UPPER TRIBUNAL

TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00095 (TCC)

Applicant: Michael Kelly	Tribunal Ref: **UT-2025-000127**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL FOLLOWING CONSIDERATION AT AN ORAL HEARING

DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicant ("Mr Kelly") 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 10 July 2025 ("the Decision"). The Decision was made by the FTT following a video hearing on 16 April 2025 with further post-hearing submissions received in June 2025.

2. The FTT's Decision was to strike out the Applicant's appeal which he had made against HMRC's decision dated 18 August 2023, to issue him a "consequential amendment notice" i.e. a notice under section 28B(4) of the Taxes Management Act 1970 ("TMA"). The notice made consequential amendments to the Applicant's self-assessment tax returns for the four relevant tax years – 2002-3 to 2005-6 (years ending 5 April 2003, 2004, 2005 & 2006).

3. References in square brackets [] are to paragraphs in the Decision unless context dictates otherwise.

4. The FTT struck out the Appellant's appeal on the basis that it decided it did not have jurisdiction in relation to the proceedings (see FTT Rule 8(2)(a)). It decided that consequential amendments notices are not closure notices nor assessments to tax which would give rise to an appeal under either section 31(1)(b) or (d) of TMA (see [18] and [22]).

5. The FTT also decided that the applicant had no right of appeal under section 32 TMA (see [26]-[30]).

6. HMRC had submitted that the Applicant's remedy in respect of his assertion that he does not owe the tax said to be due is to make a claim for overpayment relief.

7. By a decision dated 9 October 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.

8. The Applicant renewed his application to the UT for permission to appeal in-time on 8 November 2025 within a month thereafter. I directed that the application for permission to appeal be considered at an oral hearing, as had been requested by Mr Kelly, for the reasons explained in directions dated 23 December 2025.

9. The application for permission was heard before the UT at an oral hearing by video on 25 February 2026.

10. Mr Kelly appeared in-person as the Applicant, making oral submissions and relying upon written submissions in support of the application dated 19 February 2026. Mr David Street of HMRC appeared for the Respondents at the hearing relying on oral submissions and a written response dated 16 February 2026.

11. Before the hearing on 25 February 2026, the parties also forwarded to the UT copies of the hearing and supplementary bundles of material that were before the FTT together with a bundle of material for the UT.

12. I have considered all written and oral submissions together with the documents served.

UT's jurisdiction in relation to appeals from the FTT

13. 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.

14. 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.

The grounds of appeal to the FTT and the Decision

15. The Applicant's notice of appeal to the FTT was dated11 October 2023. It stated that the amount of tax in dispute was £6,581.16 and that the appeal was made in time (there being a month deadline from any of HMRC's decision in which to appeal).

16. The Applicant's grounds of appeal stated:

> "HMRC have recently adjusted my tax returns for the years ending 5.'4

> 2003,2004, 2005 and 2006.
>
> They have made errors in making those adjustments.
>
> I have repeatedly and clearly informed HMRC of those errors and how those errors overstate the tax HMRC are claiming is due
>
> HMRC continue to ignore my concerns and refuse to enter into any meaningful dialogue with me to attempt to arrive at mutually agreed adjustments.
>
> HMRC have also failed to supply documents which they, falsely, claim the adjustments are partially based on."

17. The grounds of appeal refer to HMRC having 'recently adjusted' the Applicant's tax returns and having made errors in doing so.

18. The letter uploaded and attached to the notice of appeal was HMRC's letter dated 29 September 2023. That letter referred to HMRC's letter dated 18 August 2023 with a Notice of Amendment for Invicta Film Partnership and follow up reminder letter of 8 September 2023. The letter stated that HMRC was utilising the losses as result of the amendment in 2003-04 and attached a self assessment statement dated 29 September 2023 stating that the net amount of tax due was £6,577.41.

