UPPER TRIBUNAL **Neutral Citation No. [2025] UKUT 00377 (TCC)**

TAX AND CHANCERY CHAMBER

Applicant: Haron Mayet	Tribunal Ref: **UT-2025-000040**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL FOLLOWING ORAL HEARING

DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicant (Haron Mayet or "Mr Mayet") applies to the Upper Tribunal (Tax and Chancery) ("UT") for permission to appeal the decision of the First-tier Tribunal (Tax Chamber) ("the FTT"), released on 16 January 2025 ("the Decision"). The Decision was made by the FTT following consideration of his appeal on the papers between 2 and 10 January 2025.

2. The FTT dismissed the Applicant's appeal against the following decisions of HMRC made in relation to him:

1. Discovery assessments made pursuant to section 29 Taxes Management Act 1970 (TMA) for each tax year ended 5 April 2000 to 5 April 2014 and tax year ended 5 April 2016 as varied on review (totalling around £240,000);

2. Penalties issued pursuant to schedule 18 Finance Act (No 2) 2017 for tax years ended 5 April 2000 to 2014 inclusive (Sch 18 Penalties); and

3. Penalties issued pursuant to schedule 24 Finance Act 2007 for tax years ended 5 April 2014 to 2016 inclusive (Sch 24 Penalties)

(Together the Sch 18 Penalties and Sch 24 Penalties were referred to as Penalties by the FTT. They totalled around £410,000).

3. The Assessments and Penalties were issued by HMRC because they considered that the Applicant had deliberately (as regards the Assessments and Sch 24 Penalties) failed to declare and bring into account (1) income from his trade providing property management services to customers and (2) interest income from Isle of Man (IoM) bank accounts.

4. References in square brackets [] are to paragraphs in the Decision unless context requires a different interpretation.

5. By a decision dated 27 March 2025 ("the PTA Decision"), the FTT refused the Applicant permission to appeal the FTT's Decision to the Upper Tribunal ('UT') on the grounds of appeal pursued. The Applicant renewed his application to the UT for permission to appeal in-time on 22 April 2025 within a month thereafter.

6. On 24 June 2025 I refused permission to appeal to the UT in respect of all the grounds of appeal then pursued by the Applicant (who at that time was unrepresented).

7. The Applicant requested reconsideration of his application for permission at an oral hearing which took place before the UT by video on 30 October 2025. I note that the Applicant attended the video hearing before the UT in person by videolink from South Africa. Ms Siobhan Duncan of counsel appeared for the Applicant, making oral submissions and relying upon Revised grounds of appeal dated 24 October 2025. She filed post hearing supplementary submissions on 31 October 2025.

8. Mr Max Simpson of HMRC appeared for the Respondents at the hearing relying on oral submissions and a written response dated 27 October 2025. During the hearing on 30 October 2025, the parties also forwarded to the UT copies of emails sent to the FTT by the Applicant on 16 and 29 December 2024 and letters sent by the FTT to the Applicant on 12 and 17 December 2024.

9. I have considered all written and oral submissions.

UT's jurisdiction in relation to appeals from the FTT

10. 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.

11. It is therefore the practice of this Chamber of the Upper 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.

Grounds of Appeal

12. The Applicant originally submitted grounds of appeal to the UT in an application for permission to appeal and a notice of appeal dated 22 April 2025. There were three revised grounds of appeal dated 24 October 2025 which I address below:

GROUND 1 – procedural unfairness (Rules 2, 29 and 30 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("FTT Rules 2009")):

(a) Refusal to permit oral participation; and
(b) Failure to adopt an inquisitorial approach.

GROUND 2 – the FTT misdirected itself when applying the test for 'deliberate accuracy'.
GROUND 3 – the FTT failed to give adequate reasons for penalty findings.

Discussion, Analysis and Decision

Ground 1a) – refusal to permit oral participation or hold a telephone hearing – alleged procedural unfairness

13. I refuse permission to appeal in respect of this ground of appeal as it holds no realistic prospects of success and does not raise any arguably material error of law in the FTT's Decision.

14. It was recorded by the FTT in the Decision that the Applicant was living in South Africa and could not travel to the United Kingdom to attend the hearing in January 2025 in person. At [(2)] of the Decision, the FTT explained that prior to late 2024 the Tribunal: "was unable to take evidence from a witness in South Africa remotely (either by video or telephone hearing)." In light of that restriction, the FTT had issued earlier directions for a decision on the papers (on 29 February 2024). Those directions provided for written questions to be exchanged between the parties in lieu of cross-examination, and for the exchange of position statements and skeleton arguments.

