Neutral Citation Number: [2025] EWHC 3322 (Admin)

AC-2025-LON-002281

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 December 2025

Before:

ANDREW KINNIER K.C.
Sitting as a Deputy Judge of the High Court

Between:

THE KING
(On the Application of PETER KADAS)

Claimant

- and –

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Defendant

-and-

(1) AGENCIA ESTATAL DE ADMINISTRACIÓN TRIBUTARIA
(2) OFICINA NACIONAL DE FISCALIDAD INTERNACIÓNAL

Interested Parties

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Tim Owen K.C. and Tim James-Matthews (instructed by **Withers LLP**) for the **Claimant**
Rupert Paines and Rita Dias (instructed by **HMRC Legal Group**) for the **Defendant**
The Interested Parties were neither present nor represented

Hearing date: 18 September 2025

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Approved Judgment

This judgment was handed down remotely at 2pm on 8 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ANDREW KINNIER K.C.

ANDREW KINNIER K.C. sitting as a Deputy Judge of the High Court

Introduction

1. Mr Peter Kadas, the Claimant, is a successful financial advisor who was resident in Spain between 2017 and 2022.

2. The Agencia Estatal de Administración Tributaria ("**the AEAT**") is responsible for the administration and enforcement of tax laws in Spain. To that end, it oversees the collection of taxes and conducts audits and investigations. The Oficina Nacional de Fiscalidad Internaciónal ("**the OFNI**") is a division of the AEAT: it is concerned with cross-border taxation and international tax agreements. The AEAT's parent ministry is the Ministerio de Hacienda (otherwise known as "**the Hacienda**") which is responsible for national finance and taxation in Spain. Neither the AEAT, the OFNI nor the Hacienda has played any role in these proceedings.

3. In May 2024, some 17 months after he left Spain, the AEAT started an audit of the Claimant's tax affairs ("**the audit**"). As part of the audit, on 25 October 2024, the AEAT requested certain financial information ("**the requests**") from His Majesty's Revenue and Customs ("**HMRC**"), the public body responsible for the collection and management of taxes and duties in the United Kingdom. As relevant, the requests were made under Art. 26 of the Double Tax Convention between the United Kingdom and the Kingdom of Spain ("**the Convention**") which provides for the exchange of information between their respective tax authorities.

4. Following discussions and correspondence with the Claimant's representatives, an exchange of letters with the AEAT and completion of its own inquiries, on 4 April 2025, HMRC decided to provide the information sought by the requests ("**the decision**") which the Claimant now seeks to challenge.

Preliminary matters

5. Two preliminary points arise: first, by her order of 29 July 2025 the hearing was expedited by Lieven J because HMRC had submitted that the information sought by the AEAT in the requests was urgently required to allow the Spanish authorities to make a decision about the appropriate next steps in the audit. However, by the time of the hearing, the AEAT had informed HMRC that it had decided to issue a provisional assessment of the Claimant's tax liability, the effect of which was to extend the period for tax assessment for a further four years. Therefore, the original urgency had fallen away.

6. Secondly, by a notice dated 9 September 2025, the Claimant applied for permission to rely on three further statements, namely the second statements of Mr Maurice Martin (the Claimant's London-based tax lawyer), Mr Diego Rodriguez (the Claimant's Spanish tax lawyer) and Professor Manuel Cancio Meliá (a professor of Criminal Law at the Universidad Autónoma de Madrid) (all dated 9 September 2025). Although HMRC did not oppose the application in relation to the statements of Mr Martin and Mr Rodriguez, it did oppose the admission of Professor Meliá's additional evidence. Mr Tim Owen KC, leading counsel for the Claimant, submitted that the statement was

relevant; it answered certain points raised in HMRC's evidence and it updated the court on material developments since the start of proceedings. Mr Rupert Paines, counsel for HMRC, disagreed: he submitted that the statement exclusively addressed matters that arose after the decision was made and which were not before the decision-maker. Accordingly, Professor Meliá's statement was irrelevant.

7. Although I had some sympathy with HMRC's submission, the content of Professor Meliá's second statement covered much the same ground as his first to which no objection was made. Also, the substance of the many exhibits to his second statement echoed many of the themes of the material exhibited to Mr Martin's further statement which HMRC agreed could be put into evidence. In the circumstances, any prejudice that HMRC might suffer from admitting Professor Meliá's later statement could be effectively and fairly answered by allowing Mr Paines to make further submissions on its relevance. Therefore, the course most consistent with the overriding objective was to admit Professor Meliá's second statement. The court could then consider the entirety of the evidence relied upon by the Claimant and reach its own view on its relevance with the benefit of the parties' submissions.

PART 1 – the issues

8. The Claimant relies on three grounds of challenge summarised in para. 3 of his Detailed Grounds:

   (a) Ground 1: in taking the decision, HMRC assumed that the AEAT was exercising its investigative powers honestly and in good faith. That assumption was unlawful. In the Claimant's Detailed Grounds, there were three limbs to this ground: ground 1(a) alleges a failure to determine whether the presumption of good faith has been displaced; ground 1(b) alleges a failure by HMRC to discharge its *Tameside* duty and ground 1(c) alleges that HMRC's conclusion that the AEAT was using its investigative powers honestly and in good faith involved a failure to have regard to material considerations and/or was otherwise unreasonable/irrational.

   (b) Ground 2: HMRC's conclusion that the information sought in the requests were "foreseeably relevant" to the investigation which the AEAT claimed to be conducting was unlawful because it (a) involved a failure to have regard to material considerations and/or (b) was unreasonable/irrational.

   (c) Ground 3: the decision involves an unlawful interference with the Claimant's rights under Article 8 of the European Convention in Human Rights ("**the ECHR**").

PART 2 – the legal background

The Convention

9. The United Kingdom and the Kingdom of Spain concluded the Convention on 14 March 2013 and it came into force on 12 June 2014. Its principal object is the avoidance of double taxation and the prevention of fiscal evasion in relation to taxes on income

and capital. The Convention is given domestic effect by the Double Taxation Relief and International Tax Enforcement (Spain) Order 2013 ("**the 2013 Order**") made under s. 2 of the Taxation (International and Other Provisions) Act 2010 ("**the 2010 Act**") and s. 173 of the Finance Act 2006 ("**the 2006 Act**").

10. Art. 26 of the Convention governs the exchange of information and provides that:

> "1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by Articles 1 and 2.
>
> 2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the law of the requesting State and the competent authority of the supplying State authorises such use.
>
> 3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
>
> (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
> (b) to supply information which is not obtainable under the laws or in the normal course of administration of that or of the other Contracting State;
> (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
>
> 4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes.

> The obligation containing in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
>
> 5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

11. The Convention is based on the OECD's Model Tax Convention on Income and on Capital ("**the Model Tax Convention**"). For present purposes, the content of Art. 26 of the Convention is materially identical to Art. 26 of the Model Tax Convention which is also concerned with the exchange of information between tax authorities. The Model Tax Convention is supplemented by a commentary also published by the OECD ("**the OECD commentary**"). Both parties relied upon it as an aid to construction of Art. 26 of the Convention and it was cited by the AEAT in its response to correspondence from HMRC explaining the basis of the requests.

12. Para. 1 of the OECD commentary on Art. 26 of the Model Tax Convention observes that:

> "There are good grounds for including in a convention for the avoidance of double taxation provisions concerning co-operation between the tax administrations of the two Contracting States. In the first place it appears desirable to give administrative assistance for the purpose of ascertaining facts in relation to which the rules of the convention are to be applied. Moreover, in view of the increasing internationalisation of economic relations, the Contracting States have a growing interest in the reciprocal supply of information on the basis of which domestic laws have to be administered, even if there is no question of the application of any particular article of the Convention."

13. Para. 2 of the OECD commentary explains that:

> " … the present Article embodies the rules under which information may be exchanged to the widest possible extent, with a view to laying the proper basis for the implementation of the domestic tax laws of the Contracting States and for the application of specific provisions of the Convention. The text of the Article makes it clear that the exchange of information is not restricted by Articles 1 and 2, so that the information may include particulars about non-residents and may relate to the administration or enforcement of taxes not referred to in Article 2."

14. Finally, para. 5 of the OECD commentary states that:

> "The standard of 'foreseeable relevance' is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant in the tax affairs of a given taxpayer. In the context of information exchange upon request, the standard requires that at the time a request is made there is a reasonable possibility that the requested information will be relevant; whether the information, once provided, actually proves to be relevant is immaterial."