19. The FTT explained this background at para 10 of its Decision:

> "(1) Mr Kelly was a member of two film partnerships, Invicta and Echo.
>
> (2) He returned income from both partnerships on his tax returns.
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> (3) On 28 February 2017 HMRC issued closure notices to Invicta for the tax years 2002/2003 to 2005/2006 ("the relevant tax years").
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> (4) On 18 August 2023, HMRC issued a "consequential amendment notice" (i.e. a notice under section 28B(4) TMA). These made consequential amendments to the appellant's self-assessment tax returns for the relevant tax years.
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> (5) On 8 September 2023, HMRC wrote to the appellant regarding an underutilised loss for the tax year 2003/2004 which arose because of the consequential amendments.
>
> (6) The appellant did not respond to this so on 29 September 2023 HMRC sent a further letter to the appellant explaining that they had now used the loss in the most beneficial way for him and sent him a self-assessment statement dated 29 September 2023 showing that the net amount due from him was £6,577.41.
>
> (7) On 11 October the appellant appealed to the tribunal against the adjustments made to his tax returns for the relevant tax years. The amount against which he appealed was £6,581.16…"

20. The FTT decided that HMRC's notice dated 18 August 2023 was a consequential amendment notice and not a partnership closure notice so it fell outside the ambit of appealable decisions pursuant to section 31(1)(b) of the TMA (see [15]-[17]). This was supported by the Court of Appeal in *Knibbs v HMRC [2019] EWCA Civ 1719* at [23]:

> "Upon completion of the enquiry, HMRC issue closure notice to the partnership and, if the partnership return is amended by the closure notice, HMRC must give each partner a notice and amending the partners return: section 28B(4). The partnership can appeal against the conclusions in or amendments made by the closure notice, but the individual partners have neither that right nor a right to appeal the notice given to them under section 28B (4)".

21. The FTT therefore decided that the Applicant therefore had no right of appeal against the consequential amendment notice – see [18].

22. The FTT also decided that the consequential amendment notice and subsequent correspondence of September 2023 were not an assessment to tax for the purposes of section 30A TMA and hence not appealable under section 31(1)(d) TMA – see [19]-[22].

23. The Applicant does not challenge these findings and conclusions of the FTT.

24. The FTT then stated at [23]-[30]:

> 23. I had also thought, at the hearing, that the appellant's appeal might fall within the ambit of section 32 TMA which brings with it a freestanding appeal right separate from the appeal rights under section 31 TMA. However, to fall within this provision, the appellant must have made a claim to HMRC that he has been assessed to tax more than once for the same "cause" and for the same chargeable period.
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> 24. If, having made that claim, it is refused by HMRC, then the appeal right arises.
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> 25. I sought, and was provided with, written submissions by both parties, on this point.
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> 26. It is self-evident that before the appeal right arises, the appellant must have made a claim in the first place, and that claim must have been refused by HMRC.
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> 27. Mr Kelly submitted that he has been in constant communications with HMRC explaining to them why, in his view, he has been overtaxed.
>
> 28. Having been through the documents, it seems to me that Mr Kelly's email to HMRC dated 23 March 2022 (a copy of which is embedded in his witness statement) might be construed as a formal claim that he has been assessed to tax more than once for the same cause and for the same chargeable period. And HMRC's email (the document on page 86 of the hearing bundle which I think was sent on 4 January 2024) could be construed as a refusal of that claim.
>
> 29. However, I was not taken to either document at the hearing, nor did either party refer to them in their submissions regarding the application of section 32 TMA. I am not, therefore, prepared to come to any conclusion as to whether there has been a claim and a refusal as is required by section 32 TMA.
>
> 30. But in any case, Mr Kelly's appeal was made on 11 October 2023 and thus could not have been an appeal against any such refusal. And so cannot not be construed as an appeal made under the provisions of section 32 TMA.
>
> 31. Regrettably for Mr Kelly, therefore, I am forced to conclude that I have no jurisdiction to consider his appeal and therefore must strike it out. The

> consequential amendment notice falls outside the ambit of section 31 TMA, and his appeal could not have been made under the provisions of section 32 TMA for the reasons given above."

25. Whether the Applicant's correspondence, including his email of 23 March 2022, and HMRC's reply of 25 March 2022 constituted a claim and refusal for the purposes of s.32 TMA was not a point that was the subject of the grounds of appeal to the FTT even though they were referred to in the Applicant's witness statement and the appeal was made in October 2023 before HMRC's letter dated January 2024 (which the FTT found might have constituted a refusal of a claim).