15. The FCDO guidance later changed, permitting individuals to give evidence from South Africa by videolink in UK administrative tribunals. On 12 December 2024 the FTT wrote to the Applicant offering him the opportunity to request a video hearing instead of a paper hearing in the following terms:

> "…In view of this change it is appropriate to reappraise whether it is in the interests of justice that this appeal be formally listed to be heard by way of a video hearing rather than determined on the papers. Given that Judge Brown proposed to begin consideration of the papers on 2 January 2025 the parties are now directed to indicate no later than 5pm on 16 December 2024 with reasons their preference for the forum of the hearing. A video hearing would facilitate cross examination of witnesses and the ability to orally present legal arguments with greater judicial exploration and engagement as appropriate; however, a video hearing would require all parties to have a stable internet signal for the duration of the listed hearing and will delay final determination of the appeal. If the parties agree that a video haring is appropriate the Tribunal will issue directions for its listing. If they are agreed, that the appeal be determined on the papers Judge Brown will proceed to begin consideration of the papers already submitted (no further papers will be admitted whether the hearing is on the papers or by video). Should the parties disagree Judge Brown will determine the most appropriate forum by reference to the representations of the parties and communicate her decision in that regard before 2 January 2025…."

16. On 16 December 2024 the Applicant replied by email including the following:

> "…I did have a hearing several years ago. The Judge at the time could not hear me and would not allow me to question HMRC, and the hearing was ended after a few minutes. In 2022, it

was agreed to have a further video conference hearing with family members present and Judge Sinfield presiding. The hearing was cancelled again at the last minute on the advice of the Home Office. The investigation has been ongoing since March 2016, nearly nine years ago, with HMRC deliberately changing investigators, delaying and wasting time to ensure maximum cost, resulting in injustice and witnesses not being available.

I am happy to proceed with paperwork or some form of mobile connection, as we do not have stable internet service in our area. The key witness, my brother Mohamed, is incapacitated, in his eighties, and hard of hearing from Covid. The bank Irish Nationwide took instructions from him (bundle evidence). The British justice system provides no access to justice or proper counsel representation to the unrepresented in this complex case. I see no merit in questioning Mr. Gareth Leese, the fourth HMRC investigator who has a biased agenda, questions directed to him not relevant, and is trained to lie and misrepresent Tribunals by escalating cases and making untrue statements to Judges knowing old bank statements from twenty-five years ago are impossible to defend…"

[emphasis added]

17. On 17 December 2024 the FTT responded to the Applicant including the following:

"The Tribunal acknowledges receipt of the parties' responses regarding forum of the hearing following the change in position from the Foreign, Commonwealth and Development Office.

In view of the responses received Judge Brown KC has decided that the matter is best determined on the papers. It appears a video hearing remains impossible because of internet signal and a telephone hearing would not be in the interests of justice. As HMRC note that matter has been prepared to facilitate a paper determination."

18. On 29 December 2024 the Applicant responded to the FTT as follows:

"I refer to the Tribunal's directions dated 17th December 2024. I am available at all times on 0027 … … … to clarify matters relating to my former business. I have not been able to reach my bookkeeper, Mrs. Anne Shulak. The business accounts were reconciled by her and audited by the accountants from the beginning until closure. We have always submitted and paid the correct taxes yearly with truth and honesty. I have lost everything and suffered greatly as a result of the investigation."

19. The FTT determined the appeal on the papers after refusing the Appellant's alternative offer of a telephone hearing, stating at [(3)] of the Decision:

"Although taking evidence virtually from South Africa is now permitted, the Appellant confirmed that a video hearing was unlikely to be achieved as a consequence of instability of internet connection. The parties indicated that they remained content that the matter be determined on the papers. The Appellant offered the alternative that the appeal be heard by telephone hearing and/or that I telephone him in order to clarify any uncertainties in the papers. I do not consider it in accordance with the overriding objective to conduct the matter by way of telephone hearing due to the length of the hearing and the volume of papers to be considered. I also note that it would be totally inappropriate for me to call one party (absent the other) to clarify any points of uncertainty as all communication between the Tribunal and the parties would need to be open to the other party. In any event there was no matter on which I required any additional information in coming to my conclusions."

20. The FTT stated further at [26] of the Decision that it had a bundle of 3,929 pages, including: "a witness statement from Officer Leese, the statement of facts prepared by the Appellant, their respective position papers and the questions and answers provided in lieu of cross-examination." She confirmed that she had "looked at every page in the bundle" and "read thoroughly all those to which either party specifically referred."

21. At [28] the FTT added: "I have the benefit of the questions put and answered by both sides, but it is not a comparable substitute to live cross examination which is responsive and dynamic."

22. I do not accept that the FTT arguably erred in proceeding to a paper determination without conducting an oral hearing by telephone.

23. The FTT made a case management decision and I would not interfere with it unless it was arguably wrong or in error of law – a high threshold. The FTT's decision to determine an appeal without a hearing is an exercise of the FTT's case management discretion. In *Broughton v Kop Football (Cayman) Limited and others* [2012] EWCA Civ 1743 at [51], Lewison LJ explained:

> "…The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree. So the question is not whether we would have made the same decisions as the judge. The question is whether the judge's decision was wrong in the sense that I have explained."