15. Para. 5 also gives some guidance on the types of case in which a request may not be declined by the receiving tax authority:

> "A request may therefore not be declined in cases where a definite assessment of the pertinence of the information to an ongoing investigation can only be made following the receipt of the information. The competent authorities should consult in situation in which the content of the request, the circumstances that led to the request, or the foreseeable relevance of requested information are not clear to the requested State. However, once the requesting State has provided an explanation as to the foreseeable relevance of the requested information, the requested State may not decline a request or withhold requested information because it believes that the information lacks relevance to the underlying investigation or examination. Where the requested State becomes aware of facts that call into question whether part of the information requested is foreseeably relevant, the competent authorities should consult and the requested State may ask the requesting State to clarify foreseeable relevance in light of those facts. At the same time, paragraph 1 does not obligate the requested State to provide information in response to requests that are "fishing expeditions", i.e. speculative requests that have no apparent nexus to an open inquiry or investigation." [emphasis added]

Relevant domestic legislation

16. As indicated above, the Convention is given effect in domestic law by the 2013 Order. That Order has the effects specified in s. 173 of the 2006 Act:

> "**173 International tax enforcement arrangements**
>
> (1) If Her Majesty by Order in Council declares that –
>
> (a) arrangements relating to international tax enforcement which are specified in the Order have been made in relation to any territory or territories outside the United Kingdom, and
> (b) it is expedient that those arrangements have effect,

> those arrangements have effect (and do so in spite of anything in any enactment or instrument).
>
> (2) For the purposes of subsection (1) arrangements relate to international tax enforcement if they relate to any or all of the following –
>
> (a) the exchange of information foreseeably relevant to the administration, enforcement or recovery of any UK tax or foreign tax;
> (b) the recovery of debts relating to any UK tax or foreign tax;
> (c) the service of documents relating to any UK tax or foreign tax.
>
> (3) In this section –
>
> …
>
> "foreign tax" means any tax or duty imposed under the law of the territory, or any of the territories, in relation to which the arrangements have been made.
>
> (4A) Where any arrangements have effect by virtue of this section, no obligation of secrecy (whether imposed by statute or otherwise) prevents the Commissioners for Her Majesty's Revenue and Customs or any other authorised Revenue and Customers official from making a disclosure to a person outside the United Kingdom –
>
> (a) for the purpose of giving effect, or enabling effect to be given, to the arrangements, or
> (b) which is authorised in accordance with the arrangements.
>
> (5) But information may not be disclosed by virtue of subsection (4A) unless the person making the disclosure is satisfied that the recipient of the information –
>
> (a) will only use the information in a manner consistent with the purposes of the arrangements, and
> (b) is bound by, or has undertaken to observe, rules of confidentiality with respect to the information which are not less strict than those applying to it in the United Kingdom."

The Impatriate scheme

17. The Impatriate scheme is a special tax regime in Spain which has been in force since 2004. It is colloquially known as "Beckham's Law" because Sir David Beckham was one of the first high-profile individuals to benefit from it when he joined Real Madrid Club du Fútbol.

18. In broad terms, subject to certain conditions, the Impatriate scheme allows an individual who moves to Spain to be taxed as a non-resident even if s/he is a tax resident in Spain. The scheme's benefits are considerable: income derived from employment is taxed at a

flat rate of 24 per cent up to €600,000 and at 47 per cent on the excess. By contrast, in Catalonia where the Claimant lived, residents who are ineligible for the Impatriate scheme are taxed according to a sliding scale based on a marginal tax rate of 50 per cent on income of €300,000 or more. A taxpayer can potentially benefit from the Impatriate scheme for a period of six years including the year of arrival in Spain.

19. A beneficiary of the Impatriate scheme also has different obligations in relation to the filing of annual tax returns. Although a taxpayer must still file a specific personal income tax return and a wealth tax return regarding any Spanish assets, a beneficiary of the scheme is exempt from filing other documents including a declaration of personal income tax on worldwide income, a wealth tax return on worldwide assets and rights and a declaration of rights and assets outside Spain. There is, therefore, no obligation on a taxpayer who qualifies for the Impatriate scheme to declare their worldwide income and assets (other than worldwide income) because those assets are not subject to taxation in Spain under the terms of the Impatriate scheme.

20. Mr Rodriguez's evidence indicates that in 2017 the eligibility conditions of the Impatriate scheme were three-fold: first, an individual must not have been resident in Spain for ten years before s/he moved to the country; secondly, an individual must have moved to Spain either under an employment contract signed with a Spanish employer or by an international assignment within a group or, alternatively, following appointment as a member of the board of directors of a Spanish company without ownership interest or with a participation that is not considered a related entity (below 25 per cent); thirdly, an individual must not have obtained income that qualifies as earned income through a permanent establishment in Spain. An applicant is required to complete a form and, if it is satisfied that the relevant eligibility criteria are satisfied, the AEAT issues a certificate confirming that the applicant has elected to be taxed under the Impatriate scheme.

PART 3 – the factual background

The Claimant and the Impatriate scheme

21. As indicated at the start, the Claimant was resident in Spain between 2017 and 2022. In 2017, he applied to be taxed under the Impatriate scheme and he later received a certificate from the AEAT which confirmed his eligibility to be so. The Claimant's position is that the AEAT never rescinded or resiled from that certificate. He filed tax returns in Spain, it is said in compliance with the rules of the Impatriate scheme, in each year between 2017 and 2022. The Claimant's case is that none of his filings was rejected and no question was ever raised by the AEAT about his eligibility to be taxed under the Impatriate scheme.

The audit

22. On 31 May 2024, the AEAT notified the Claimant that it had started a general tax audit of his personal income tax and wealth tax obligations for the fiscal years 2019-2022. Its focus is the Claimant's eligibility to be taxed under the Impatriate scheme.

23. There have been many meetings between the Claimant's representatives and the AEAT during the audit. According to the evidence of Mr Rodriguez, the focus of the parties' discussions has been the circumstances of the Claimant's move to Spain in 2017; his compliance with the requirements of the Impatriate scheme; the nature of his relationship with his Spanish employer and the latter's sole shareholder, BXRAP LLP; and his previous tax residency in the United Kingdom in and before 2016.

24. The evidence gathered as part of the audit is recorded in the "*diligencias*", minutes which form the investigation's record. The *diligencias* show that a significant amount of information has been sought by the AEAT and that the Claimant has defended his position robustly. Notwithstanding their confidence in his case, the Claimant's representatives' view is that the AEAT intends to conclude that he did not satisfy the eligibility criteria under the Impatriate scheme. If that is so, he should have been taxed on his worldwide income and assets in the years 2019-2022.

25. Although it is not necessary to rehearse the detailed history of the audit set out in Mr Rodriguez's evidence, it should be noted that the Claimant concluded that some of the extensive information sought by the AEAT was not foreseeably relevant to its investigation and so he declined to provide it. In November 2024, the AEAT imposed a penalty fine of €10,000 for failing to provide the information which they sought. In March 2025, the Claimant lodged an appeal against the fine to the Tribunal Economico Administrativo Regional de Cataluña. Mr Rodriguez anticipates that the appeal process will take between one and three years to reach a conclusion. To the extent that Mr Rodriguez explains the grounds of appeal in his evidence, there is no allegation of bad faith, corruption or any impropriety on the part of the AEAT or its officers.

The requests

26. On 25 October 2024, the requests were received by HMRC. The requests are materially identical and each sought information held by two UK banks (Barclays Bank PLC ("**Barclays**") and Lombard Odier ("**LO**")) in relation to the Claimant.

27. The requests are lengthy but, in summary, they said that:

    (a) The AEAT was investigating the Claimant in relation to income and wealth taxes for the tax years 2019-2022. The investigation had been prompted by concerns about the Claimant's entitlement lawfully to claim the benefits of the Impatriate scheme. The AEAT's principal concerns were two-fold: first, whether the Claimant had been resident in Spain before his date of entry into the country; secondly, whether his contract of employment was a sham devised to allow him to claim the benefits of the Impatriate scheme. The AEAT said that it sought the information to allow Spanish tax inspectors to quantify the Claimant's tax assessment (either on his worldwide income and assets or just on his earned-from-work income depending upon whether he was entitled to the advantages of the Impatriate scheme).

    (b) Both requests asked the question "why is it essential that the UK banking documentation is provided?" which was answered thus:

> "Mr Kadas was resident in Spain for the years under examination. If definitely proven that he was not eligible to apply the special tax scheme for employers posted to Spanish territory (as expected), he should be taxed in Spain on his worldwide income and assets, and the information requested would be necessary for that purpose.
>
> On the other hand, even in case Mr Kadas could benefit from the application of that special tax scheme, our tax auditors would need to check whether he included in his tax returns all his earned from work income, and make the corresponding tax adjustments in case there were undeclared earnings. Therefore, the information requested would also be relevant in that case, as he could have received income from work through bank accounts held at BARCLAYS BANK PLC."

(c) In answer to the question "what do you expect the UK banking documentation will show?", the requests' response was income and assets owned by the taxpayer that should be taxed in Spain.

(d) The AEAT had asked the Claimant for the information, but he had refused to provide it.

(e) All information received in response to the requests would be kept confidential and used only for the purposes authorised by the Convention.

28. HMRC sent Financial Institution Notices ("**FINs**") to Barclays and LO to obtain the information sought by the requests. HMRC notified the Claimant that the FINs had been issued and identified the categories of information sought.

The parties' meetings

29. Following that notification, on behalf of the Claimant, Mr Martin and Dr Christopher Wales (a tax policy consultant) asked to meet HMRC officials. The parties met on 13 February 2025 and 10 March 2025. Nothing of relevance was discussed on the first occasion but the parties seemingly agree that what was said, or not said, at the second meeting forms the effective foundation of this claim.

30. There appeared to be some controversy in the evidence about the concerns that were raised by Mr Martin and Dr Wales at the 10 March meeting about the AEAT and the requests. However, as Mr Owen KC fairly observed in submissions, the parties' accounts of what was said are broadly consistent. On the basis of the parties' contemporaneous meeting notes, the following points were made by the Claimant's representatives:

(a) The requests were a "fishing expedition" by the AEAT which had no legal foundation. The Claimant had complied with those requests which were correct but not otherwise.

(b) Mr Martin and Dr Wales asked HMRC to consider the substance of the requests following the meeting and ask for further information from the AEAT because they questioned whether the foreseeable relevance test had been satisfied.

(c) Mr Martin and Dr Wales raised concerns about "leakiness" at the AEAT following the unauthorised dissemination of tax-related information to ETA, the Basque separatist organisation, and a more recent incident involving Álvaro Garcia Ortiz, the Spanish Attorney-General, and the partner of the President of the Community of Madrid.