26. In any event the FTT found at [28]-[30] that none of these documents were referred to at the hearing in April 2025. Further, while the claim for double assessment and section 32 TMA were referred to in the Applicant's post-hearing submissions for the FTT dated 6 & 16 June 2025, following the Judge's directions, the Applicant's submissions did not refer to the email of 23 March 2022 nor HMRC's replies of 25 March 2022 nor January 2024 as being the documents that constituted the claim for double assessment or the refusal thereof.

The application to the FTT for permission to appeal to the UT

27. There was then an application to the FTT for permission to appeal to the UT by the Applicant dated 27 August 2025 with which the Applicant provided the same chain of four emails sent between HMRC and him that he had put before the FTT in his original witness statement. They begin with an email from HMRC dated from 25 March 2022 (set out below) with the Applicant's reply dated 30 March 2022 (these had previously been included in the Applicant's witness statement for the hearing at para 64 and Appendix 4). The other emails were an exchange between HMRC and the Applicant in September 2023.

28. In its PTA Decision the FTT refused the application for permission to appeal to the UT and stated:

> 16. In the application, however, the appellant produced an email dated 22 March 2022. The first time I saw this was when I received the application. It was not before me at either the hearing or in the appellant's subsequent submissions.
>
> 17. Even if this could be construed as an application to HMRC under section 32 TMA, and HMRC's response construed as a rejection which might bring the appellant's position within the ambit of section 32 TMA, my failure to consider it at the hearing or subsequently cannot be construed as an error of law given that it was not before me at the relevant time. The appellant clearly had an opportunity, when providing submissions on the application of section 32 TMA, to provide this exchange of emails, but failed to do so.
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> 18. I can therefore see no error of law in my decision that section 32 TMA could not apply to confer jurisdiction in relation to the appeal as there was no evidence before me at the relevant time that an application had been made to HMRC under that section nor any refusal of it.
>
> 19. The appellant is a litigant in person. I would not expect him to be aware of the subtleties of section 32 TMA. But it occurs to me that one avenue which

> he might wish to explore is whether it might still be possible to make a formal application to HMRC under that section. Should HMRC refuse it, then it might be possible for him to make an appeal under that section.
>
> 20. However, I can see nothing in the Decision which amounts to an arguable error of law.

29. The reference at [16] of the PTA Decision to an email dated 22 March 2022 not previously seen before by the FTT is unclear. The FTT had already referred to the email sent by the Appellant on 23 March 2022 which was in the Applicant's witness statement and considered by the FTT in its Decision at [28]. No email dated 22 March 2022 has been identified nor produced by any party and is not contained within the various bundles of documents provided to me.

Grounds of Appeal submitted to the UT

29. The Applicant's grounds of appeal to the UT are summarised at [20]-[26] of the 'reasons for appealing' document enclosed with the application for permission to appeal and notice of appeal:

> "20.The Tribunal failed to consider critical evidence, including evidence deliberately withheld by the Respondent and evidence that was included in the original bundle, but which the Judge incorrectly asserts wasn't, in arriving at its decision.
> 21. The Tribunal has failed to recognize the claim I repeatedly made, in detail, that I have been taxed twice on the same income, dismissing it because it didn't refer specifically to the relevant legislation.
> 22. The decision is not a decision on the case, but on a decision as to whether the case should be heard. In these circumstances it was incumbent on the Respondent to prove their case, not the Appellant to prove his case should be heard. The Tribunal placed an unjust responsibility on the Appellant to prove that they should be heard. On the balance of probabilities, the Tribunal has Jurisdiction and the appeal should have been allowed.
> 23. Rule 2(3) gives the Tribunal an overriding objective to deal with cases fairly and justly. HMRC have clearly and repeatedly taxed my income more than once for the same cause and for the same chargeable period. HMRC have also blocked all possible avenues to remedy this, including refusing to engage in ADR. The Tribunal decision maintains this injustice in violation of Rule 2(3).
> 24. The tribunal had insufficient evidence to support its decision, with critical information being deliberately withheld by the Respondent.
> 25. As noted above, I have new evidence that further indicates HMRC have misled the Tribunal and confirms my argument that the tax was not due to the 'consequential amendments'.
> 26. If the Tribunal decision is not reversed it would set an unfortunate precedent. It would enable the Respondent, whether unconsciously by accident or consciously by design, to use a spurious argument to deny a taxpayer any right to appeal to a Tribunal in similar circumstances."

