourt J with respect to the service of notices, reflecting on the effect of *Sword Services*.

140. *Marano* was a case where one of the points taken by the taxpayer was that HMRC could not show that penalty notices were validly served on him as they had not been served personally nor posted to his last known place of business. They were held in that case to have been validly served, nonetheless. The statute, there Schedule 55 para 18 of the Finance Act 2009, required HMRC to assess the penalty, notify the taxpayer, and state in the notice the period in respect of which the penalty is assessed. The taxpayer's agent, his accountant, had received them and sent them on. The UKUT referred to the authority of *Albert House Property Finance PCC Ltd (in liq) v Revenue and Customs Comrs* [2020] UKUT 373 (TCC) affirming [2019] UK FTT 732 (TC) for the proposition that a provision about notice to a taxpayer must be interpreted to give effect to its purpose, so that actual notice in fact was there sufficient.

141. A summary of the approach from caselaw was given by Fancourt J:

> *"63. We do not intend to set out the analysis of the cases as that has been done by the FTT and this Tribunal in Albert House. But, in summary the key principles which can be drawn from those cases are:*
>
> *(i) The starting point, as with any statutory provision, is a consideration of the terms, context and purpose of the relevant provision: HMRC v Raftaopoulou [sc. Raftopoulou] [2018] EWCA Civ 818 per David Richards LJ at [33].*
> *(ii) Some provisions are likely to have different interpretations to others;* ***there is no one standard interpretation that will fit all notification provisions.***
> *(iii) There may be situations where a provision requires a particular or special formality for the giving of notice: per Lady Smith in R (Spring Salmon and Seafood Ltd) v IRC [2004] STC 444 at [32] and per David Richards LJ in Raftopoulou at [36].*
> *(iv) There is also a category of cases where the purpose of service of a notice can be recognised as being simply to see to it that the recipient is informed.*
> *(v)* ***As long as the statutory purpose has been achieved, a failure to follow the literal wording of the provision does not invalidate a notice****: Hastie & Jenkerson v McMahon [1990] 1 WLR 1575 and Ralux N.v./S.a. v Spencer Mason (The Times 18 May 1989).*
> ***(vi) When considering whether the statutory purpose has been achieved it is necessary to look at the question from the perspective of the taxpayer, HMRC's***

intentions in giving the notice are not relevant: see R (Sword Services Ltd) v HMRC [2016] EWHC 1473 and Flaxmode Ltd v HMRC [2008] STC (SCD) 666.
(vii) ***The reality of a situation should be taken into account and, in cases where notification requires no particular formality, evidence of actual notice having been received or*** *of a taxpayer being* ***made clearly aware of the subject matter of the notification directly or indirectly, may be sufficient for notice of it to have been given, even if the notice has not been given directly to the taxpayer (Sword Services).”***
[Emphasis added].

142. That synopsis reflects the possibility they argue of notice being received indirectly and still being good notice in some circumstances.

Conclusions on Indirect Notice

143. It is not necessary to decide this point given my conclusions on the main agency point. So what I have decided on these points of indirect knowledge are *obiter dicta*. However, I have reached the conclusion that the taxpayers are correct on this point – in *Tinkler* there would on the facts in that case have been indirect knowledge, through the taxpayer’s PA. But that issue was not considered by the Supreme Court or argued in the Court of Appeal.

144. In my judgement as set out above, there requires under statute to be the formality of the intention to enquire being in writing which will be treated as properly notified under statute if it is brought to the attention within time of
(i) the nominated partner or
(ii) the authorised agent, or
(iii) the individual taxpayer whether it is addressed to him personally, or not, so long as it gives notice of the intention to enquire into the partnership return.