(d) About one hundred other individuals were subject to a similar investigation by the AEAT.

(e) At no time had the Claimant been told that he was not entitled to the benefits of the Impatriate scheme.

(f) The motivations of the AEAT's investigators should be considered by HMRC as they were said to be subject to financial incentives to achieve informal settlements.

(g) Only facts, not documents, should be provided in answer to the requests.

(h) Mr Martin and Dr Wales were particularly concerned about the "know your clients" documents (otherwise known as "KYC" documents in the evidence) because their contents were said to be "subjective" in some instances. If that information were to be provided to the AEAT, the Claimant would want the details of any parties to be redacted.

31. At this stage I note two points: first, the parties agree that the words "bad faith" were not expressly used by the Claimant's representatives during the meeting. There is, however, an issue about whether what was said amounted to an allegation of bad faith especially in relation to the regime of financial incentives which benefit the AEAT's officers. Secondly, following the meeting on 13 March 2025, Mr Martin sent an e-mail to Mr Gardiner in which the former said that he was " … confident that HMRC will determine that the requests made by [the AEAT] do not bear a proper, rational connection to [the AEAT's] underlying investigation, for the reasons we explained at Monday's meeting." The clear point of sending the e-mail on 13 March 2025 was to reinforce the Claimant's representatives' primary point made at the meeting.

Mr Gardiner's consideration of the points raised in the meeting on 10 March 2025

32. Following the meeting on 10 March 2025, Mr Gardiner researched the points that had been raised by Mr Martin and Dr Wales. Mr Gardiner considered the allegations of breach of confidentiality. In relation to the point about ETA, Mr Gardiner concluded that it was of historic interest only. In respect of the matter concerning the Spanish Attorney-General, he concluded that it did not involve information held by the AEAT so it was irrelevant.

33. Mr Gardiner also researched concerns about the AEAT's conduct. As part of that exercise, he identified on-line reports published by the *Daily Mail* and *GB News*. He noted a "degree of discontent" among taxpayers who had claimed the benefit of the Impatriate scheme but whose eligibility to do so was now subject to investigation by the AEAT. That discontent reflected the point made by the Claimant's representatives that others' entitlement to the Impatriate scheme was also being scrutinised by the AEAT. Mr Gardiner concluded that it was unsurprising that taxpayers might consider investigations by the tax authorities to be oppressive or unwarranted. In para. 62 of his witness statement, Mr Gardiner observed:

> "That is a very common reaction to a tax investigation being instituted into an individual's tax compliance. Moreover, it did not (and does not) seem surprising to me that a tax authority might wish to investigate claims of entitlement to a beneficial tax regime, where it suspects or is concerned that that tax regime may have been abused in one or more cases. A tax administration is fully entitled to take that approach. If a taxpayer considers that he or she has complied with the requirements of that regime, his/her remedy is to cooperate with the tax enquiry and evidence their compliance (and to challenge the outcome if he/she considers it incorrect.)"

34. Mr Gardiner also noted the involvement of Amsterdam & Partners LLP ("**Amsterdam**"), a law firm, in providing statements and information for the two articles. He inferred that the firm was seeking to publicise content about the AEAT's investigations to generate work for itself and concluded that it would be appropriate to treat the information in the articles with a "degree of caution". Mr Gardiner noticed that Dr Wales, one of the Claimant's representatives who attended the meeting on 10 March 2025, was commissioned by Amsterdam to undertake research.

Mr Gardiner's correspondence with the AEAT

35. On 18 March 2025, Mr Gardiner wrote to the AEAT to ask for more information about the requests. He raised four points: first, the nature of the rational connection between the request and the AEAT's audit; secondly, the assertions made by the Claimant's representatives about the lack of a legal basis for the audit, the alleged "fishing" nature of the requests for documents and the fact that many taxpayers were said to be the subject of a similar investigation by the AEAT; thirdly, the relevance of the KYC documents; and fourthly, the status of requests made by the AEAT of tax authorities in Switzerland and Singapore.

36. Mr Gardiner considered whether to ask the AEAT about its alleged "leakiness", its allegedly oppressive conduct and what were said to be improper financial incentives for its officers. He did not do so for four principal reasons:

    (a) In relation to the Claimant's concerns about the unauthorised dissemination of confidential tax information held by the AEAT, the particular examples provided by his representatives were groundless. There was also no reason to conclude that the AEAT would not adhere to the confidentiality provisions in Art. 26 of the

Convention. Mr Gardiner was not aware of any concerns within HMRC that the AEAT had not previously managed information appropriately and in accordance with the relevant rules under the Convention or otherwise. Had any concerns existed, Mr Gardiner said that he would have been aware of them because of his role in HMRC.

(b) Although Mr Martin and Dr Wales had contended that the audit had no proper legal basis and was otherwise unexplained, the AEAT had already explained the reasons for the audit which demonstrated, in Mr Gardiner's view, that the request was made for "proper tax purposes" and that it had a sound foundation in law.

(c) In relation to the AEAT's incentive arrangements for its officers, Mr Gardiner considered that it was not unusual for institutions to operate performance schemes under which financial incentives are offered for performance. He did not consider such arrangements to be inherently surprising or wrong. Mr Gardiner concluded that if he had asked the AEAT whether it had treated, or would treat, the Claimant unfairly or whether its officials would over-assess any tax liability or press for a quick settlement to secure promotion or for personal gain, the answer would be "no". He added that he was sure that the AEAT would consider the question to be insulting.

(d) Ultimately, Mr Gardiner considered that "the key to my decision was the foreseeable relevance test." If, in light of any further detail provided by the AEAT, he was satisfied that the information sought was foreseeably relevant to the administration or enforcement of Spanish tax law and it would be used for that purpose (as the AEAT had already confirmed), HMRC would provide the information sought.

37. The AEAT responded to Mr Gardiner's letter on 27 March 2025. Its reply was detailed but in summary it said that:

(a) The information sought was required to determine if the Claimant's employment arrangements in Spain had been confected to allow him to benefit from the Impatriate regime and, if so, to assess his consequential tax liability in Spain.

(b) The AEAT explained that the Claimant said that he had been posted to Spain under a contract of employment ("**the BXR contract**") with a company known as BXR Corporate Consulting Partners SL ("**BXR SL**"). The AEAT questioned whether the BXR contract was genuine: first, the Claimant's pre-existing economic and personal links to Spain suggested that he may have been residing in Spanish territory before the start of the BXR contract and so the prompt for his move to Spain may have been personal and not a consequence of the BXR contract; secondly, the substance of the BXR contract was identical to an agreement entered into between BXR SL and the Claimant's wife although she had been retained as an agricultural advisor; thirdly, there was evidence to suggest that the Claimant and his wife had substantive links with BXR's parent company and that they were not mere employees; fourthly, the bank information was sought because they could show income from other

companies in BXR group other than BXR SL or reflect payments for loans received by the Claimant because of his position within those companies.

(c) In short, the information sought could evidence links between the Claimant and other companies in the BXR group to prove that the BXR contract was "simulated" to enable him to benefit from the Impatriate scheme. If the BXR contract were a sham and the true reason for his move to Spain was personal, the AEAT's view was that "he should be taxed on his worldwide income and assets for all the years under assessment." Alternatively, if the Claimant were entitled to the benefits of the Impatriate scheme, the information was necessary to determine whether he had properly declared all relevant income including worldwide "earned from work" income.

(d) The AEAT explained that the Claimant and his advisors had been given a detailed explanation of the reasons why the information was sought and HMRC was given an extract from a clarification provided by the AEAT to the Claimant.

(e) In response to the allegation that it was carrying out a fishing expedition for documents, the AEAT effectively repeated the reasons that had prompted the audit and cited the first paragraph of the commentary on Art. 26 of the Model Tax Convention.

(f) The KYC documents were needed to verify whether the Claimant was the holder or beneficial owner of the bank accounts for which information was sought and, in particular, to trace the origin of the income credited to these accounts and to know about the economic activities carried out by the Claimant outside Spain. Even if he were found to be eligible for the Impatriate scheme, the KYC documents would allow the AEAT to assess whether the Claimant had properly declared all his income.

(g) Finally, it was confirmed that an exchange of information request had also been sent to the Singaporean tax authorities which had provided an answer.

The decision

38. Having considered the AEAT's response, Mr Gardiner was satisfied that the information was, for the purposes of Art. 26 of the Convention, foreseeably relevant. On 4 April 2025, Mr Gardiner decided that HMRC should provide the information sought in the request. He duly notified the Claimant's representatives. In so doing, Mr Gardiner also said that no information would be provided until the Claimant had decided upon his next steps including whether to challenge the decision by judicial review.

The pre-action correspondence

39. On 2 May 2025, the Claimant sent a pre-action protocol letter to HMRC. For present purposes, the pertinent point is that there was no suggestion of bad faith or corruption on the part of the AEAT and the alleged grounds do not substantively anticipate the

grounds in this claim. Instead, the focus of the proposed claim was the contention that if HMRC complied with the requests, it would be acting ultra vires. It was said that, contrary to Art. 26(3) of the Convention, the AEAT was using HMRC to obtain information which would not otherwise be obtainable in the normal course of the AEAT's activities. Also, if HMRC were to comply with the requests, it would deprive the Claimant of his legal right under Spanish law to challenge the AEAT's powers to obtain the information. The Claimant further contended that the requests constituted a fishing expedition and the documents were not foreseeably relevant for the purposes of Art. 26 of the Convention. The pre-action protocol letter also argued that it would be irrational for HMRC to conclude that the information and documents sought by the requests were reasonably required for the purposes of investigating the Claimant's tax position in Spain. Finally, it was said that to the extent that the AEAT had not provided all the relevant information, HMRC's decision to comply with the requests was flawed as it could not have had regard to all relevant considerations.

