



**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Neutral Citation No. [2025] UKUT 00358 (TCC)

Applicant: Eurolaser IT Limited	Tribunal Ref: UT-2025-000048
Respondents: The Commissioners for His Majesty's Revenue and Customs	

**RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL
FOLLOWING ORAL HEARING**

DECISION NOTICE

JUDGE ASHLEY GREENBANK

Representation

For the Applicant: Liban Ahmed, counsel

For the Respondents: Charlotte Brown, counsel, instructed by instructed by the General
Counsel and Solicitor to HM Revenue and Customs

Introduction

1. This decision notice concerns an application by the Applicant, Eurolaser IT Limited, for permission to appeal the decision of the First-tier Tribunal (the “FTT”) released on 4 April 2025 (the “FTT Decision”)¹, in which the FTT dismissed appeals by the Applicant against decisions of the Respondents, the Commissioners for His Majesty’s Revenue and Customs (“HMRC”), to issue various assessments to VAT in respect of several VAT periods and to impose penalties in relation to those assessments.

2. The assessments were issued on the basis that the principles established in the judgments of the Court of Justice of the European Union (“CJEU”) in *Mecsek Gabona KFT v Nemzeti Adó- és Vámhivatal* (C-273/11) and *Axel Kittel v Belgian State and Belgian State v Recolta Recycling SLRL* (C-439/04 and C-440/04) applied to transactions undertaken by the Applicant, that is that the

¹ In this decision notice, references to paragraphs in the FTT Decision are in the format “FTT [xx]”.

Applicant knew or should have known that its supplies were connected to the fraudulent evasion of VAT by others.

3. In the FTT Decision, the FTT concluded that a self-employed consultant to the Applicant, Mr Moshin Darr, knew or should have known that the Applicant's transactions were connected to the fraudulent evasion of VAT by others and that Mr Darr's actual or constructive knowledge could be attributed to the Applicant. The FTT found that this was the case even though HMRC accepted that the evidence did not show Applicant's sole director, Mr Stephen Pallister, knew or should have known that and the Applicant's supplies were connected to the fraudulent evasion of VAT.

4. On 25 May 2025, the Applicant made an in-time application to the FTT for permission to appeal the FTT Decision (the "FTT Application"). In a decision dated 6 June 2025, the FTT refused the FTT Application.

5. On 18 June 2025, the Applicant made an in-time application to the Upper Tribunal for permission to appeal (the "UT Application"). The grounds of appeal were:

(1) Ground 1: The FTT's finding that Mr Darr knew that the Applicant's transactions were connected with fraud was:

(a) flawed because it relied upon findings of fact and inferences that were inconsistent with Mr Pallister's unchallenged evidence; and/or

(b) unduly coloured by Mr Darr's previous involvement in transactions connected with fraud; and/or

(c) not properly open to the Tribunal such that it was perverse (and therefore constituted an error of law applying *Edwards v Bairstow*²).

(2) Ground 2: The FTT's finding that Mr Darr should have known that the Applicant's transactions were connected with fraud was:

(a) flawed because it relied upon findings of fact and inferences that were inconsistent with Mr Pallister's unchallenged evidence; and/or

(b) unduly coloured by Mr Darr's previous involvement in transactions connected with fraud; and/or

(c) not properly open to the Tribunal such that it was perverse (and therefore constituted an error of law applying *Edwards v Bairstow*).

(3) Ground 3: The decision by the FTT to treat ESSL's previous involvement in transactions connected with fraud as evidence of Mr Darr's "propensity" was an error of principle. Even taken at its highest, Mr Darr's previous involvement with ESSL was insufficient to establish that he had a relevant "propensity".

6. Ground 1 and Ground 2 are the grounds of appeal on which the Applicant relied in the FTT Application. Ground 3 is a new ground of appeal.

7. The reference to ESSL is a reference to Euro Stock Shop Limited ("ESSL"), a company of which Mr Darr was previously a director. In an earlier decision also concerning VAT assessments involving intra-community fraud, *Euro Stock Shop Limited v HMRC* [2009]

² *Edwards v Bairstow and Harrison* [1956] AC 14

UKFTT 182 (TC) (“*ESSL FTT*”), the FTT found that the directors of ESSL, including Mr Darr, knew that deals they had entered into were connected to fraud (*ESSL* [109], [116] referred to at FTT [33]) and upheld VAT assessments on ESSL. The decision in *ESSL FTT* was upheld on appeal by the Upper Tribunal (*Euro Stock Shop Limited v HMRC* [2010] UKUT 259 (TCC).)