24. Under Rule 29(1)(a) & (b), the Tribunal may proceed to decide an appeal without a hearing only if each party has consented and "the Tribunal considers that it is able to decide the matter without a hearing."

25. Ms Duncan submits that while the Applicant did not expressly object to a paper determination, his response was ambiguous and his proposals in emails of 16 and 29 December 2024 suggesting that the hearing take place by telephone demonstrated a wish to participate.

26. I do not accept this argument gives rise to an arguable error of law.

27. The FTT was entitled to find as a matter of fact that the parties had agreed to a paper determination i.e the Applicant had consented to proceeding on the papers without a hearing. The Applicant's emails of 16 and 29 December 2024 make references to an alternative offer of a telephone hearing or being asked questions by telephone but do not undermine the FTT's finding that he consented to a paper determination by virtue of the plain words in the email of 16 December 2024 ('I am happy to proceed with paperwork'). This was supported by the wider context of the email as a whole. The FTT was entitled to find that the Applicant's consent to proceeding without a hearing was given even if he offered a telephone hearing as an alternative.

28. I do not accept the submission that there was an error in the FTT's finding because the consent was conditional or that the offer to engage by phone if the FTT would like undermined that consent. If the Applicant had wished to participate by telephone only and insist on there being a telephone hearing he could have refused to consent to a paper determination.

29. There is no arguable error of law in the FTT's application of Rule 29(1)(b) nor the overriding objective, Rule 2, in deciding it was able to decide the matter without a hearing and just to do so for the reasons set out at [(3)] above and in [(2)]:

> "Prior to late 2024 this Tribunal was unable to take evidence from a witness in South Africa remotely (either by video or telephone hearing). Accordingly, I on 29 February 2024 I made directions for the management of the appeal facilitating a decision on the papers including directions that the parties prepare and have answered questions they would have wished to put to witnesses had there been a hearing. The directions also provided for the exchange of position statements/skeleton arguments."

30. I am not satisfied that the exercise of the discretion to proceed without a hearing was arguably contrary to the overriding objective nor took into account irrelevant matters nor failed to take into account relevant matters. It was not arguably procedurally unfair nor in error of law. The FTT obviously took into account the fairness of the proceedings in [(2)], [(3)] and [28] in the absence of oral evidence but made a decision to proceed as being fair in light of the procedures adopted in writing for answering questions put by the other party and considering written submissions and evidence. It explained that it did not require any additional information from the parties.

31. The Applicant accepts that the FTT endeavoured to manage the procedural limitations arising from residing in South Africa (and FCDO restrictions on giving evidence from abroad). However, Ms Duncan submits that the fact that the Tribunal could not lawfully and/or technically take evidence from South Africa at the time did not remove its continuing obligation to ensure fairness under Rule 2(1) and Rule 2(2)(c) the FTT Rules 2009 which provide respectively:

> "The overriding objective of these Rules is to enable the Tribunal to deal with the cases fairly and justly"; and
> "Dealing with a case fairly and justly includes... (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings."

32. I accept that the assessment of fairness, justice and practicable participation in proceedings are questions required to be reviewed on an ongoing basis. Once the Tribunal recorded that remote evidence from South Africa became feasible in late 2024 (at [(2)]), it was still required to reconsider whether oral participation was necessary to ensure fairness. The time difference between South Africa (UTC +2) and the UK (UTC + 1) is approximately 1 hour and would not have prevented practical scheduling of a telephone hearing.

33. Ms Duncan submits that in treating the Applicant's location and the impracticality of conducting a hearing over telephone due to the length of the hearing and volume of papers as purported reasons to deny oral participation, the FTT failed to apply Rule 2 and took into account irrelevant matters. Further she argues that the FTT's statement that a telephone hearing

would have been inconsistent with the overriding objective was a misdirection as to the purpose of that objective. The overriding objective exists to secure fairness, not to avoid administrative burden or complexity, particularly where issues and conduct were central to the outcome.

34. She contends that the FTT treated administrative difficulty as a reason to curtail the Applicant's participation, and it failed to revisit the assessment as to the proper form of hearing once the FCDO restrictions on giving evidence from South Africa had been lifted. The Applicant was therefore denied any opportunity to respond to serious allegations of deliberately filing inaccurate returns. She submitted that the Decision resulted from an unfair hearing was 'written in the water' per Lord Reed at paragraph 49 of *Serafin v Malkiewicz* [2020] UKSC 23.

35. I do not accept that there was an arguable error of law. The FTT took into account the fairness to the Applicant of proceeding without a telephone hearing at [(2)], [(3)] and [28] finding that the Applicant had received a reasonable opportunity to put his case in writing and there was no additional information the Judge required in order to make the decision and it would be unfair to call one party by telephone and not the other. This was a permissible exercise of discretion and did not take into account irrelevant matters.

36. Likewise, the FTT was entitled to take into account practical matters in exercising its discretion and when proceeding without a telephone hearing by virtue of Rule 2(2)(a), proportionality to the importance and complexity of the issues, (b), flexibility and (e) avoiding delay so far as compatible with proper consideration of the issues.