HMRC's later correspondence with the AEAT

40. Following the issue of proceedings, on 18 August 2025, HMRC asked the AEAT for its response to the substance of grounds 1 and 2 of the claim. The AEAT's reply (dated 20 August 2025) was, again, detailed but in summary:

    (a) The allegations of bad faith were denied as "false, unsubstantiated, and entirely without merit." In particular "the claims put forward lack any factual foundation and do not correspond to the reality of the conduct of the AEAT, which has acted consistently within the limits of its legal powers and in full compliance with the applicable legal framework."

    (b) In relation to the nature and scale of the AEAT's investigations of those who chose to be taxed under the Impatriate scheme, out of a total of 37,000 taxpayers who benefit from its provisions, only 0.5 per cent (185 cases) were the subject of an inspection due to potential non-compliance with its rules. Of those cases, 70 per cent were resolved either by agreement or what was described as "conformity" and the balance resulted in claims or appeals.

    (c) There is no certificate issued by the AEAT that attests to compliance with the conditions of the Impatriate scheme. There is a certificate which confirms that the taxpayer has elected to be taxed under that scheme.

    (d) The AEAT's investigations have revealed the artificial creation of employment contracts based in Spain; the involvement of companies without the means to hire the taxpayer who has sought to be taxed under the Impatriate scheme or situations where fictitious company structures allow the taxpayer to avoid paying tax anywhere on a significant capital gain generated outside Spain.

    (e) The judicial review was described as a "frontal attack on the system, not just the Spanish Tax Agency, aimed at undermining our decisive action against tax fraud, especially if that action could fall on individuals with sufficient resources to fund such attacks, in a futile attempt to stop ongoing regularization procedures."

(f) In relation to ground 2, given the Claimant's position at the hearing, it is sufficient to note the AEAT's point that the categories of documents sought were necessary to prove whether the Claimant satisfied the eligibility criteria of the Impatriate scheme and, if not, to regularise his tax situation.

PART 3 – the grounds of challenge

Ground 1

The parties' submissions on context

41. By the time of the hearing, the Claimant's claim concentrated on ground 1. Both parties submitted that the general context was an important consideration in assessing the merits of their respective positions. Unsurprisingly, they drew support from different aspects of what were said to be the relevant circumstances.

42. Mr Owen KC submitted that the Claimant's challenge should be seen against a "fraught political" background. It is said that both the AEAT and the Hacienda have been the subject of "serious, credible allegations of endemic corruption". By way of example, a former Spanish Minister of Finance is under investigation for corruption and three former heads of the AEAT are also the subjects of criminal inquiries. It was said that the Claimant's evidence shows that the AEAT has been "weaponised politically" and its officers incentivised by inappropriate bonus arrangements. It was submitted that there is widespread evidence that the AEAT places improper pressure on taxpayers (but especially high profile and high net worth individuals) which are designed to extract notionally voluntary payments of substantial sums in tax or penalties which are not lawfully due. The AEAT's treatment of the Claimant is a particular instance of its corrupt and abusive conduct.

43. Particular emphasis was placed on the allegation that the AEAT's officers are subject to a regime of financial incentives the application of which distorts their proper duties. That is because bonuses are linked to success in extracting settlements from taxpayers even if those settlements are later set aside by the courts. The Claimant submits that these distorting incentives, when coupled with the AEAT's substantial coercive powers, give rise to real concerns regarding the good faith of the AEAT in the conduct of tax investigations. Set against that context, the Claimant contends that the requests reflect and evidence the AEAT's "arbitrary and oppressive conduct". For that reason, for the purposes of Art. 26 of the Convention, the information sought in the request is not "foreseeably relevant" to the scope of the audit and the information seeks to pre-empt judicial scrutiny of the requests in Spain.

44. By contrast, on behalf of HMRC, Mr Paines submitted that the claim for judicial review is simply another facet of the Claimant's determined policy to obstruct the AEAT's investigation of his tax affairs. HMRC has rationally concluded that the information sought by the AEAT in the requests is foreseeably relevant to the administration and enforcement of Spanish tax law. That assessment is said to be obvious because all the information asked for by the AEAT is foreseeably relevant to the Claimant's personal finances which, in turn, may be material to the AEAT's assessment of his tax liability

in Spain. These matters have now been repeatedly explained by the AEAT in the requests themselves and in its later correspondence of 27 March and 20 August 2025.

45. In support of its general submission that the Claimant has sought to thwart the audit, HMRC says that a "farrago of points and arguments" were advanced to dissuade it from collecting and sending the information to the AEAT. It is said to be telling that there is no submission or evidence that the AEAT's request, the fact of the audit or any aspect of its conduct is unlawful (arguably or otherwise) under Spanish law. HMRC has asked the Claimant's advisors for confirmation whether it is alleged that the AEAT's conduct is unlawful under Spanish law and whether any complaints about corruption and bad faith have been raised in Spain. HMRC submits that the Claimant's responses have been evasive but the answer appears to be "no" to both questions.

The Claimant's submissions

46. The Claimant's essential submission is that, in taking the decision, HMRC simply assumed that the AEAT was exercising its investigative powers honestly and in good faith. That assumption was made even though the Claimant had, by his representatives, (a) clearly alleged bad faith on the part of the AEAT at the meeting on 10 March 2025; (b) provided evidence of widespread public reporting of serious, credible allegations of endemic corruption at the AEAT and the Hacienda and (c) explained why the Claimant's individual case reflected the broader picture of the AEAT's corruption and bad faith. In particular, HMRC was obliged to consider whether the assumption of the AEAT's good faith was misplaced but did not do so; HMRC failed to discharge its *Tameside* duty to investigate the allegations of bad faith properly; and a conclusion that the AEAT was acting honestly involved a failure to have regard to material considerations, namely the points made by the Claimant's representatives at the 10 March meeting and the material readily available in the media about the AEAT's conduct.

47. In the skeleton argument lodged on his behalf, the Claimant identified two issues that were relevant to ground 1: first, was HMRC required to consider and investigate allegations of bad faith in taking the decision; secondly, were HMRC's considerations and investigations legally sufficient.

    (a) In relation to the first point, the Claimant submitted that the reasons advanced by HMRC to justify its position that there was no duty to investigate were unpersuasive. In that regard, the Claimant emphasised that "bad faith" is not a term of art and that the evidence unequivocally demonstrated that the Claimant had made allegations that were highly material to the bona fides of the AEAT and its officers. Particular emphasis was placed upon (i) the structure of tax inspectors' remuneration which was said to create perverse incentives for inspectors wrongly and artificially to over-assess taxpayer's liability; (ii) Spain's "pay to appeal" system which requires taxpayers to pay or guarantee the full amount alleged to be due in order to appeal; (iii) the AEAT abuses various procedural devices that disadvantage taxpayers in order to secure a settlement; (iv) arrangements for the oversight of the AEAT are ineffective.

(b) The Claimant took issue with HMRC's point that no allegations of bad faith were advanced that were material to his case. His response was succinct: the allegations were made in the context of the Claimant's case and so they cannot sensibly be said to apply to someone else's case. It was also submitted that it will very often be the case that a taxpayer has limited or no evidence of bad faith conduct in their particular matter and bad faith will be a matter of inference. To require a taxpayer to provide specific and direct evidence of corrupt conduct in their case (especially at an early stage) is obviously unrealistic.

(c) In respect of the second point, the Claimant's case is that Mr Gardiner simply did not understand the allegations made by Mr Martin and Dr Wales to be relevant to the *bona fides* of the AEAT's inspectors. Mr Gardiner also misunderstood important details of the allegations touching upon the perverse regime of financial incentives under which AEAT officers are paid. The Claimant contends that Mr Gardiner did not appreciate the "corrupting incentive" of tying the performance bonus to the amount of the inspector's initial assessment where the bonus is not required to be repaid if that initial assessment is later found to be excessive. It is said that these arrangements are different from a general scheme of performance bonuses because they create an incentive to inflate the inspector's initial assessment without any countervailing incentive to produce an assessment which is fair, reasonable and lawful.

(d) The Claimant criticises the extent of the research carried out by Mr Gardiner and contends that he failed to appreciate the import of the media reports that he found in the articles published by the *European Conservative*, the *Daily Mail* and *GB News*. In any event, Professor Meliá's evidence is that there were numerous public reports which corroborated the Claimant's concerns and which were readily available to HMRC had they looked for them.

(e) The Claimant also criticises the fact that Mr Gardiner chose not to raise the allegations of corruption with the AEAT and his reasons for not doing so are insubstantial.

HMRC's submissions

48. In summary, HMRC's position was that, under Art. 26(1) of the Convention, HMRC is obliged to consider whether the information requested is "foreseeably relevant … to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of [Spain]." It had done so and rationally concluded that the information was foreseeably relevant. As a matter of fact, the Claimant did not make any clear or evidenced allegation of bad faith to HMRC. Therefore, on the Claimant's own case, no strict duty to consider any such allegation arose. In any event, HMRC did consider the points made on the Claimant's behalf including the alleged possible motivations for alleged bad behaviour by the AEAT and it investigated them to the extent that it was appropriate to do so. HMRC's investigations were rationally sufficient. In particular, the Claimant's representatives' principal concern that they did not understand why the audit had been started was answered by the information provided by the AEAT to HMRC. Where the Claimant's representatives had raised

specific points of concern (for instance, alleged involvement with ETA and the actions of the former Spanish Attorney-General), they were investigated and found to be groundless. Where HMRC decided not to put certain points to the AEAT, a cogent response has been provided to explain that decision. In response to the allegation that HMRC should have understood the internet articles differently and Mr Gardiner should have read further, the assessment of those articles is a matter for HMRC subject to rationality review. HMRC's assessment was both rational and correct: the articles are no more than reportage of sensationalised claims made by Amsterdam.

