



**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Applicant: Steven James Czerwionka	Tribunal Ref: UT/2025/000088
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE
Oral renewal of permission to appeal

Background

1. The applicant, Mr Czerwionka, applies to the Upper Tribunal (Tax and Chancery) ("UT") for permission to appeal against the decision of the First-tier Tribunal ("FTT") released on 12 June 2025 ("the FTT Decision") following a hearing which took place on 28 March 2025.
2. Mr Czerwionka renewed his application for permission to the UT. I had previously refused permission to appeal in my decision on the papers of 20 October 2025 ("the UT written permission refusal").
3. The FTT Decision concerned whether Mr Czerwionka should be allowed to bring a late appeal against an HMRC discovery assessment for the year 2016/17 removing an Enterprise Investments Scheme (EIS) claim from his self-assessment return, filed by Capital Allowances Consultants Ltd ("Capital") and which resulted in an additional liability of £19,443.60. Further to the EIS claim, which was stated to be in respect of an investment of £66,000, HMRC paid a tax refund to Capital Allowances Consultants Ltd, in relation to which Mr Czerwionka received approximately £6000.
4. The appeal was late by just over 4 years. Mr Czerwionka's explanation for the delay encompassed various personal and mental health difficulties and also his discovery of other FTT decisions involving the same agent and similar claims that had been denied by HMRC but where the taxpayer had succeeded either in their appeal or getting permission to pursue their late appeal. The FTT refused permission to bring the late appeal. Mr Czerwionka applied to the FTT in-time for permission to appeal which the FTT refused in its decision of 14 August

2025. On 22 August 2025 Mr Czerwionka made an in-time application for permission to appeal to the UT which was forwarded to me to deal with on 23 September 2025.

Upper Tribunal's jurisdiction on appeal

5. An appeal to the Upper Tribunal from a decision of the First-tier Tribunal can only be made on a point of law (s11 of the Tribunals, Courts and Enforcement Act 2007). It is therefore the practice of the Upper Tribunal in this Chamber only to grant permission to appeal where the grounds of appeal disclose an arguable error of law on the part of the FTT.

Grounds of appeal in written application

6. As explained in the UT written permission refusal, I had considered Mr Czerwionka's application of 22 August 2025 to raise in essence the following main groups of issues, none of which for the reasons I explained there had raised any arguable point of law:

- (1) Failure to take account of various legal principles regarding fraud.
- (2) Challenge to a number of findings of fact and/or the FTT's evaluation of those facts.
- (3) The similarity of Mr Czerwionka's case with other decisions of the FTT involving the same agent and similar claims refused by HMRC but where the taxpayer had succeeded.

Grounds developed in Oral submissions at renewal hearing and further documents sent in

7. At the oral renewal hearing I heard from Mr Czerwionka, assisted by Mr Richard Tweddle. On behalf of HMRC, Ms Basma Osman attended by video to observe and assist with the tribunal's questions rather than to make representations. She had not appeared before the FTT. At my request she provided, after the hearing, a copy of HMRC's FTT bundle. That bundle did not contain copies of the relevant self-assessments so I asked that the appellant provide the three HMRC computer printouts of self-assessment records which he had obtained from HMRC and in relation to which he had submitted there was nothing to indicate he had authorised the returns. He also provided a letter advancing a further alleged error of law namely that, because there were no signed assessments before the FTT, the proceedings were a nullity.

8. Reference was also made to a UT permission decision of Upper Tribunal Judge Zaman refusing permission in another case where similar arguments were made and where the applicant was also assisted by Mr Tweddle (*Hosie refusal on oral renewal of PTA* [2025] UKUT 00432 (TCC)).

9. The appellant developed and added to his earlier grounds. He submitted that the FTT misapplied the three-stage approach to late appeals in *Martland v HMRC* [2018] UKUT 178 (TCC). He accepted that the delay was substantial, being more than four years, but argued that the FTT failed to assess the reasons for delay properly and failed at stage three to consider all the relevant circumstances. His overarching complaint was that the FTT did not undertake a holistic assessment at either stage two or stage three. The alleged failures also break down into a number of discrete points.