(iv) The remedy point

145. Mr Stone KC submitted that Invicta41 was itself in breach of the relevant statutory obligations and could therefore not complain of improper service in respect of ICL. He drew attention to section 12 AA headed “Partnership return,” which states by subsection (2) requires the following:

> “*An officer of the Board may by a notice given to the partners require such person as it is identified in* ***accordance with rules*** *given with the notice [or a successor of his]*
> *(a) to make and deliver to the officer … a return”*

While subsection (3) provides that

> “*An officer of the Board may by a notice given to any partner require the partner [or successor of his] …*”
> *(a) to make and deliver to the officer … a return…”*

Mr Stone KC referred to the Invicta tax return (there was none found for Trojan), and he submitted this was a subsection (2) case. He put emphasis upon the fact that “such person” is singular and the details are as identified in accordance with rules “given with the notice”,

are on the front of the Tax return, the address of the partnership is expressed as Invicta Partnership 41 GP c/o Invicta Capital Limited, 33 St James's Square, London. This indicates that the return was issued to *the partners* as opposed to, under subsection (3) of the section an officer of the board giving notice to "*any partner*".

146. The rules on the face of the tax return tell you he submitted, what you must do, when you must do it and who must do it. The wording included:

> *This Notice requires you by law to send us a Tax Return and any documents we ask for, for the year from 6 April 2006 to 5 April 2007. Give details of all the income and disposals of chargeable assets on which the partners may be charged to tax using:*
> *- the Internet (using 3rd party software). An instant online acknowledgement will tell you that your Tax Return has been safely received. To register for Self-Assessment Online for Partnerships go to https://online.inlandrevenue.gov.uk*
> *- this form and any supplementary Pages you need; OR*
> *- other HM Revenue & Customs approved forms.*
>
> *Make sure your Tax Return, and any documents asked for, reach us by the later of 31 January 2008 and 3 months after the date this notice was given, at the latest. (You may have slightly longer if the partnership includes a company as a partner.) You should ensure that the information individual partners need in order to complete their personal Tax Returns is given to them as quickly as possible. Some partners may wish to send their personal Tax Returns by 30 September 2007.*
>
> **…**
>
> ***Who should send the Partnership Tax Return****?*
>
> *If this Partnership Tax Return has been issued in the name of the partnership, then the partner nominated by the other members of the partnership during the period covered by the Tax Return is required by law to complete it and send it back to us. If the partners are unable to nominate someone, they should ask us to nominate one of them."*

147. Mr Stone KC notes that the singular is also used in terms of the partner nominated. It does not contemplate more than one. Indeed, it is the single person who is required to sign and *not* partners in the plural. Subsection (6) requires as mandatory, for every return, a declaration of the name, residence and tax reference of *each of the persons* who have been partners. The claimant he notes, accepts that this was not done in respect of ICL, although it was in respect of Trojan.

148. The declaration by subsection (6)(b) has to be by "*the person making the return*", in the singular. The notice of enquiry likewise is to be given to the partner, in the singular. This is relevant to ICL; for Invicta this person has not been identified i.e. the person to whom the Revenue should have sent the notice of enquiry under section 12AC. This is relevant non-compliance and as reflected in the case law, disentitles those who are non-compliant from relying upon another technical fault as against the revenue. In such a case, the taxpayer may not invoke the court to grant a remedy against HMRC it would be suggested.

149. The taxpayer denied that *Sword Services* was of assistance. In that case the box 11.3 of the partnership return was blank so the partner who made it and filed it was not identified at all. Those to whom the notices of enquiry should have been sent, SSMS and SFPS were not referred to as partners in the return. Here at least *Anglo* and *Sovereign* are named. Further in *Sword Services* HMRC had sent courtesy letters to all the named partners telling

them that enquiries had commenced – , but not so here. Letters sent there referred to enquiries into the relevant partnership tax return and the corporate entities to whom HMRC had sent the notices of enquiry had authority as agents to receive them – which the agreements it was argued did not give here.

150. There was no mention of *Anglo* or *Sovereign* equivalents in the *Sword Services* case – and that was the failure identified by Cranston J which disentitled the taxpayer from complaining about any HMRC failure. Further in that case there was actual authority in the agent to receive the notices of enquiry whereas, so the taxpayer submits there is no such authority in the present case. In that case there had been contacts and correspondence over a number of years so the partnerships and the claimant members of those partnerships could not deny that. They knew of the enquiries.