8. In a decision without a hearing released on 31 July 2025, I refused permission to appeal on Grounds 1 and 2. This was on the grounds that the three limbs of Grounds 1 and 2 taken together amounted to a general challenge on *Edwards v Bairstow* principles to the FTT’s findings that Mr Darr knew or should have known that the Applicant’s transactions were connected to fraud and did not disclose an error of law.

9. I granted permission to appeal on Ground 3 on the basis that whether, as a matter of principle, a given factor– Mr Darr’s involvement in the ESSL transactions – was relevant to whether Mr Darr knew or should have known that the impugned transactions were connected to fraud, was a question of law. That factor was arguably material to the FTT’s conclusions. I therefore granted permission to appeal on Ground 3 on the premise that it was limited to an assertion that the FTT erred in law by taking into account a factor which was not relevant.

10. Following the issue of that decision, the Applicant made an application under rule 22(4) of the Tribunal Procedure (Upper Tribunal) Rules for the decision to refuse the application for permission to appeal on Grounds 1 and 2 to be reconsidered at an oral hearing.

11. A video hearing, by CVP, of the permission application was held on 17 October 2025. Mr Ahmed appeared for the Applicant and Ms Brown appeared for HMRC. I am grateful to them both for their submissions.

The parties’ submissions

12. In the course of his submissions, Mr Ahmed confirmed that he was no longer relying on Grounds 1(b) and (c) or Grounds 2(b) and (c). He made his submissions focussing on Ground 1(a) – that the FTT erred in law finding that Mr Darr knew that the Applicant’s transactions were connected with fraud because it relied upon findings of fact and inferences that were inconsistent with Mr Pallister’s unchallenged evidence. He submitted that the same reasons applied to Ground 2(a).

13. In summary, Mr Ahmed submitted that Mr Pallister’s evidence as contained in his witness statement was not challenged before the FTT. He was not cross-examined. That statement contained important evidence that the characteristics of the transactions on which the FTT relied as bearing hallmarks of transactions connected with fraud – principally the amount of the mark-ups and the presence of back-to-back transactions (see the FTT’s findings at FTT [60(9)(a)-(h)] and FTT [60(10)]) – were no different from legitimate commercial transactions. Mr Pallister’s evidence is referred to in the FTT Decision (see FTT [23] to [28], in particular, FTT [28]), but those references relate primarily to Mr Pallister’s supervision of the business. The inferences that the FTT drew from the facts (see FTT [61(3)], [61(4)], [61(8)] and [61(9)]) were inconsistent with the evidence contained in Mr Pallister’s witness statement. There was no other evidence before the FTT on which to base the FTT’s conclusions.

14. On that basis, Mr Ahmed submitted that the FTT erred in law in its finding that the transactions entered into by Mr Darr bore the hallmarks of transactions connected to fraud. Instead of comparing the impugned transactions with legitimate transactions referred to in Mr Pallister’s evidence, the FTT compared the transactions with those in *ESSL FTT* (see FTT

[61(8)], FTT [61(9)]). The FTT had erred in law in reaching findings of fact and drawing inferences that were inconsistent with the evidence before it.

15. There was a measure of disagreement before me as to the circumstances that led to Mr Pallister's evidence not being subject to cross-examination at the FTT hearing. Mr Ahmed, who appeared for the Applicant before the FTT, recalled that the tribunal informed the parties at the beginning of the hearing that it did not need to hear oral evidence from the witnesses, but that he requested the opportunity to cross-examine and did cross-examine the HMRC officer involved in the enquiry. Ms Brown, who did not appear before the FTT, put forward HMRC's recollection, which was that the FTT informed the parties that it did not need to hear oral evidence from Mr Pallister, but on the basis that the person with the relevant knowledge in this case was Mr Darr. She also challenged Mr Ahmed's assertion that the FTT did not take Mr Pallister's evidence into account (see, in particular, FTT [23]-[28]). In her view, Grounds 1(a) and 2(a) were essentially broad challenges to the FTT Decision on *Edwards v Bairstow* principles.