37. In the light of considering of Rule 2(2) (a)-(e), it is apparent that the submission that the FTT cannot take into account administrative and practical considerations when making its decision is not arguable. Even if one were to limit themselves to Rule 2(2)(c), the requirement is to ensure participation in the proceedings only extends "so far as practicable". The use of "practicable" as opposed to a different word such as "possible" is an indication that administrative burdens, challenges and complexities fall within the ambit of the overriding objective of dealing with cases fairly and justly and can be taken into account as a relevant matter when deciding the form of the hearing. It was not the only the matter the FTT took into account – it also balanced and considered fairness as set out above. This was against the further background where the FTT was entitled to find that the Appellant had consented to a paper determination.

38. The Applicant had stated he was unable to travel to the UK to attend a hearing in person. The parties were invited to make submissions on the form of the hearing in December 2024 and the Applicant stated, 'I am happy to proceed with paperwork or some form of mobile connection, as we do not have a stable internet service in our area.' He therefore did not request a telephone hearing but consented to a paper hearing while offering telephone as an alternative. The FTT was entitled to decide that a telephone hearing would not be just and fair (in accordance with the overriding objective) for the reasons it gave (including the length of the hearing and volume of papers). Furthermore, the FTT adopted a written procedure by which evidence could be tested by way of written questions and answers being given in respect of the witnesses' evidence. This procedure was to provide a fair hearing in accordance with the principles of natural justice.

39. I am also satisfied that the Applicant was given a reasonable opportunity to attend a hearing in person or by video but declined it. The procedure adopted was just and fair. It was clear that the Applicant did not require a telephone hearing even if he raised the potential as an alternative. Most importantly, and in any event, he consented to a paper determination without a hearing. It was fair for the FTT to proceed on the papers without a telephone hearing for reasons it gave. The procedure was fair to both parties because the FTT had to decide the reliability and credibility of all witnesses and the weight to be given to their evidence based on written statements and written answers to the questions. This was the closest to cross examination that could be adopted without an oral hearing. The FTT made a case management decision that was rational and it took into account material matters when exercising its discretion.

40. In conclusion, the general complaint of procedural unfairness based upon proceeding to determine the appeal on the papers without a hearing, does not give rise to an arguably material error of law in the FTT's Decision. I agree with the matters relied upon by the FTT at paragraph 6 of the PTA Decision. The FTT therefore applied Rules 29 and 2 without arguable error of law.

41. I refuse permission on Ground 1a.

Ground 1b) – failure to adopt an inquisitorial approach

42. Ms Duncan submits that the Applicant was an unrepresented litigant facing very serious allegations. In light of that, the FTT did not identify or pursue clarification of material matters which an inquisitorial Tribunal should have explored, including:

1. the timing and nature of professional advice received; and
2. the Appellant's attempts to correct his position with HMRC before the assessments were issued.

43. She argues that the absence of any active fact finding or questioning of HMRC's assertions – particularly where the Tribunal itself accepted that written questions were no substitute for live engagement (see [28]) - meant that the FTT did not discharge its procedural duty to ensure fairness for an unrepresented party.

44. I am not satisfied that this ground is arguable. Once the FTT had exercised its discretion lawfully to proceed to determine the matter on the papers, it did not fail to adopt an inquisitorial approach.

45. The FTT performed a multifactorial evaluation of the reliability and credibility of the evidence given by the witnesses (including the Applicant) by reference to all the documentary evidence. It gave sufficient and rational reasons for rejecting the Applicant's evidence or finding it to be unreliable or incredible. Furthermore, the Applicant has not identified any evidence or answers that he would have given had he received a telephone hearing, or if he had been asked further questions, that he was not able to provide in writing to the FTT before it made its determination. Therefore, any unfairness in deciding the appeal on the papers without a telephone hearing or exploring evidence through further inquisition could not be arguably material.

46. The FTT considered the Applicant's explanation of reliance on professional advice received at [150(5)] but rejected it. It considered all the Applicant's evidence and summarised it in the Decision.

47. In *Volkswagen Financial Services (UK) Ltd v Commissioners for Her Majesty's Revenue and Customs* [2017] UKSC 26, at [7] Lord Carnwath observed that:

> "One of the strengths of the new tribunal system is the flexibility of its procedures, which need to be and can be adapted to a wide range of types of case and of litigant. In some areas, particularly those involving litigants in person, a more inquisitorial role may be appropriate."

48. The flexibility of the FTT's procedures is enshrined in Rule 2 and in Rule 5(1), which provides that: "Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure."

49. While there is an inquisitorial nature to some appeals before the FTT (Tax Chamber), the extent of the duty varies greatly between unrepresented litigants who may be unsophisticated, unfamiliar with tax or live with disabilities as opposed to global corporate litigants who are represented by large and expert legal teams. The extent of the duty all depends on the facts of any case and fairness is key. How much of an inquisitorial role the FTT should adopt is therefore also a matter of discretion and thus the threshold for interference is high.

