Dear Ms Ashley

I am writing to confirm that HMRC has now completed its search for the information you requested on 21 January 2013.

You asked for information in relation to all transfer pricing investigations, settled throughout 2012, on companies operating in the UK. You asked how much money HMRC collected and how much money it originally demanded in relation to the same interventions.

I can confirm that HMRC holds information that falls within the description specified in your request. However, we estimate that the cost of complying with your request would exceed the appropriate limit of £600. The appropriate limit is specified in regulations and for central government is set at £600. This represents the estimated cost of one person spending 3½ working days determining if the department holds the information. This includes locating, retrieving and extracting the information. Consequently, under section 12(1) Freedom of Information Act the department is not obliged to comply with your request and we will not be processing it further.

Normally, HMRC would explore with you how you might be able to narrow down your request so that it did not exceed the fees limit. However, in this case, I cannot see any scope for doing this.

The second part of your request asks how much money HMRC originally demanded in relation to the transfer pricing interventions for which additional yield is reported. I hope the following explanations make it clear why it is not possible for HMRC to provide a figure of tax demanded that could be meaningfully compared to the additional yield achieved for any particular year.
The transfer pricing interventions settled in any 12-month period will have been carried out in a wide range of circumstances. For example some will be settled with the full cooperation of the taxpayer in arriving at the appropriate amount of tax payable, in a collaborative way. In other cases HMRC needs to use formal, legal powers to obtain information or documents that the taxpayer is not prepared to provide voluntarily. Some cases may only involve a single taxable period while others may cover a number of such periods, perhaps going back several years.

HMRC can only demand additional tax through the process of issuing assessments and the extent to which such assessments are necessary will depend on the sort of circumstances described above. One circumstance in which HMRC may need to make such an assessment is in order to ensure that the legal time limit for making a further assessment to tax for an earlier period does not expire. “Protective assessments” will be based on estimates of the tax that may be at risk for the period to which they relate. Information available to HMRC at the time of making an estimated assessment may be very limited and it would be expected that the taxpayer would make an appeal and the appropriate amount would be determined through the appeal process.

In transfer pricing cases, in order to make an accurate assessment of any additional tax that may be due, it is not only necessary to establish the full facts and circumstances relating to the transactions in question. It is also necessary to go on to identify the most appropriate transfer pricing methodology and then to establish how that methodology should be applied in the context of the particular facts and circumstances. This makes it particularly difficult to make estimates of tax at risk in transfer pricing cases, and such estimates will be continually modified as the enquiries progress.

So in cases where it is necessary for HMRC to issue demands for tax in transfer pricing cases it is very likely that amounts assessed will differ from the amounts eventually established as due. On the other hand there will be many cases involving substantial amounts where no such demands are issued because it is possible for HMRC and the taxpayer to agree on the appropriate UK tax liabilities without the need for formal assessments. In short, we would not expect to see overall for any particular period a meaningful relationship between tax demanded and yield achieved and do not keep records to attempt to link them.

Generally a tax assessment reflecting a transfer pricing adjustment which has not been agreed by the business requires “the Commissioners’ sanction” under section 208 TIOPA 2010. However this does not apply to adjustments in relation to the attribution of profits to permanent establishments, which are also reflected in the transfer pricing yield figures. While HMRC keeps records of Commissioners’ sanctions issued, it would be a complex task to link amounts assessed in different years for different taxable periods to the taxable periods covered in the yield statistics for each of the cases settled in a particular year. Furthermore it would also be necessary to undertake a separate exercise to identify permanent establishment issues reflected in the statistics and to try to establish on a case by case basis what assessments were issued and whether they included amounts representing adjustments in relation to profit attribution.

Although, because of the fees regulations, the Act allows HMRC to decline to deal with the request as a whole, I am able to provide some information relating to your request on a discretionary basis, outside of the Act, in the hope you will find it useful.

HMRC published statistics on 22 August 2012 (http://www.hmrc.gov.uk/international/transfer-pricing-stats.pdf) showing the additional tax yield from its transfer pricing enquiries settled in the year to 31 March 2012 was £1095m.
Details of additional tax yield in relation to enquiries settled after 31 March 2012 will be published on the HMRC website in due course.

If you are not happy with this reply you may request a review by writing to HMRC FOI Team, Room 1C/23, 100 Parliament Street London SWIA 2BQ or email foi.review@hmrc.gsi.gov.uk. You must request a review within 2 months of the date of this letter. It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of an internal review, you may apply directly to the Information Commissioner for a decision. The Information Commissioner will not usually consider a case unless you have exhausted the internal review procedure provided by HMRC. He can be contacted at The Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Mary Leeds