10. Having reflected on them, I consider that some of the points raised disclose arguable errors of law and I grant permission on those grounds in the terms which I have set out. For clarity, I group the grounds on which I grant permission separately from those on which I refuse permission rather than dealing with them in the sequence they were argued before me.

GROUND ON WHICH PERMISSION TO APPEAL IS GRANTED

Ground 1: Error in not taking account appellant's case that he was pressured and/or felt pressured into not pursuing an appeal.

11. The appellant's case is that he was pressured in a HMRC telephone call to pay immediately rather than to appeal, at a time when he was vulnerable. He also says he made repeated subject access requests for the recordings of those calls but received only brief written summaries. He says the FTT was aware of both points yet did not address them in its evaluation of his reasons for delay.

12. The materials before the FTT show he did raise these points. The appellant's witness statement and his written objection referred to his Subject Access Requests for HMRC's notes and the recording of a telephone call dated 7 February 2019. Before the FTT, HMRC's written objection strongly denied that any pressure was applied. It is less clear whether HMRC disputed the appellant's evidence that he *felt* under pressure. The issue of whether the appellant was pressured or reasonably apprehended such pressure was potentially relevant to his explanation for his failure to appeal in time. As the FTT Decision did not refer to this when setting out and evaluating his reasons for delay, it is at least arguable that the FTT failed to take into account a relevant consideration.

13. Permission to appeal is granted on Ground 1.

Ground 2: Error in not taking account, when evaluating the merits, appellant's case that he had not authorised Capital to file his return

14. The appellant's case was that he did not authorise Capital to file his self-assessment returns. That case appears in his notice of objection before the FTT and in a letter in the same format as his other documents described as "witness statements". Those documents contained both evidence and submissions.

15. The FTT's reasons do not engage with this issue. While the FTT recorded at [5] that the appellant "enlisted the services of Stefan Brown and Richard Hall of Capital to submit tax returns on his behalf for the tax year ending 5 April 2017", that appears as a statement of the FTT's understanding of the background facts. It did not purport to set out the FTT's view of the appellant's case regarding the self-assessments not being authorised when considering the merits of his appeal at stage three. It is at least arguable that the FTT erred by not addressing the authorisation issue when evaluating the merits in outline.

16. As to the significance of any such error, in my earlier refusal I noted that the appellant had not set out any detail of his dealings with Capital and that the WhatsApp messages he had put before the FTT were not inconsistent with authorisation. Having now seen the FTT bundle and what was advanced by HMRC, I am satisfied that any failure to consider the case on lack of

authorisation could be potentially material. There is no indication that HMRC had put forward any countervailing evidence of actual authorisation or indeed what evidence they would advance on the issue. (HMRC's objection submissions suggested the appellant had authorised "a claim", but did not address the distinction the FTT drew in *Robson v HMRC* [2023] UKFTT 226 (TC) between authorisation of a return and authorisation of a claim. Nor for instance was any case set out that it was sufficient from HMRC's point of view that the agent had apparent authority). In those circumstances it is at least arguable that the FTT could, on the basis of what was before it, without detailed investigation of the merits or fact-finding on disputed facts have treated the merits in the appellant's favour as overwhelmingly strong or at least strong enough to carry material weight at stage three. **Permission is granted on Ground 2.**

Ground 3 – error in not considering absence of prejudice to HMRC

17. The appellant argued that allowing a late appeal would cause no prejudice to HMRC because HMRC remained engaged in litigation on similar issues involving the same agents, and the evidence remained available. He relied on an FTT decision *Huntly v HMRC* [2022] UKFTT by way of analogy where the point was made that there would be limited time and cost associated with adding the taxpayer's appeal to the other cases proceeding in the FTT. The FTT had erred in not taking into account this lack of prejudice. Given the FTT Decision did not address this point this error of law is at least arguable.