50. The FTT was clearly cognisant of the need to take a reasonably and proportionately inquisitorial approach and did so. I have referred above to the passages of the Decision where it sets out the method it adopted for posing questions of the Applicant in writing in advance of the determination and based upon the written evidence it had received. In addition, at [6(4)] of the FTT's refusal for permission appeal it also stated: "In order to ensure that the Appellant was fairly treated I reminded HMRC when producing their skeleton argument of their duties when appearing against an unrepresented party that they should be thorough in their references to case law drawing my attention to all relevant case law. I am satisfied that HMRC's skeleton argument did as directed."

51. The FTT adopted reasonable and proportionate measures to demonstrate flexibility in its procedure. It is not arguable that it erred or that it should have adopted a more inquisitorial approach within the confines of a paper determination.

52. I refuse permission on Ground 1b.

Ground 2 –the FTT misdirected itself when applying the test for 'deliberate accuracy'.

53. The test for a deliberate inaccuracy is set out by the Supreme Court in *HMRC v Tooth* [2021] UKSC 17 at [47]:

> "For there to be a deliberate inaccuracy in a document within the meaning of section 118(7) there will have to be demonstrated an intention to mislead the Revenue on the part of the taxpayer as to the truth of the relevant statement or, perhaps, (although it need not be decided on this appeal) recklessness as to whether it would do so."

54. The Upper Tribunal in *CPR Commercials Ltd v HMRC* [2023] UKUT 61 (TCC) stated at [23] that:

> "Where a taxpayer suspects that a document contained an inaccuracy but deliberately and without good reason chooses not to confirm the true position before submitting the document to HMRC then the inaccuracy is deliberate…However, the suspicion must be more than merely fanciful."

and further at [39]:

> "The conclusion that CPR was 'at least reckless' is not a finding that CPR had actual or blind-eye knowledge of any error… and accordingly did not support a finding that CPR was liable to a penalty for deliberate inaccuracy."

55. The FTT found at [150] that:

> (32) The number and total value of the deposits is significant in total and on a year in year basis. When signing the return declarations it would or certainly should have been obvious to the Appellant that they were incorrect and that by signing the return HMRC would rely on the return and the declarations.
>
> (33) I consider that the Appellant deliberately rendered to HMRC tax returns which he knew to be incorrect. The figures are material.

56. The FTT concluded that the Appellant's conduct was deliberate, stating at [153]:

> "I have also found that the inaccuracies were deliberate. The Appellant rendered returns which understated his liability to tax in each year knowing or turning a blind eye to whether they were incorrect."

57. Ms Duncan submits that no contemporaneous evidence was cited by the FTT demonstrating that the Appellant actually intended to mislead HMRC, or that he held a specific awareness that his returns were inaccurate. Indeed, the burden of proof to demonstrate that a taxpayer's behaviour is deliberate lies with HMRC.

58. She also argues that the FTT adopted the phrase "knowing or turning a blind eye" in respect of his rendered returns ([153]) but made no finding that the Appellant possessed actual knowledge of an inaccuracy, nor that he had a non-fanciful suspicion of an inaccuracy which he consciously ignored.

59. Ms Duncan contended that the FTT did not consider whether the Appellant's filing of asserted inaccurate returns was motivated by confusion or neglect rather than deliberate concealment. Its reasoning was thus a misdirection in law material to both the penalty (and by extension discovery) findings.

60. I do not accept this ground is arguable. Ms Duncan argued that the FTT applied the wrong test at [153] and that there was no evidence or reasoning in support of its finding of deliberate conduct on the Appellant's part. She contended that the authorities make clear that constructive knowledge or carelessness cannot establish "deliberate" behaviour. There must be either: 1. a demonstrated intention to mislead; or 2. a non-fanciful suspicion consciously ignored. She submits that the FTT's reasoning at [153] – "knowing or turning a blind eye" – does not satisfy either condition. It substitutes inference from outcome for evidence of intent. She submits that the expression in [150(32)] "should have been obvious" denotes constructive knowledge – a hallmark of carelessness, not deliberate conduct.

61. This ground is not arguable. I am satisfied that the FTT correctly summarised the principles at [12] of the Decision as to what constitutes a deliberate inaccuracy. As such, there is a strong presumption that it applied the principles correctly:

> "12. It will be established that an inaccuracy is brought about deliberately where it can be shown that the taxpayer intended to mislead HMRC when providing them with a document (including a self-assessment return) which he knew was inaccurate and with the intention that HMRC would rely on the inaccurate document (see *HMRC v Raymond Tooth* [2021] UKSC 17). Deliberate conduct may also be established where the taxpayer suspects that a document rendered to HMRC is inaccurate and turns a blind eye to whether it is inaccurate (see *CPR Commercials Ltd v HMRC* [2023] UKUT 00061 (TCC))."