Ground 1 – discussion

The Claimant's evidence generally

49. The Claimant has put a significant amount of evidence before the court. It primarily consists of critical media reporting of the AEAT's approach to administration and enforcement of the Impatriate scheme; media reports of recent political controversies involving various senior Ministers and officials which have resulted in criminal inquiries and which are alleged to have involved the AEAT to varying degrees; and critiques of Spain's approach to the administration of taxes (in relation to the substance of legislation and enforcement policy and practice) and the alleged consequences for legal certainty and the rights of taxpayers.

50. The volume, content and tone of the material now relied upon by the Claimant tends to obscure the fundamental point that it is seldom necessary or appropriate to consider any evidence which goes beyond the material which was before the decision-maker and evidence of the process by which the decision was taken. That is because it is not the court's function in judicial review to assess the merits of the decision which is under challenge: *R v. Secretary of State for the Environment, ex parte Powis* [1981] 1 WLR 584 at 595; *R (The Law Society) v. Lord Chancellor* [2018] EWHC 2094 (Admin), para. 36.

51. The Claimant did not submit that the documents exhibited to the statements of Mr Martin, Mr Rodriguez, Professor Meliá and Dr Wales were before Mr Gardiner when he made the decision. None of the statements or their many exhibits is evidence of the process by which the decision was made. The Claimant did not argue that the evidence fell within any of the other categories identified by Dunn LJ in *ex parte Powis* or the additional categories identified in later cases such as *R (Lynch) v. General Dental Council* [2003] EWHC 2987 (Admin) or *The Law Society* [2018] EWHC 2094 (Admin).

52. I acknowledge that some of the exhibits, for example the material exhibited to the Martin and Meliá statements, is relied upon to seek to show the insufficiency of Mr Gardiner's inquiries and so demonstrate that the decision was flawed. It may also be said that the material is relevant to relief. However, it is well established authority that in considering the grounds of challenge the court should generally confine itself to considering the evidence that was before the decision-maker and evidence of the decision-making process. If that is not done, the risk arises that the court will inadvertently fall into error.

53. The point is illustrated by two documents relied upon in oral submissions by the Claimant. Some weight was attached to a report, written by Dr Wales and Robert Amsterdam, entitled "*Hacienda v. The People: An initial report on Spain and the Beckham Law*" ("**the Wales/Amsterdam report**"). It was published in May 2025 and is dedicated to "all the victims of the Agencia Estatal de Administración Tributaria, the Spanish Tax Authority". The Wales/Amsterdam report has clearly informed the Claimant's arguments in this claim. It was said that the Wales/Amsterdam report is the type of material that should have been uncovered by Mr Gardiner following the 10 March meeting but the plain fact is that the report itself was not before Mr Gardiner when he made the decision. Similarly, Professor Meliá's second statement refers to recent political controversy involving Cristóbal Montoro, a former Spanish Minister of Finance, and which was only publicised in July 2025, three months or so after the decision. These are matters which will be addressed below, but the fundamental point is that, in considering the substance of ground 1, the focus must be on the material before Mr Gardiner when he made the decision and the evidence of the process he adopted in making it.

54. The Claimant's reliance on the Wales/Amsterdam report and the Montoro reportage illustrates a broader theme in his evidence, namely the absence of any specific evidence which tethers the general allegations about the AEAT's wrongdoing to the detail of the Claimant's case. The Wales/Amsterdam report, for instance, criticises what it describes as the AEAT's "standard pattern of investigation" and various aspects which are said to prejudice taxpayers. The allegations are, however, drafted in general terms and no detail is given about particular cases. The Montoro case appears to relate to events from more than a decade ago and there is no evidence that the circumstances of that case have any substantive link to the Claimant's case.

55. These matters are considered further below but the material which post-dates the decision and/or which contains general allegations with no substantive link to the Claimant's case tends to distract attention from the core question whether Mr Gardiner's decision to accede to the requests was rational.

56. There is one final point in relation to the Claimant's evidence. The scheme of incentives which forms part of the AEAT's inspectors' remuneration was a prominent feature in argument. The supplementary bundle contained a document entitled "*Note on criteria for the distribution of inspection productivity*" published by the AEAT upon which both sides relied in submissions ("**the note**"). In broad terms, the note explains how its incentive scheme works. At para. III.2, it is said that the scheme seeks to avoid a large number of losers with only a few receiving a bonus by a number of administrative mechanisms (primarily application of a scale) to ensure fairness; para. IV.1 provides that assessment of productivity is informed by a number of factors (special performance and dedication; assigned workload; compliance with timetable; a co-operative spirit at work; proficiency in work quality; management of a team's work; contribution to the functioning of units and offices and the number of teams/units or officials in their charge) as well as by an objective assessment of the work carried out by each team. The bonus is assessed on the basis of team, not individual, performance; para. IV.3 sets out how the scale is operated to identify any bonus. Para. V ("conclusions and summary") provides an overview of the principles underpinning the AEAT's bonus scheme and its

methodology. Bearing in mind the Claimant's submissions on the substance and consequences of the scheme, two points from Para. V of the note are relevant:

(a) The AEAT does not choose its files randomly or capriciously but follows a principle of selection by risk of non-compliance, a process which "means of focusing on cases in which there are more indications of fraud and therefore a higher probability of discovering tax fraud with an appropriate inspection": para. 5.

(b) Productivity is a closed (or zero-sum) amount for which all civil servants are eligible, so that no specific amount is paid in relation to a specific inspection. There is no "commission" or "percentage" on the proposed regularisations. There is no direct link between the overall receipt of the productivity bonus and any particular case: para. 6.

57. As matters stand, it is not necessary to decide the meaning and effect of the AEAT's bonus scheme in order to answer the grounds advanced in this claim. However, the substance of the note casts doubt on the accuracy of the Claimant's understanding of it. It is not a scheme which is obviously based upon the precept that "you eat what you kill" (to use Mr Paines' graphic phrase.) On its face, the detail of the scheme (as usefully explained in Para. V of the note) does not appear to encourage the arbitrary conduct of tax investigations in the terms alleged in this claim. On the contrary, the emphasis on a risk-based justification for investigating tax non-compliance and the use of objective mechanisms (such as the scale) and objective criteria by which to assess team (not individual) performance for the purposes of deciding bonus payments, suggest that the scheme seeks to discourage arbitrary conduct. The short point is that the note illustrates the forensic difficulties of relying upon general allegations of bad faith, corruption or impropriety without an examination of the relevant detail.

HMRC's obligations under Art. 26 of the Convention and s. 173 of the 2006 Act

58. In considering ground 1, the first task is to identify and define the nature and extent of HMRC's obligations under Art. 26 of the Convention. The position can be summarised thus:

(a) Art. 26(1) contains the primary obligation. The competent authorities in the United Kingdom and Spain "shall exchange information as is foreseeably relevant … to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states."

(b) In considering the proper approach to applying the concept of foreseeable relevance, some assistance can be taken from the OECD commentary on Art. 26 of the Model Convention which, at paras. 2 and 5, emphasised that the provision embodies rules under which information may be exchanged "to the widest possible extent" so as to achieve the policy and object of the Convention. To that end, the standard of foreseeable relevance requires that, at the time that the request is made, there is a "reasonable possibility that the requested information will be relevant; whether the information, once provided, actually proves to be relevant is immaterial."

(c) If a request is foreseeably relevant to the administration or enforcement of domestic laws concerning taxes of every kind and description, the competent authority of one contracting state is obliged to comply with that request. That conclusion is consistent with the OECD commentary on Art. 26 of the Model Convention and especially para. 5. On that point, the OECD commentary anticipated a case in which questions might arise about whether information sought in a request is foreseeably relevant. In that position, the commentary observed that a requested state should ask for an explanation but once a (presumably adequate) response is provided by the requesting state, "the requested state may not decline a request or withhold requested information because it believes the information lacks relevance to the underlying investigation or examination."

(d) Art. 26(1) is supplemented by Arts. 26(2) and (3). The former requires any information provided under Art. 26(1) to be treated as secret in the same manner as information obtained under the domestic laws of the providing state and to be disclosed only to persons or authorities concerned with the specified functions. The latter places limits on both Arts. 26(1) and (2). In broad terms, Art. 26(3) provides that neither Arts. 26(1) nor 26(2) should be construed so as to impose an obligation to carry out administrative measures at variance with the laws and administrative practice of that or the other contracting state (Art. 26(3)(a)) or to supply information the disclosure of which would be contrary to public policy (Art. 26(3)(c)). To that extent, Art. 26(3) limits the primary obligation in Art. 26(1).

(e) Section 173(5) of the 2006 Act requires HMRC to be satisfied that the AEAT will only use the information collected by HMRC under any request "in a manner consistent with the purposes of the arrangements." If a request does not relate to information which is "foreseeably relevant", it is difficult to see how the test in s. 173(5) of the 2006 is met.

(f) Allegations of corruption or bad faith may be relevant to HMRC's decision whether to comply with a request. For example, if information about a taxpayer was not requested for the purposes of administering or enforcing domestic tax laws but for some ulterior political purpose, a request would not be foreseeably relevant within the meaning of Art. 26 of the Convention or consistent with the purposes of the arrangements in the Convention under s. 173(5) of the 2006 Act. Similarly, if there were evidence that information was sought with a view to extort money from a taxpayer which was not lawfully due, the tests under Art. 26(1) and s. 173(5) of the 2006 Act would not be satisfied.