151. Mr Grodzinski KC said although the judge decided the case on the basis of *ex turpi causa*, the failures which HMRC isolate, not providing a name, company residence, and the unique tax reference were all capable of deduction by the reader and the position of Anglo and Sovereign as UK resident could have been checked from Companies House. These were not serious failures. In *Sword Services* the nominated partner was not even named on the partnership return: that is very different. He pointed to a spreadsheet produced by HMRC naming some of the nominated partners: Mr Wadhwani is wrongly named for Invicta41. This shows that they wrongly believed it was Mr Wadhwani – it was not that they did not know where to send the form because there was no address given to HMRC, or no UTN given. Mr Bamford had signed the form, and the Revenue complain that he was not so entitled. On this and other issues he said, if HMRC were in any doubt they could have written to Mr Bamford.

Conclusions on the Remedy point

152. Again, this is not a point I need separately to decide. I would however follow Cranston J's reasoning to the extent that there *may* be cases where the Court would decline to deny there had been jurisdiction in HMRC in cases where the taxpayer can be shown to have themselves failed to give to HMRC the requisite information for it properly to discharge its obligations of notification. I should say that I find a little difficulty with an analysis that imports the *ex turpi causa* analysis to the question of whether there was *vires* in a public authority for a certain statutory act, here the issue of the s 28B(4) Notice.

153. The better analysis in the current case might be to ask what consequence Parliament intended to flow from a failure by the Revenue to follow the requirements of the TMA 1970 (see per Lord Steyn in *Regina v. Soneji* [2005] 2 WLR 303) – i.e. to ask the "Soneji question". It might be thought difficult in a case where, as here, the statute under scrutiny sets out as conditions of later action, the accomplishment of prior statutory steps: the opening of an enquiry, but I would rather incline in the present case to the conclusion that Parliament did *not* intend that there should be the consequence of complete invalidity of the original enquiry where defects existed in the service of enquiry notification, but it could be shown (as would likely be the case here), that the taxpayer was aware of the intention to enquire and did not lose the opportunity to make representations.

154. Alternatively, it might be thought appropriate that the discretionary jurisdiction of the judicial review court would not be exercised so as to quash a purported enquiry that (on this hypothesis) was done *ultra vires* the statute, but which did not impair substantive rights or impose unfairness. This might be thought appropriate where, as here, there is evidence that the parties acted without protest or complaint and as if that which ought to have been done was properly done.

155. These conclusions are not necessary, however, on the analysis I have accepted. That is to say, that there is good evidence that IMIL and ICL had authority to receive notice of HMRC's intention to enquire, and that that notice was properly conveyed in courtesy letters which were, as I find, received by those agents.

SUMMARY OF CONCLUSIONS

156. The conclusions on those issues that remain are set out above.

(i) What did the statute require? (The statutory interpretation point);
Answer: Statute required that HMRC can show either:
(a) The nominated partner received notification in writing in time of the intention to enquire, (which need not be in strictly compliant format) or that
(b) The partners' agent with authority received notification in writing in time of the intention to enquire, (which need not be in strictly compliant format) or
(c) The individual partner whose affairs are under question received notification in writing in time (which need not be addressed particularly to him as long as it notifies as to the partnership)

(ii) Is it more likely than not there was direct notification of an enquiry such that the statutory requirement at (i) was satisfied? (The agency point);
Answer: **Yes, in this case there was notification to the authorised agents of the partnerships in each case.**

(iii) Is it more likely than not there was indirect notification or knowledge that satisfies the statutory purpose of the section? (The indirect notification or knowledge point);
Answer**: Indirect notification, i.e. notification to *another* person is not in and of itself, notification to a taxpayer under the statute, however, HMRC may prove it is more likely than not the taxpayer *was* notified in writing, although addressed to another by reference to evidence of the position with other partner taxpayers.**

(iv) Even if wrong, will the court treat the notice as having been properly served because a taxpayer who themselves does not fulfil the statutory requirements, cannot require it of HMRC? (The remedy question)
Answer: It may do; or it may refuse relief to the claimant in certain circumstances.

Overarching Conclusion

Were the Notices addressed by HMRC to the Claimant issued ultra vires?

157. No they were not. In each case there was actual authority to receive notice of the fact of the enquiry into the partnership accounts under section 12 TMA 1970. This was given to IMIL for Trojan, and to ICL for Invicta 41 in the Agency Agreements described above.