62. It is right that the FTT's finding at [150(32)] that the Applicant may have had constructive knowledge or means of knowledge (that it would or should have been obvious to the Applicant that the returns were inaccurate), would be an insufficient basis on which to make a finding of deliberate conduct. It relies on an objective test equating to objective recklessness – failure to give thought to an obvious risk rather than a subjective finding of actual knowledge or blind eye knowledge – deliberately and without good reason choosing to ignore a reasonable suspicion.

63. Nonetheless, any error is not material because this was merely part of the supportive reasoning in relation to its actual conclusions. The FTT went on to make explicit findings at [150(33)] that the Applicant deliberately rendered a return he knew to be inaccurate and at [153] that he rendered inaccurate returns understating his tax liability and knew or turned a blind eye to the returns being incorrect. It therefore came to two explicit conclusions that accord with the level of mental state required for deliberate conduct and it applied the correct legal test.

64. At [26] of the Grounds, Ms Duncan argued that the FTT "made no finding that the Appellant possessed actual knowledge of an inaccuracy". In her supplementary submissions she argues that that findings at [150] do not establish deliberate behaviour. She argues that the FTT articulated the correct legal framework in general terms at [12] yet applied a different standard in substance when reaching its conclusion at [153]. The findings at [150(1)]–[150(39)] of the Decision concern record-keeping, credibility, and residence, but do not show an intention to mislead.

65. She also argued that much of the reasoning in [150(3)], [150(27)], and [150(32)] rests on assertions that the Applicant "should have known" or "failed to evidence" the accuracy of his returns. However, the Decision does not explain why it would have been reasonable to expect the Appellant personally to have identified the alleged inaccuracies, particularly given his reliance on professional advisers, residing abroad, and the complex cross-border context in which the returns were prepared. The analysis therefore does not engage with the Applicant's individual circumstances or with the high threshold set by Tooth for establishing a deliberate intention to mislead. In the absence of clear reasoning as to how the Appellant's state of knowledge met that test, the conclusion at [153] is unsustainable on the findings made.

66. I reject these arguments. In reality, this was an *Edwards v Bairstow* challenge to factual findings made by the FTT on the basis that it provided no or insufficient evidence or reasons in support of the findings. This is a high threshold to meet and it is not met in this case. The FTT's findings and reasoning in support must be read as a whole and in context. The FTT's

findings of fact are clearly and helpfully set out in 39 numbered sub-paragraphs at [150] as well as at [152]-[153]. At [150(33)], the FTT makes an explicit finding of fact of actual knowledge that: "…the Appellant deliberately rendered to HMRC tax returns which he knew to be incorrect".

67. It made a number of adverse findings as to the Applicant's credibility based on the lack of evidence provided by him on a number of matters or the inconsistency of his evidence with other documentary evidence at [150]. For example, it found that the Applicant was operating an off-record property management business at (1)-(7) of [150] the income from which he did not record in business records nor declare to his accountants or those preparing his accounts and returns:

> (1) I reject the Appellant's statements and assertions that he ran his business by way of legitimate business principles. In correspondence he has accepted that he used his private bank accounts for business purposes and that is contrary to legitimate business.
> (2) I also find business practices of advancing rent to landlords without having found a tenant and otherwise fronting payments for tenants to have been highly risky and thereby unlikely to have happened.
> (3) If either of these purported business practices, had in fact carried out, the Appellant could have evidenced them for some of the periods assessed by reference to statutory records. At the start of the investigation the Appellant should have retained records back to 2010; a significant proportion of the UK deposits were made in the period 2010 – 2016 but the Appellant chose not to produce records supporting these practices.
> (4) The business records did not record the receipt of any loans from family to support the business.
> (5) I am prepared to accept that the bookkeeper and accountants prepared the books and accounts believing them to be correct by reference to the documents provided to them by the Appellant but that assumes that full records were provided to them. In view of the level of deposits into personal accounts and the pattern of such deposits (small in value and large in number/frequency) I consider it reasonable to infer and so decide that the Appellant did not provide full records of his activities to those producing his accounts and tax returns.
> (6) That conclusion is corroborated by the inconsistencies identified by HMRC in the business records.
> (7) I consider these inconsistencies permit a reasonable inference that prior to incorporation of ARCL the Appellant operated on record and off record property management businesses. Post the formation of ARCL the Appellant continued to operate an off-record property management business in his own right.

68. Ms Duncan submits that the Decision at [150(1)]–[150(7)] pertains to findings relating to use of private accounts, alleged risky practices, and missing records. These may justify a finding of carelessness (which is not admitted) but not deliberate conduct.

69. I reject this argument. The findings do not amount to carelessness but amount to the Applicant deliberately not providing full records of activities so as to avoid disclosing the income from his off-record property management business.

70. She argues that the FTT accepted at [150(5)] that professional advisers prepared the accounts but did not assess whether the Appellant relied upon them in good faith. The omission is material. *Tooth* at [47] requires evidence of intention to mislead, not confusion or misplaced reliance.