30. The grounds of appeal are specified in Appendix 1A of the Appellant's submissions to the UT for the oral hearing dated 19 February 2026:

> 1 - HMRC failed to provide key evidence to the Tribunal. This failure was explicitly and repeatedly brought to the attention of the Tribunal, but the Tribunal proceeded to make its decision without considering this key evidence.

2 - Despite HMRC's withholding of key evidence, it is clear beyond reasonable doubt that I have been assessed to tax more than once for the same cause and for the same chargeable period and s32 TMA 1970 should apply.
3 - cl. 29 of the decision is incorrect, the relevant documents were provided to the Tribunal, I referred to them during the hearings and the Tribunal should not have ignored them in arriving at its decision.
4 - cl. 30 of the decision is incorrect. My email to HMRC dated 23 March 2022 can only reasonably be construed as a claim under s32 however to decide that the first refusal of that claim by HMRC was in 2024 is to completely ignore all the correspondence in between whereby I repeatedly claimed HMRC taxed my income twice and HMRC repeatedly refuse that claim. These refusals commenced well before the appeal was made on 11 October 2023, please see the attached e-mail string eg.
5 - cl. 11 (5) of the decision is untrue, at no stage in the proceedings have HMRC accepted this as having happened.
6 - Rule 2(3) gives the Tribunal an overriding objective to deal with cases fairly and justly. HMRC have clearly and repeatedly taxed my income more than once for the same cause and for the same chargeable period. HMRC have also blocked all possible avenues to remedy this, including refusing to engage in ADR. They have, in effect, defrauded me of over £6.5k. This is unjust and unfair and in these circumstances tribunal rule 2 (3) must be paramount. Instead, the decision incorrectly subjugates rule 2 (3) below flawed procedural arguments and in doing so removes the only means by which fairness and justice can prevail.

Relevant legislation

31. For direct tax cases section 31 TMA provides rights to appeal to HMRC against certain decisions they make. The precise terms are no longer relevant to this appeal. A taxpayer must first appeal HMRC's decision by sending a written notice to HMRC within 30 days from the date of the decision letter – see s.31A TMA. In the notice, the taxpayer must specify the grounds of appeal.

32. Section 32 TMA provides additional appeal rights against refusal of claims to double assessment (assessment to tax more than once for the same cause and chargeable period):

> 32.—Double assessment.
>
> (1) If on a claim made to the Board it appears to their satisfaction that a person has been assessed to tax more than once for the same cause and for the same chargeable period they shall direct the whole, or such part of any assessment as appears to be an overcharge, to be vacated, and thereupon the same shall be vacated accordingly.
>
> (2) An appeal may be brought against the refusal of a claim under this section.
>
> (3) Notice of appeal under subsection (2) must be given—
>
> (a) in writing;
>
> (b) within 30 days after the day on which notice of the refusal is given;
>
> (c) to the officer of Revenue and Customs by whom that notice was given.

32. Once a notice of appeal has been given to HMRC the taxpayer may also immediately appeal to the FTT or wait for HMRC to provide a decision on review, if offered or required, before doing so – see ss.49A & 49D TMA. If a review is proceeded with, an appeal to the FTT must

be brought within 30 days of HMRC's review decision or after the period in which HMRC should have concluded a review has ended – see ss.49E & G TMA.

Discussion and Analysis

33. I address in turn the six numbered paragraphs of the grounds of appeal at Annex 1A to the Applicant's submissions for the hearing on 25 February 2026. The Applicant concentrated upon these during his oral submissions. I identify them as six grounds of appeal.

Ground 1

34. This ground does not give rise to an arguable error of law in the FTT's Decision. The alleged non-production of documents by HMRC has no material bearing on the question of the FTT's Decision on lack of jurisdiction to hear an appeal and that the appeal should be struck out.

35. In any event, I do not accept the Applicant's criticism that HMRC deliberately withheld documents, let alone that they were relevant to the strike out application. There was an adversarial process in the appeal before the FTT with both parties producing the documents they wished to rely upon in support of their case in their lists of documents.