(g) As para. 5 of the OECD's commentary on Art. 26(1) explained, a request which amounts to a "fishing expedition" will not satisfy the test of foreseeable relevance under Art. 26(1) of the Convention. Similarly, it would not meet the test in s. 173(5) of the 2006 Act.

59. Mr Owen KC criticised HMRC's interpretation of its relevant obligations as reducing its role to that of a "passive automaton" and a "blind, incurious post-box". He also said that HMRC had a duty to assess the "validity" of the request. With respect, I disagree. As set out above and consistent with the OECD commentary, once HMRC is satisfied that the request is foreseeably relevant for the purposes of Art. 26(1) of the Convention

and that the information provided will be used consistently with the Convention's arrangements, subject to Art. 26(3), it must comply with the request.

Principles relevant to review of HMRC's decision

60. At this stage, it is convenient to set out the principles that are relevant to a review of HMRC's decision.

(a) The question for Mr Gardiner was a narrow one: he had to be satisfied that the information or documents sought in the requests were, for the purposes of Art. 26(1) of the Convention, foreseeably relevant. The case of *Kotton v. First Tier Tribunal (Tax Chamber) and others* [2019] EWHC 1327 (Admin) provides some assistance in identifying the scope and nature of a challenge to a decision by HMRC to comply with a request under the Convention. In that case, the court was concerned with a challenge by an international businessman to a third party information notice issued by HMRC under para. 2 of Sch. 36 to the Finance Act 2008. The notice required AMEX to provide information to HMRC for checking the Claimant's tax position by way of assistance to the Skatteverket, the Swedish tax authority. The information was sought under the UK/Sweden Double Taxation Agreement. At the hearing, the sole question for decision was whether it was open to the HMRC officer, properly advised on the law, to conclude that the information and documents required under the notice were "reasonably required" for the purposes of checking the Claimant's tax position. Simler J (as she then was) concluded that it was not for the decision-maker to investigate the merits of the underlying tax investigation or whether the investigation is itself justified: para. 60. The judge found that provided there is a genuine and legitimate investigation or inquiry of any kind into the taxpayer's tax position that is neither irrational nor in bad faith, that is sufficient. The challenge is not to the lawfulness of the investigation: for the purposes of this case, the challenge is to the rationality of the conclusion that the information or documents are foreseeably relevant for the purposes of Art. 26(1) of the Convention.

(b) A decision can be challenged on the basis that it is "so unreasonable that no reasonable authority could ever have come to it" on the material before the decision-maker or that there is a "demonstrable flaw in the reasoning which led to it": *R (The Law Society) v. Lord Chancellor* [2019] 1 WLR 1649, para. 98.

(c) The classic formulation of the *Tameside* duty lies in the speech of Lord Diplock in *Tameside* [1977] AC 1014 at 1065B: "the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?"

(d) The nature and extent of the *Tameside* duty was later explained in *R (Balajigari) v. Secretary of State for the Home Department* [2019] 1 WLR 4647, para. 70:

"The general principles on the *Tameside* duty were summarised by Haddon-Cave J in *R (Plantagenet Alliance Ltd) v. Secretary of State for Justice* [2015] 3 All ER 261, paras. 99-100. In that passage, having referred to the speech of Lord Diplock in *Tameside*, Haddon-Cave J summarised the relevant principles which are to be

derived from authorities since *Tameside* itself as follows. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to *Wednesbury* challenge … it is for the public body and not the court to decide upon the manner and intensity of enquiry to be undertaken: see *R (Khatun) v. Newham London Borough Council* [2005] QB 37, para. 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further inquiries if no reasonable authority possessed of that material could suppose that the inquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it."

(e) As was also explained in *Balajigari*, the court will not impugn the absence of an inquiry simply on the basis that a party would have wished that an inquiry be made or because a particular inquiry may have been sensible or even desirable. The *Tameside* duty exists within a specific framework of public law as a "specific application of the doctrine of irrationality": *R (Campaign Against Arms Trade) v. Secretary of State for International Trade* [2019] 1 WLR 5765, para. 58. In considering the duty within the broader concept of rationality, the court will show appropriate respect to the institutional expertise of the decision-maker in relation to inquiries made and not made: *R (L1T FM Holdings) v. Chancellor of the Duchy of Lancaster* [2025] 1 WLR 1697 at 1732H, para. 148.

(f) In assessing an impugned decision, the court is required to give appropriate weight to the decision-maker's assessment particularly where legislation requires that person to make the decision or is acting in a technical area or one involving predictive judgments and where the decision-maker has an expertise which the court lacks: *U3 v. Secretary of State for the Home Department* [2025] UKSC 19, paras. 64-68; *R (Bibi) v. Secretary of State for the Home Department* [2015] 1 WLR 5055, para. 63. That approach extends to the understanding of a decision-maker about the meaning of, or the significance to be attached to, representations and information put before the decision-maker: *R (Drax Power) v. Secretary of State for Energy & Climate Change* [2014] EWCA Civ 1153, paras. 71 and 75.

The Claimant's allegations of bad faith conduct

61. As found in para. 30 above, the Claimant's advisors' principal concerns at the 10 March meeting were two-fold: the requests were nothing more than a "fishing expedition" by the AEAT which had no legal foundation and whether the requests satisfied the foreseeable relevance test under Art. 26(1) of the Convention. Their presentation started

with these two points and, as Mr Martin's post-meeting e-mail of 13 March shows, the Claimant's advisors were anxious to emphasise them afterwards. In the hierarchy of the Claimant's concerns about the requests, in my judgment, the evidence plainly shows that their legal basis and their allegedly speculative nature were at the apex. That emphasis and prominence is unsurprising. The two primary concerns are specific to the Claimant: they relate to the requests which seek information about his personal financial arrangements in the context of the AEAT's investigation of his tax affairs. The concerns also concentrated on the fundamental legal question as it affected the Claimant's case: the foreseeable relevance of the requests and whether they were a speculative trawl for documents.

62. It is also clear from the parties' contemporaneous notes of the meeting that other points were raised by the Claimant's representatives: the putative "leakiness" of the AEAT as illustrated by two episodes (ETA obtaining information to support its kidnapping campaign and the unauthorised disclosure of the tax return information of the partner of the President of the Community of Madrid); the number of other taxpayers subject to an investigation of their eligibility to the Impatriate scheme; the absence of any previous challenge to the Claimant's qualification to be taxed under the scheme and, then, the financial incentives for AEAT officials to achieve settlements. Both sets of notes place the issue of AEAT officers' motivation at the lower end of the Claimant's list of concerns. Neither set records explicit use of the phrase "bad faith" or any similar term by Mr Martin or Dr Wales.

63. Having carefully considered the parties' respective notes of the meeting, Mr Martin's e-mail of 13 March 2025 and the relevant parts of the parties' witness statements, I conclude that:

    (a) The parties' contemporaneous notes and the e-mail of 13 March 2025 are consistent with the recollection of Mr Gardiner and Mr Ferguson that the Claimant's principal concerns were the requests' legal basis and their alleged speculative nature.

    (b) As Mr Gardiner said in his evidence, the issue of the financial motivation of the AEAT's officers formed only a small part of the discussions at the 10 March meeting. That evidence, in my judgment, reflects the hierarchy of the Claimant's concerns as recorded in the parties' notes of that meeting and confirmed in Mr Martin's e-mail of 13 March 2025 and by the absence of any bad faith/corruption allegation in the Claimant's pre-action protocol letter of 2 May 2025.

    (c) To the extent that the Claimant's representatives raised the question of the financial incentivisation of the AEAT's officers at the meeting, they did not characterise those matters (expressly or otherwise) as bad faith, corruption, impropriety or any form of wrongdoing in relation to the audit of the Claimant's own tax affairs.

    (d) At para. 37 of his first witness statement, Mr Martin says that the matters that he and Dr Wales raised were indicative of their "concern that [the AEAT's] investigation had been initiated and was being conducted in an oppressive and improper manner, i.e. in bad faith." I am unable to accept that characterisation: first, Mr Martin's primary concern was the issue of foreseeable relevance, a point which is clear from both parties' meeting notes; secondly, there was no indication of any

such concern in Mr Martin's post-meeting e-mail of 13 March 2025 or in the pre-action protocol letter of 2 May 2025; thirdly, the notes of the 10 March meeting, read as a whole, record that the Claimants' representatives said that the AEAT's officers' remuneration package incentivised inspectors to settle tax investigations, to recover the largest possible sums and to conclude investigations swiftly. Taken at their height, these were general and unevidenced allegations which, even viewed generously, did not amount to an allegation of dishonesty or impropriety on the part of the AEAT in relation to the Claimant's case. Notably, they were broad and unsubstantiated matters raised at a stage when the AEAT had already explained the basis of the audit to HMRC.

64. Two points follow this conclusion: first, because the Claimant did not raise a specific or substantiated allegation of bad faith, on his own case, HMRC was under no obligation to consider matters further; secondly, HMRC did in fact consider the concerns that the Claimant's representatives had raised at the 10 March meeting. The next question, to which I now turn, is whether that consideration was sufficient and rational.

HMRC's subsequent consideration

65. There were three elements to HMRC's consideration of the matters raised by the Claimant's representatives: (a) meetings with the Claimants' representatives and later correspondence; (b) correspondence with the AEAT about the foreseeable relevance of the information sought in the requests and (c) Mr Gardiner's independent research. I shall deal with each in turn.