71. Again, I reject this. The FTT found that the Applicant did not provide full records to those producing his accounts and tax returns. It made other findings of an intention on his part to mislead HMRC. This could not reasonably permit of any possibility that he relied on the accounts produced by professional advisers in good faith as the finding is to the effect that he deliberately did not provide all the relevant information for the accounts to be prepared accurately.

72. At [150(17)-(30)] the FTT made further adverse findings against the Applicant to the effect that he received income from undeclared trading in his bank accounts which he did not declare to HMRC:

> IOM bank accounts
>
> (17) The Appellant held 5 banks accounts in the IoM at least for the period 6 April 1999 to various November 2013.
>
> (18) At least one account of the actively used accounts was opened on the basis that the Appellant declared that the sources of funds to be deposited in the accounts included his property management trade. No mention was made of family savings as a source of funds and the account was not opened on the basis that the Appellant was acting as a trustee or that there were any other beneficiaries of the accounts.
>
> (19) In the period 6 April 1999 – 27 September 2012 over 400 cheques totalling £764,655 were deposited in the accounts. The cheques were all from UK bank accounts owned by parties other than the Appellant and were sent by post by the Appellant to the IoM.
>
> (20) The value and frequency of the deposits reflect that they were part of a trade rather than savings deposits.
>
> (21) On closure of the accounts a transfer of £85,199,38 was made to one of the Appellant's UK bank accounts and two transfers totalling £716,017.08 were transferred to his own bank accounts in South Africa and not, as would be consistent with his position in this case, to other family members.
>
> (22) Given my findings in subparagraphs (17) – (21) above I consider there is no evidence that the deposits which remain part of the assessed amounts represent family savings. I consider it is reasonable to infer without alternative explanation that they are income from a property management trade.
>
> UK Private accounts
>
> …
>
> (26) The deposits into the Appellant's accounts cannot be explained as dividends or employment income paid by ARCL in the relevant periods as the statutory records for ARCL do not show such payments has having been made.
>
> (27) All other explanations provided by the Appellant lack credibility in all the circumstances and have not been proven by reference to any other evidence. Whilst I accept that the Appellant was not required to retain records for more than 6 years, he has provided no evidence from within the records he was required to maintain (which at the start of the enquiry would have gone back to 2010) to support any contentions made as to the source of the deposits.
>
> (28) The unexplained deposits into these accounts exceeded declared turnover for the business. It is reasonable to infer that thereby represent undeclared income from the business.

(29) That finding is corroborated by the declaration made as to the Appellant's earnings when opening one of the UK bank accounts in which he stated that his total income was £80,000.

(30) It is further corroborated by the inconsistencies in the business records disclosed to HMRC.

73. Ms Duncan submits that [150(17)]–[150(30)] of the Decision concerned findings on the Applicant's Isle of Man and UK bank accounts, frequency of deposits, and inconsistencies in explanation. These go to source of income but not to the Applicant's state of mind at the time the returns were signed. She argues that none of the findings in [150(1)]–[150(39)] identify a single contemporaneous document or communication evidencing the Appellant's knowledge of falsity or suspicion of error when signing the returns.

74. Again, I reject this – the FTT finds that the Applicant has consciously, deliberately and repeatedly underdeclared turnover and income in a number of contexts (to HMRC, to banks and to the FTT) and this supports the findings and accompanying reasons at [150(32)] that he deliberately did so when not declaring or understating it on his tax returns.

75. The FTT gave specific reasons founded in the evidence at [150(32)], the number and total value of deposits not declared in the tax returns, in support of its conclusions at [150(33)] and [153]. It gave further reasons at [150(34)-(35)] in support of a finding that the Applicant had an intention to mislead HMRC in a number of regards. This also supports its conclusions of an intention to mislead in making declarations and actual knowledge of inaccuracies in the tax returns.

76. The FTT drew reasonable inferences from the evidence, or lack of evidence, to which it referred which it was entitled to draw. It made rational findings that it was entitled to make – it made findings that a properly instructed could reasonably make on the evidence before it:

"150…(32) The number and total value of the deposits is significant in total and on a year in year basis. When signing the return declarations it would or certainly should have been obvious to the Appellant that they were incorrect and that by signing the return HMRC would rely on the return and the declarations.

(33) I consider that the Appellant deliberately rendered to HMRC tax returns which he knew to be incorrect. The figures are material.

(34) Whilst not directly relevant to whether the returns were rendered on the basis that they were deliberately inaccurate I also note that the Appellant has sought to and actively mislead HMRC on a number of occasions:

(a) By asserting that for 2012/13 he was not resident in the UK and was resident in South Africa despite the basis on which his returns were rendered and having only spent 9 days in South Africa. The Tribunal was also misled in this regard.

(b) He has asserted that he has correctly accounted for all income, in particular the interest on the IoM accounts, in South Africa but SARS has confirmed that he did not.

(c) His explanation for the deposits has varied over time evolving as each previous explanation was refuted or challenged.