18. Permission to appeal Ground 3 is granted.

Grounds 4 – error in misunderstanding the appellant's explanation for the delay

Ground 5 – error of legal approach in failing to consider the appellant's reasons for delay and all the circumstances of his case in a combined way

19. It is convenient to address these two grounds together. Under Ground 4 the appellant says the FTT wrongly proceeded (at [30] of its decision) on the basis that in his written and oral submissions the appellant's case revolved simply on his later discovery of favourable FTT decisions. That was incorrect because his case had in fact relied on multiple factors which included his mental health difficulties, personal circumstances, the pressure he says he felt from HMRC, and the alleged fraud.

20. While I cannot see how the FTT Decision's account of the *oral* submissions can be challenged (no judge's note of the FTT hearing having been obtained to suggest that the FTT Decision was incorrect on this point), as regards the written submissions there appears nothing on the face of those to suggest the appellant was only relying on the discovery of the FTT decisions. To that extent the misunderstanding of the appellant's written case is an error of law which is at least arguable.

21. In my permission refusal I had queried the materiality of any alleged error here because the FTT had, in the appellant's favour, gone on to consider the merits of the appellant's explanation on personal circumstances in any event. In the light however of the FTT's statement in the final paragraph at [42] that the appellant's "only reason for bringing this appeal now is to benefit from other recent FTT decisions" (a finding which preceded its conclusion that it was not

appropriate to give permission to appeal late) I can see that the error (particularly when considered with the ground below) might have made a difference to the outcome.

22. Permission is granted on Ground 4.

23. Under Ground 5, the appellant argues that when evaluating the delay the FTT did not look at the combination of his particular circumstances. He argues that a proper evaluation at stage two required the FTT to look at the cumulative picture, including the nature of his work (an oil and gas project worker who worked away from home in remote locations for long periods), his mental health, the alleged pressure from HMRC, and the question of when he first had reason to think he had a viable case following the other FTT decisions on similar cases becoming known.

24. The FTT relied (at [31]) on the lack of medical evidence as to him being able to “participate in the appeal process”. To the extent that meant the FTT did not consider there was medical evidence that he was unable to file an appeal that would not address the wider point that the personal and other circumstances meant he was unable to meaningfully engage with whether it was worthwhile filing an appeal.

25. The FTT referred to *Mulvenna & Anor v Secretary of State for Communities and Local Government* [2015] EHC 394 (Admin) and *Moor and Anor v HMRC* [2022] UKFTT 411 (TC) at [94]) in essence for the proposition that publication of a new authority that prompted an out of time appeal was not, for reasons of good administration and finality, a good reason for appealing out of time. This approach assumes that litigants ought to have been in a position to take a view on the merits of their case sooner. That was why it was not a good reason to wait for others to show the way. That assumption could not, it may be argued, fairly apply to the appellant however given the personal and other upheaval he faced during the period of delay.

26. On the basis the error to the look at the appellant’s circumstances in combination is at least arguable **I grant permission on Ground 5.**

GROUND ON WHICH PERMISSION TO APPEAL IS REFUSED

Ground 6: The FTT failed to take various legal maxims relating to fraud into account

27. The appellant relied on the maxim that fraud “unravels all” as set out in the House of Lords’s discussion at [15] of *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6 , submitting that alleged fraud by his former agents was fundamental and should have been treated as materially affecting both the explanation for delay and the fairness of refusing a late appeal.

28. For the reasons set out previously in the UT permission refusal decision, the appellant’s reliance does not help in showing an error of law in the FTT Decision. This was not a case where HMRC was accused of fraud or indeed the fraud was proved. It was not explained how the fraud maxims, taken as legal principles, converted the late appeal discretion into an obligation to extend time. Nor was it explained how those maxims meant the appellant would necessarily succeed in showing how the underlying tax liability HMRC imposed on him was wrong. (To the extent the alleged fraud provides factual context for the authorisation issue, that is addressed under Ground 2). For present purposes, no arguable error of law arises from the

FTT's omission to take account of the fraud maxims. **Permission to appeal this ground is refused.**

Ground 7: Failure to consider other FTT decisions

29. The appellant relied on various FTT decisions involving EIS claims by an agent alleged to be fraudulent including *Robson, Huntly v HMRC* [2022] UKFTT 135 (TC) and *Stoney v HMRC* [2025] UKFTT 850 (TC), contending that his case was materially similar and that the FTT failed to give those decisions appropriate weight.