Reasons

16. Having heard the parties' submissions, I informed the parties that I would grant permission to appeal on Ground 1(a) and Ground 2(a) subject to certain limitations. My reasons are set out below.

17. An appeal to the Upper Tribunal from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The Upper Tribunal has a discretion whether to give permission to appeal. It will be exercised to grant permission if there is a realistic (as opposed to fanciful) prospect of an appeal succeeding, or if there is, exceptionally, some other good reason to do so: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

18. It is the practice of this Tribunal to grant permission to appeal where the grounds of appeal disclose an arguable error of law in the FTT's decision which is material to the outcome of the case or if there is some other compelling reason to do so.

19. There cannot therefore be an appeal to the Upper Tribunal on a pure question of fact. However, the FTT may arrive at a finding of fact in a way which discloses an error of law. The recent case law of this tribunal (*WM Morrison Supermarkets plc v HMRC* [2023] UKUT 000020 at [39], *HMRC v Marlborough DP Limited* [2024] UKUT 00098 at [75]-[78]) suggests that that may happen in broadly one of two ways.

(1) First, there may be an error of law if the FTT took into account irrelevant considerations or failed to take into account relevant considerations. In such cases, it must then be shown that that error was material in the sense that it might have affected the outcome.

(2) Second, there may be an error of law if the FTT's overall conclusion on any issue was one that "no person acting judicially and properly instructed as to the relevant law could have come to" (*Edwards v Bairstow* [1956] AC 14 per Lord Radcliffe at page 36). In some cases, this is referred to as the conclusion being "perverse" or "irrational".

20. Mr Ahmed presented his submissions in favour of Ground 1(a) and Ground 2(a) on the basis that, as a matter of principle, the FTT Decision was inconsistent with the evidence of Mr Pallister and that the FTT had erred by failing to take that evidence into account. That submission seems to me to be an attempt to place these Grounds within the first category of case that I have described above.

21. For my own part, I agree with Ms Brown that Ground 1(a) and Ground 2(a) more naturally fall within the second category. Mr Ahmed's argument is in essence that the FTT's findings of fact and the inferences that it drew from those findings were not available to the FTT on the basis of the evidence before it. That argument falls within the principles set out by the House of Lords in *Edwards v Bairstow* (see Lord Radcliffe at page 36).

22. That having been said, given the issues surrounding the manner in which the evidence was approached before the FTT, I am prepared to grant the Applicant permission to appeal on Grounds 1(a) and 2(a). This is on the understanding that those Grounds refer to (and so are limited to) an assertion that the FTT erred in law in concluding that Mr Darr knew or should have known that the Applicant's transactions were connected with fraud by relying on the inference that the transactions bore the characteristics of fraudulent transactions (as seems to be implied in FTT [61(9)] and [61(10)]) which was not consistent with the evidence before it (taking into account Mr Pallister's evidence). It seems to me that is an arguable error of law in the FTT Decision and is arguably material to the outcome of the case. It will be for the Applicant to show that the FTT's conclusion was, as a result, "irrational" in the sense that it was not a conclusion that was available to it on the evidence.

Decision

23. I grant permission to appeal on the following grounds:

(1) Ground 1: The FTT's finding that Mr Darr knew that the Applicant's transactions were connected with fraud was flawed because it relied upon findings of fact and inferences (as referred to in paragraph [22] above) that were inconsistent with Mr Pallister's unchallenged evidence.

(2) Ground 2: The FTT's finding that Mr Darr should have known that the Applicant's transactions were connected with fraud was flawed because it relied upon findings of fact and inferences (as referred to in paragraph [22] above) that were inconsistent with Mr Pallister's unchallenged evidence.

(3) Ground 3: The FTT erred in law in concluding that the Appellant knew or should have known that its transactions were connected with fraud by taking into account an irrelevant factor, being Mr Darr's prior involvement with ESSL as evidence of his "propensity" to commit the same kind of offence (FTT [65]).

(Ground 3 is rewritten to reflect my previous decision.)

Signed:

Date: 20 October 2025

ASHLEY GREENBANK

JUDGE OF THE UPPER TRIBUNAL