66. As to the first element, there were two meetings between HMRC and the Claimant's representatives. The meeting on 13 February 2025 was preparatory to that on 10 March 2025. No criticism is made by the Claimant of HMRC's approach to those meetings. In particular, there is no suggestion that his representatives were denied an effective opportunity at which to set out their concerns.

67. The second element was HMRC's correspondence with the AEAT. HMRC's letter of 18 March 2025 concentrated on the two principal issues with which the Claimant's representatives were concerned at the 10 March meeting, namely the alleged absence of a rational connection between the substance of the requests and the audit and a legal basis to the requests and their putatively speculative nature. The letter also asked for an explanation of the relevance of the KYC documents and an update on the response of the Swiss and Singaporean tax authorities to the requests addressed to them.

68. The Claimant has criticised HMRC for not pursuing its concerns about the AEAT's "leakiness". On that point, Mr Gardiner's explanation was two-fold:

    (a) Having considered reports of the ETA episode and the disclosure of tax-related information belonging to the partner of the President of the Community of Madrid, he concluded that the Claimant's concerns were baseless. As to the former, ETA had long since stopped its armed campaign. As to the latter, the article in the *European*

Conservative indicated that the chief prosecutor of Madrid had disclosed the material to the Spanish Attorney-General. None of these matters concerned either the AEAT or the Claimant.

(b) The exchange of information under Art. 26(1) of the Convention was subject to the confidentiality provision in Art. 26(2). Mr Gardiner was not aware of any concerns within HMRC that the AEAT had not handled information, exchanged under the Convention, appropriately.

69. The Claimant has challenged Mr Gardiner's conclusion not to ask the AEAT about its officers' financial incentive arrangements. As set out at para. 36(c) above, Mr Gardiner's essential reason was that the AEAT was likely to deny any unfairness to the Claimant, any intention to over-assess or to press for an early settlement for the personal gain of the investigating officers. The substance of the AEAT's response of 20 August 2025 to grounds 1 and 2 of this claim confirmed Mr Gardiner's prescience.

70. The third element was Mr Gardiner's inquiries about the AEAT's conduct. As set out at paras. 32 and 33 above, he found reports in the on-line editions of the *Daily Mail* and *GB News* which, in general terms, accused the Spanish tax authorities of targeting British expatriates living in Spain with "unexpected tax traps". Mr Gardiner's effective conclusion was that while the articles evidenced a degree of discontent on the part of taxpayers who are subject to an audit of their tax arrangements, it was both necessary and desirable for tax authorities to investigate cases of suspected abuse of beneficial tax regimes such as the Impatriate scheme.

The Claimant's criticisms of HMRC's investigation

71. The nature, scope and intensity of HMRC's investigation was criticised by the Claimant in three principal respects. It is said that HMRC did not properly understand the full force of the points advanced by the Claimant's representatives to the extent that HMRC could not lawfully have considered them. I do not accept that submission. Mr Gardiner fully understood and investigated the concerns that Mr Martin and Dr Wales articulated at the 10 March meeting. As set out above and at the risk of undue repetition, the Claimant's representatives' concerns were focussed on the questions of foreseeable relevant and the requests' legal basis.

72. It is also said that Mr Gardiner should have reached a different understanding of the articles published on the internet that he found. It is submitted that he should also have carried out further research. There is nothing in this criticism. The internet articles found by Mr Gardiner were one-sided, occasionally florid, reports of the views of anonymised taxpayers whose tax arrangements under the Impatriate scheme were now the subject of investigations by the AEAT. The internet articles were not, and did not purport to be, objective critiques of the AEAT's conduct generally or treatment of taxpayers who sought the benefit of the Impatriate scheme. None of the articles can be fairly read as providing a balanced or detailed assessment of the AEAT's conduct. As Mr Gardiner noted, the articles were seemingly prompted by media statements published by Amsterdam. It is entirely legitimate for a law firm to seek to represent those whose entitlement to the Impatriate scheme is now under scrutiny by the Spanish

tax authorities and who are plainly aggrieved by that action. However, the articles did not provide a reasoned or reasonable basis upon which to doubt the AEAT's good faith or the foreseeable relevance of the requests. In summary, Mr Gardiner's reading of the articles that he found was reasonable.

73. The Claimant also criticises HMRC for not locating the articles exhibited to Professor Meliá's statements. I do not accept this submission. The six articles exhibited to Professor Meliá's first statement are all in Spanish. There is no good reason why HMRC should have searched for and translated them. Their substance does not substantiate the allegations of bad faith and there is nothing in them to prompt HMRC to question the lawfulness of the requests or to carry out further inquiries. Of the six articles, four report the AEAT's public statement that it would examine social media posts when investigating the tax affairs of "citizens who show off luxurious living, but then declare an income far below what would be logical for that standard of living." Another article reported a decision by the Spanish Supreme Court concerning the tax arrangements of Lionel Messi, the international footballer. The relevance of the distinctive facts of Mr Messi's case to the present claim is hard to discern. The sixth article considered various technical and other matters arising from the parallel existence of tax investigations by the AEAT and criminal liability under Spanish law. Again, this article is not relevant to the allegations of bad faith advanced in this claim. I have read the articles but none confirms or suggests that the investigation of the Claimant's tax affairs has been tainted by bad faith, corruption or impropriety.

74. I have considered the "Declaration of Granada" (dated 18 May 2018) to which Professor Meliá refers in his first statement and upon which some reliance was placed in submissions. It was prepared by a group of eminent tax lawyers. It deprecates certain trends in the drafting and implementation of tax law. It objects to the supplanting of the proper role of the Cortes Generales in the consideration and promulgation of tax law (especially the increased use of secondary legislation); to the increasing role of the Court of Justice of the European Union in this field and the regrettable intrusion of judge-made law in the Anglo-Saxon manner into Spanish jurisprudence; to the diminution of the taxpayer in the legal relationship between the citizen and the tax authorities with adverse consequences for the principles of equality, solidarity and legal certainty. I have read the Declaration with care but there is nothing in it which confirms or even suggests that the investigation of the Claimant's tax affairs has been influenced in any way by bad faith, corruption or impropriety.

75. Mr Martin's second statement exhibited more media articles. Broadly speaking, they fell into three categories: reportage from British news media such as the *Daily Mail*, the *Daily Express* and the *Daily Telegraph* about British expatriates who settled in Spain, submitted themselves to the Impatriate scheme and are now under investigation by the AEAT; an article that argues that Spain's tax laws constitute an unlawful barrier to the free movement of capital and so violate European Union law; and articles from Spanish media outlets about alleged attempts by a former Spanish Minister of Finance to manipulate the AEAT to do his bidding.

    (a) As to the first category, the articles generally echo the tone and content of those found by Mr Gardiner. Most of them report media statements published by Amsterdam about the Impatriate scheme and that British expatriates are liable to

have their entitlement under the scheme examined. Some report Amsterdam's more attention-catching quotations such as the description of the AEAT as "Spanish Tax Pickpockets" and a statement that "what Spain is doing would embarrass a Mafia Don". Some cite comments from expatriates who feel strongly about the AEAT's decision to investigate their tax affairs in circumstances where, in their view, they had secured the requisite certificate and so had their eligibility under the Impatriate scheme definitively confirmed some time ago.

(b) The second category is a technical subject on Spanish tax law and EU law. It is not relevant to the Claimant's allegations of bad faith, corruption and impropriety (either generally or in relation to the audit of his tax affairs) nor does it substantiate them.

(c) The third category consists of an article, published on-line, in which the Spanish Journalists Association denounced the Spanish Treasury's alleged attempt to intimidate and threaten certain journalists. In particular, the article accused María Jesús Montero, a former Minister of Finance, of misusing tax information to intimidate political opponents. Even if it is assumed that the allegation is substantially accurate (which is not clear), none of this concerns the Claimant (who is not a journalist) or the AEAT's investigation of his tax affairs.

76. Professor Meliá's second statement is primarily concerned with a criminal investigation concerning Cristóbal Montoro, the Spanish Minister of Finance (2000-2004; 2011-2018). As set out above, the fact of the investigation was made public in July 2025, some three months after the decision that is challenged in these proceedings. The statement also raises other matters such as the alleged targeting by the AEAT of particular groups of taxpayers (including foreign employees posted to Spain who had been taxed under the Impatriate scheme) and the alleged misuse of confidential tax information by the AEAT.

77. The Montoro investigation is said by Professor Meliá to evidence "the systematic weaponisation of state tax apparatus for political and economic purposes" but also the AEAT's chronic corruption. The investigation is said to concern the misuse of the AEAT to benefit the clients of a company with which Mr Montoro was connected and to "punish" his political opponents. It is alleged that Mr Montoro and certain AEAT officials had selectively disclosed confidential tax information in service of his political interests and against those of opponents such as journalists. It is also said that senior officials have been dismissed as a result of the Montoro case and others are under investigation. The source of Professor Meliá's account of the Montoro investigation seems to be the media. From the perspective of the allegations in this claim, there are three fundamental problems with this element of Professor Meliá's statement: first, the fact and substance of Montoro investigation were not matters of public knowledge before July 2025. Therefore, they could not conceivably have been before Mr Gardiner when he made the decision on 4 April 2025; secondly, the extent to which the substance of the media reports is accurate is not clear and, in any event, the investigation is apparently continuing; thirdly and importantly, there is no suggestion that the Montoro investigation is in any way connected to the audit of the Claimant's tax affairs.