30. Except in so far as those decisions support the appellant's case in respect of other grounds (such as authorisation or prejudice), there is no arguable error of law in the FTT's treatment of such other FTT decisions. Those decisions are not binding. It was open to the FTT to conclude that they did not make the appellant's merits overwhelmingly strong (*Stoney* it will be noted pre-dated the FTT Decision here so could not have been considered). As regards the evaluation of the appellant's delay, it was open to the FTT to conclude, for reasons of finality (as discussed in *Mulvenna* and *Moor*), that becoming aware of a later decision is not in itself a good reason for waiting to file an appeal. The underlying facts relevant to the appellant's case and which were relied on here, such as lack of authorisation, were within the appellant's knowledge. (To the extent the appellant's personal circumstances are relied on to explain why the appeal's viability was not known sooner that is the subject of Ground 5 in relation to which permission has already been granted.)

31. Permission to appeal Ground 7 is refused.

Ground 8: Error in treating the self assessment returns as valid because not signed and because of Bills of Exchange Act 1882 and that therefore the procedural time limits did not apply

32. The appellant argued that his self-assessment returns were void because they were unsigned or unauthorised, advancing arguments under the Bills of Exchange Act 1882 to the effect that liability requires a signed instrument. The question of authorisation is addressed in Ground 2, on which permission is granted. The separate arguments about signature and the Bills of Exchange Act do not disclose any error of law which is arguable. Mr Tweddle's various submissions regarding the Commissioners being constituted as legal persons, the appellant's consent by signature being required and that the Bill of Exchange Act 1882 provisions overrode assessment requirements set out in secondary legislation, do not raise points of law which are arguable. There is no legal requirement that a self-assessment return be signed in the sense relied, the Bills of Exchange Act does not govern the creation of tax liabilities under statute (which regime is set out in the primary legislation), and its provisions would not in any case apply for the reasons explained by Judge Zaman in *Hosie* (see [32] to [35]).

33. Permission to appeal Ground 8 is refused.

Ground 9: Omission of assessments in bundle before the FTT meant the proceedings were void

34. In a letter sent shortly after the hearing before me the appellant argues that HMRC failed to provide the relevant self-assessments to the FTT, meaning the FTT decided the case without the core evidence on which the dispute depended. He contends that this omission rendered the FTT's decision legally flawed, unfair, and effectively a "void act", because the Tribunal reached a conclusion on a hypothetical basis, without the factual material needed to adjudicate whether the returns were authorised or valid.

35. These points do not raise any point of law which is arguable. The purpose of the hearing before the FTT was to decide whether permission should be given for the appellant to make an appeal despite it being late. It was not required to adjudicate on whether the returns were authorised or valid but, without entering into a detailed investigation, to consider the strength or weakness of the appellant's case when balancing all the circumstances of the case. While a lack of evidence about the assessments might be potentially relevant to whether HMRC had provided evidence sufficient to contradict the appellant's case on lack of authorisation (the subject of Ground 5 in relation to which permission has been granted) it could not of itself make the late appeal proceedings before the FTT or its decision a nullity. **Permission to appeal Ground 9 is refused.**

Ground 10: Misunderstanding of the facts around marital breakdown.

36. The appellant says the FTT misunderstood the chronology of separation and divorce, which he says began in December 2018, with separation around July 2019 and divorce proceedings in late 2021, which then concluded in May 2023. As explained in the UT refusal of permission decision, the FTT proceeded however in essence on the basis of the appellant's account rather than on HMRC's. In other words, to the extent there was any error in what HMRC had said about the timing then that was not something which the FTT had then relied on. Any error could not therefore be significant to the FTT's conclusion.