(35) A further propensity to mislead is demonstrated by the Appellant's explanation of the reason for recording £80,000 on one of the UK bank accounts (i.e. that the account was opened with an aim of securing a mortgage) and his explanation for not completing returns on the basis that he was non-resident (again stated to be for mortgage purposes).

…

> 153. I have also found that the inaccuracies were deliberate. The Appellant rendered returns which understated his liability to tax in each year knowing or turning a blind eye to whether they were incorrect."

77. Ms Duncan argues that the FTT made a conclusive finding unsupported by contemporaneous evidence or analysis of intent. No documentary evidence is cited or identified in support of the conclusion at [153].

78. She also contends that the FTT relied on inconsistencies in explanations over time at [150(34)]–[150(35)]. These findings concern inconsistent explanations and post hoc justifications. Even if accepted (which it is not), those inconsistencies do not prove an intention to mislead at the time of filing, which is the material moment under Schedule 41 FA 2008 and section 118(7) TMA 1970. Accordingly, while the FTT cited the correct legal principle in form, it applied a lower threshold in substance. It treated the mere absence of corroborative material and changes in explanation as sufficient to infer deliberateness, rather than examining whether there was any proven intention to mislead. The Appellant's position has always been that his actions were consistent with a genuine belief in the accuracy of his returns at the time of submission, and the FTT's failure was in elevating evidential gaps into proof of deliberate conduct, contrary to the test in *Tooth*.

79. For the reasons set out above, I reject all these arguments. The FTT provided sufficient and rational reasons, founded in the evidence it identified and to which it referred, made reasonable inferences it was entitled to make in support of adverse conclusions at [150(33)] and [153] which were repeated and satisfied the correct legal principles on deliberate inaccuracy.

80. I refuse permission on Ground 2.

Ground 3 - the FTT failed to give adequate reasons for penalty findings

81. The FTT at [76], stated:

> "By their skeleton argument HMRC also invite me to uphold the Penalties in identified sums. I have spent some considerable time trying to calculate the basis on which the revised penalties have been calculated. The penalty schedule provided by HMRC does not add up to the total figure claimed and I do not therefore know on what basis the penalties have been calculated. The Penalties for 1999/00 and 2000/01 remain at 192.5% of the tax assessed. However, for later periods the relevant correlation no longer applies. I have tried to determine whether HMRC has sought to split the calculation between onshore and offshore errors but that does not appear to be the case. I do not therefore know on what basis the Penalties have been calculated but set out below the percentages for each year. On the basis that the penalty percentages are equal to or less than 192.5% for Sch 18 I am satisfied that I consider them as presented to me."

82. Ms Duncan submits that, despite the uncertainty it identified, the FTT upheld the penalties in full and confirmed the characterisation of the conduct as deliberate ([153]). She contends that the Decision did not identify which parts of HMRC's penalty calculations were accepted, how any discrepancies were resolved, or whether any adjustment was made.

83. I reject this ground of appeal as unarguable.

84. The FTT's reasoning at [76] must be view in context. Paragraphs [17], [145], and [158] of the Decision are also relevant. At [17], the FTT set out the relevant legal framework including that these penalties under Sch 18 are charged at 200% of the potential lost revenue (the "PLR") and "Where a taxpayer provides full cooperation in telling, helping, and giving the penalty rate can be reduced to 150% of the PLR". At [145], the FTT records HMRC's submissions that they allowed a reduction of 5% (of the penalty range) for each of telling, helping, and giving. The effect of these reductions, and how it results in a penalty value of 192.5% of the PLR was explained at paragraph 311 of HMRC's written submissions for the hearing:

> "The Respondents have allowed a 15% reduction. This reduction is applied to the penalty window (the difference between the minimum chargeable penalty and the maximum chargeable penalty). The penalty window in this case is 150% to 200%, or 50 percentage points. 15% of the 50 percentage points is 7.5 percentage points. The maximum penalty of 200% of the PLR is therefore reduced by 7.5 percentage points for a total penalty of 192.5% of the PLR."

85. At [158], the FTT records its conclusion that the reduction given is generous.

86. In the light of the rest of the Decision and reading the whole paragraph in context, it is tolerably clear that the FTT finds at [76] that:

a. The FTT would have upheld penalties that were 192.5% of the PLR.

b. Some penalties were less than 192.5% of the PLR.

c. However, as it is not clear why the penalties are less than 192.5% of the PLR, the FTT will not increase them to 192.5%.

87. As such I am satisfied that there was no failure to give reasons and no arguable error of law in the Decision.

88. I refuse permission on this ground of appeal

Conclusion on grounds

89. I refuse permission on the grounds of appeal because they do not raise arguably material errors of law in the FTT's Decision. I am not satisfied that these grounds hold realistic prospects of success and there is no other compelling reason to grant permission to appeal.

Conclusion

90. Permission to appeal to the Upper Tribunal is **refused.**

Signed:	**Date: 4 November 2025**
JUDGE RUPERT JONES	
JUDGE OF THE UPPER TRIBUNAL	