78. The statement also refers to separate criminal investigations of nine senior officials in the Hacienda and the AEAT. It also lists five instances of individual AEAT officers who have been convicted of corruption or similar offences since 2019; it quotes an allegation reported in the media that in 2024, María Jesús Montero, the present Minister of Finance, had potentially committed a criminal offence by disclosing confidential tax information and using it for political purposes; and it cites media reports that artists and footballers (but the self-employed more generally) have been unfairly targeted by the AEAT together with the government's political opponents. Having carefully considered these materials, the key point is that none of it supports the allegations of bad faith in relation to the Claimant's particular case. Again, there is nothing to suggest that the audit of the Claimant's tax affairs has been influenced or in any way affected by bad faith, corruption or wrongdoing.

79. Professor Meliá refers to a media report of an opinion of the Consejo de Estado, a consultative body to which all proposed legislative measures are required to be lodged for review. His statement quotes the report to the effect that the Consejo de Estado had criticised the poor quality of the draft legislation sponsored by the Spanish Treasury which was apt to create legal uncertainty. Professor Meliá's view is that the report of the Consejo de Estado's opinion reflects concerns raised by the Spanish Association of State Tax Inspectors about technical changes to the arrangements for refunds of income tax payments made by mutual society members and the constitutional and legal consequences. It may be that the criticisms in Consejo's opinion (which is not exhibited) are reasonable but, in my judgment, there is nothing in the media report that substantiates the allegations of bad faith made in this particular claim.

80. The third and final criticism made by the Claimant is that HMRC failed to ask the AEAT if its officers proposed to act corruptly or in bad faith. This point can be taken shortly. HMRC concluded that such a question would serve no useful purpose because only one answer could conceivably be given. That conclusion was both reasonable and obvious. In any event, in its letter of 18 August 2025, HMRC asked the AEAT the suggested question: its response clearly and firmly rejected the Claimant's allegations.

The sufficiency of HMRC's consideration - conclusion

81. Having regard to the relevant principles set out at para. 56 above, Mr Gardiner's consideration of the concerns raised by the Claimant's representatives cannot be impugned. His assessment of the points to be raised with the AEAT was reasonable and concentrated on the two principal points that weighed most heavily with the Claimant at the 10 March meeting. It also raised other matters such as the relevance of the KYC documents and the responses of the Swiss and Singaporean to the requests sent to them. Equally, his determination of the matters that were not raised in his letter of 18 March 2025 was the product of an informed consideration of the substance of the Claimant's concerns about the AEAT's suggested "leakiness". He made an entirely realistic assessment of the likely response had he asked the AEAT about the improper consequences of its inspectors' bonus arrangements. In parenthesis, I note that Mr Gardiner's view was duly confirmed by the AEAT's response to grounds 1 and 2 in this claim. In the circumstances, Mr Gardiner's reasoning for not asking the AEAT about these matters was cogent and reasonable.

82. The nature and scope of the inquiries that Mr Gardiner made following the 10 March meeting were for him to decide subject only to *Wednesbury* review. He had due regard to the matters that were raised by the Claimant's representatives at the meeting as well as the fact that HMRC was aware of the AEAT's reasons for opening the audit and making the request at that time. In that context, the extent of his internet search for complaints or concerns about the AEAT and its practices was reasonable and proportionate. Mr Gardiner's assessment of the weight to be attached to the media reports he found was similarly reasonable. The fact that those reports appear to have been prompted by media statements published by Amsterdam was a relevant factor and it was reasonable for Mr Gardiner to treat them with an appropriate degree of caution. Mr Gardiner's assessment of what further investigations were required was rational.

Other matters

83. In oral submissions Mr Owen KC sought to rely upon Art. 26(3) of the Convention to argue that HMRC was not required to comply with the requests. It was said that Art. 26(1) was not an absolute obligation but was subject to the qualifications in Art. 26(3)(a) and (c). In particular, it was submitted that the AEAT's abusive and oppressive conduct; the endemically corrupt tax system in Spain; the requirement that taxpayers "pay to appeal"; the nature of the criminal sanctions to which taxpayers are subject and the effective reversal of the burden of proof clearly evidenced bad faith on the part of the Spanish tax authority. The Claimant's case bore all the hallmarks of that conduct. He had complied with all that was asked of him under the rules of the Impatriate scheme but two years after he left Spain, the AEAT started the audit. In those circumstances, Art. 26(3)(a) required HMRC not to comply with the requests. Also, as a result of the AEAT's policy of harassment, the Claimant (and others) were the victims of a "shake down" at the hands of the AEAT which was seeking to obtain information that it could not obtain under Spanish domestic law. That should be contrasted with the protections available to taxpayers in this country against arbitrary, oppressive and corrupt actions by HMRC. For that reason, Art. 26(3)(c) also required HMRC not to answer the requests.

84. This argument was raised for the first time at the hearing. It did not feature in the Claimant's Detailed Grounds; in the various statements served on his behalf or in his skeleton argument. Mr Owen KC did not seek to argue that the point had been made in any form before and no prior notice was given to HMRC that the point would be advanced at the hearing. Mr Paines, with some force, submitted that it was too late for the Claimant to seek to rely on it at such a late stage and, in the circumstances, it was inconsistent with the overriding objective to adjourn the hearing. Mindful of the importance of conducting judicial review proceedings in an orderly and proportionate way (as the Court of Appeal held in *R (Talpada) v. Secretary of State for the Home Department* [2018] EWCA Civ 841) and the courts' general deprecation of "litigation by ambush", I agree with Mr Paines that the argument was raised too late to be relied upon by the Claimant. By raising it only at the hearing, the Claimant effectively denied HMRC a proper opportunity to respond whether in evidence or in argument. Although Mr Owen KC raised the prospect of an adjournment, quite reasonably Mr Paines decided to proceed and to make summary points in response.

85. Irrespective of the question when the point was raised, I am not persuaded that either Arts. 26(3)(a) or (c) assist the Claimant for four principal reasons:

    (a) "Bad faith" was not explicitly alleged at the 10 March meeting. Allegations of endemic/systemic corruption in the Spanish tax system were also not expressly raised at the 10 March meeting although, as set out above, the Claimant's representatives did raise the issue of AEAT officers' financial incentives but as a lesser order concern.

    (b) There is no evidence that the audit of the Claimant has been tainted by bad faith or impropriety. Certainly, the Claimant has made no allegation in Spain that the AEAT's investigation has been touched by bad faith, corruption or any other form of wrongdoing.

    (c) For the purposes of Art. 26(3)(a), given my conclusions on the evidence, HMRC is not construing Arts. 26(1) or (2) so as to require it to carry out administrative measures that are inconsistent with the laws of England and Wales.

    (d) Given my findings, no information would be provided by HMRC which would be contrary to public policy for the purposes of Art. 26(3).

Ground 1 - conclusion

86. Although the Claimant is granted permission to pursue ground 1, it fails for the reasons set out above.

Ground 2

The parties' submissions

87. In his skeleton argument, the Claimant contended that HMRC's conclusion that the information sought in the requests was foreseeably relevant to the audit was unlawful because it involved a failure to have regard to material considerations and/or it was unreasonable or irrational. In relation to the six categories and information sought, the Claimant set out his case as to why the subject-matter was not foreseeably relevant.

88. HMRC's response is three-fold: first, it is clear that HMRC is not allowed to take an intrusive approach to the question of foreseeable relevance; secondly, HMRC rationally concluded that the information sought related to the Claimant's financial position in the relevant years and was therefore foreseeably relevant to an investigation to his eligibility to be taxed under the Impatriate scheme. If he were not eligible, the information sought would be foreseeably relevant to the quantification of the Claimant's tax liabilities in Spain.

89. At the hearing Mr Owen KC indicated that, as the AEAT had proceeded to make a determination of *simulacion*, the position in relation to ground 2 had changed. Indeed, the AEAT had seemingly decided that it did not need the information sought in the

requests. Mr Owen KC submitted that even if the requests had been made by the AEAT in good faith, some of the information sought was accepted to be relevant to valuation of the Claimant's tax liability. Although Mr Owen KC observed that the AEAT's decision to proceed with the determination of *simulacion* raised a further question whether the requests had been made in good faith, his effective position was that ground 2 added little substance to ground 1, his primary basis of challenge.

Discussion

90. Given Mr Owen KC's position, I shall deal with ground 2 briefly. In summary, the ground fails: the narrow question for the court is the rationality of Mr Gardiner's conclusion that the requests were foreseeably relevant. It is, in my judgment, clear from the *Kotton* judgment and the OECD commentary that HMRC is not entitled to take an intrusive approach to this question. In addition to the detailed summary of the reasons contained in the requests themselves, HMRC asked for and received an explanation of foreseeable relevance in the AEAT's letters of 27 March and 20 August 2025. As set out in that correspondence, the information sought by the AEAT concerned the Claimant's financial affairs between 2019 and 2022. It was therefore foreseeably relevant to the audit whose focus was the Claimant's eligibility to be taxed under the Impatriate scheme. If he was not eligible, the information was relevant to the assessment of his tax liability in Spain. Given the AEAT's detailed explanation, Mr Gardiner's conclusion on foreseeable relevance was plainly rational.

91. Although permission is granted, in light of the Claimant's position and for the reasons set out above, ground 2 fails.

Ground 3

92. The Claimant accepts that this ground is contingent on grounds 1 and 2. As both were arguable, ground 3 is also arguable. If neither of those grounds is made out, ground 3 falls. As grounds 1 and 2 have failed, ground 3 also fails.

Conclusion

93. For the reasons set out above, permission is granted on all grounds, but the claim is dismissed. I will consider any consequential applications in writing or, if necessary, at a short hearing. Finally, I would like to express my thanks to counsel for their assistance and to those who prepared the bundles.