37. Permission go appeal Ground 10 is refused.

Ground 11: Failure to recognise his vulnerability.

38. The appellant argues that the FTT failed to recognise his vulnerability and litigant-in-person status. The FTT considered his difficulties, expressed sympathy in its decision and, on the materials before it, dealt with him appropriately at the hearing. There is nothing to suggest improper treatment, cross-examination or questioning that could amount to an error of law. By the appellant's own account before me the FTT panel were patient in their handling of the hearing. To the extent there is overlap with Grounds 4 and 5 as regards consideration of the appellant's personal difficulties then that is addressed above.

39. Permission to appeal Ground 11 is refused.

Conclusion

40. Permission to appeal is **granted on Grounds 1- 5** above.

41. Permission to appeal on **Grounds 6-11** above is **refused**.

42. To the extent any grounds remain which are pursued from the appellant's written application which have not been dealt with specifically above then they are refused for the reasons set out in the earlier UT permission refusal decision.

Next steps and points for appellant to be aware of

43. Where the Upper Tribunal has granted permission to appeal (as I have done on the Grounds 1 to 5 as stated above) the application for permission to appeal would normally, unless the tribunal directs otherwise, stand as the appellant's notice of appeal (Rule 23(1)(c) of the UT Rules).

44. In the UT permission refusal decision I had described how the appellant's application of 22 August 2025 comprised 14 pages or so of narrative making a number of points, many of which overlapped or which repeated the same point, some being put at high level of generality (for instance that the refusal was unjust or violated equity).

45. I direct the grounds which stand (subject to the appellant's confirmation below) as the appellant's grounds in its notice of appeal are the grounds as I have expressed them above in this decision.

46. As the grounds as I have stated them are worded differently to the appellant's application, and for the other reasons mentioned below, I consider it appropriate to give the appellant the opportunity to confirm within 28 days of the issue of this decision that he wishes to pursue some or all of the grounds that I have stated. (The time limit for HMRC to file a response (under Rule 24 of the Upper Tribunal Rules) will only start after the appellant provides such confirmation or the 28 day deadline expires).

47. The appellant should be aware of following points and is encouraged to seek legal advice.

(1) The grant of permission to appeal does not guarantee the appellant will be successful following the final Upper Tribunal appeal hearing. It simply means that the appeal is permitted to proceed to a full hearing on the grounds I have stated above before the Upper Tribunal. Even if successful in identifying errors of law in the FTT Decision, an Upper Tribunal hearing his substantive appeal would need to be persuaded those errors were material to the outcome before it set the FTT Decision aside. Moreover, remembering that the decision on whether to permit a late appeal is a matter of discretion, if having set the FTT Decision aside, the Upper Tribunal remade it, or remitted it to the FTT for the FTT to hear it again, it is possible that even when any errors were corrected the overall outcome (that permission to appeal out of time be refused) might remain the same.

(2) If successful in overturning the FTT decision and changing the outcome on permission to make a late appeal there would then need to be a further hearing at which the appellant's appeal against the discovery assessment would need to be determined. It should not be assumed that success in a UT appeal against the FTT late appeal decision would mean success in any subsequent substantive hearing of the appellant's appeal against HMRC's discovery assessment.

(3) Whereas in the FTT proceedings here the parties will have borne their own legal costs, in the Upper Tribunal parties can apply for costs orders against the opposing party. Subject to the tribunal's discretion, the usual order made is that the party who loses the appeal should bear the legal costs of the party who won the appeal. In other words, if he lost, the appellant might be made liable for HMRC's legal costs.

48. The appellant is directed, within 28 days of the issue of this decision, to confirm to the Upper Tribunal, and to HMRC, whether he wishes to pursue the appeal on the basis that Grounds 1 to 5 as stated above will stand as the grounds in his notice of appeal (and if not all grounds are pursued, to identify which ones are).

Signed: SWAMI RAGHAVAN JUDGE OF THE UPPER TRIBUNAL	Date: 17 February 2026
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Issued to the parties on: 17 February 2026