36. Even so, I accept HMRC's submissions that they did not fail to produce evidence that would have undermined their case and the Applicant made no applications to the FTT for specific disclosure of such. If the Applicant wished to produce evidence in support of an argument that section 32 TMA applied then he could have done so but he did not make the argument before or during the hearing because it was an argument raised by the FTT at the hearing. Likewise he could have brought forward further evidence relevant to the s.32 TMA argument, in his post hearing submissions but he did not file or serve anything further on the issue.

37. In respect of the Applicant's personal self assessment returns, HMRC had explained that they had not retained his returns for the years from 2003-6 due to their retention policy and they were open with the Applicant about this. It was a matter for the Applicant whether he had kept copies of his returns from this time period but it had no bearing on the question of jurisdiction which depended on the nature of the decision(s) under appeal.

38. In respect of the returns for Echo 2 Partnership, the Applicant did request these and they were included by HMRC in the supplementary bundle for the FTT hearing. They were not in the original bundle because HMRC did not get clarification on the Applicant's request for the production of these in time for inclusion in the original bundle.

39. HMRC received no request for the Invicta partnership returns to be included in the bundle.

40. In any event the issue before the FTT was not the rights and wrongs of the details of the amendments contained in the partnership return closure notices or in consequential amendments to the personal returns, to which these documents might be relevant, but the

question of whether the FTT had jurisdiction to hear an appeal or whether it should be struck out because the decision challenged was not appealable.

Ground 2

41. This does not give rise to an arguable error of law in the FTT's Decision. The applicability of s.32 TMA is a new point taken on appeal to the UT by the Applicant when it was not a ground in the notice of appeal to the FTT nor part of his submissions at the hearing. I am satisfied it was not part of the original grounds of appeal to the FTT. The FTT asked for submissions upon it after the hearing.

42. The FTT adequately explained at [26]-[30] of the Decision that it considered the point of its own initiative at the hearing and after receiving post hearing submissions. At [28] it accepted that it was arguable that the Applicant's email of 23 March 2022[1] might constitute an arguable claim for double assessment (assessment more than one time for the same cause) and HMRC's email of January 2024[2] arguably constituted a refusal of that claim.

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[1] The Applicant's email to HMRC dated 23 March 2022 states;

> "23 Mar 2022. 08:00 [Mr Kelly]
> Thank you for your e-mail of the 8th March. Please can you confirm receipt of this e-mail a.s.a.p.?
> After reviewing the calculations carefully it seems that HMRC may have made mistakes in the calculations:
>
> in the SA302_2003_04 reworking, HMRC have introduced the losses per the revised partnership return, but are still including the superseded Invicta profits of £5,238 in Profit from partnerships of £8,714, this overstates the tax payable by £2,095
> In reworking SA302_2004_05 HMRC appear to have added the reworked figure to the original rather than substituting the original with the reworked figure, so instead of replacing £3,887 with £3,854, HMRC have added them together to arrive at Invicta profits of £7,741 , this overstates the tax payable by £1 ,554.
> In reworking SA302_2004_05 HMRC appear to have similarly added the reworked figure to the original rather than substituting the original with the reworked figure, so instead of replacing £4,271 with £4,148, HMRC have added them together to arrive at Invicta profits of £8,419 this overstates the tax payable by £1,708.
> HMRC have therefore overstated the tax payable by a total of £5,357, i.e. if the above errors are corrected, your calculation of the additional tax payable should fall to £764? There should also be a corresponding reduction in the amount of interest payable?
> Also, I've checked and I don't appear to have received any letter dated 27 May 2017 from HMRC, please could you let me have a copy?
>
> Best wishes
>
> Mike"

[2] The email from HMRC to the Applicant in January 2024 is as follows:
"Thank you for your email of 18 December 2023.
In your email you state that you believe our consequential amendment amounts are incorrect as a result of errors made in our calculations relating to the partnership figures on the return.
I can see from previous emails between HMRC and yourself – more specifically in your email dated 23 March 2022 – that you believe the mistakes in our calculations are as a result of the Invicta amounts essentially being taken into account twice – that the original and the amended figures were added together, rather than substituted for each other.

43. However, the FTT decided that it could not properly decide the s.32 TMA argument based upon these documents for the reasons given at [29] because it had not received proper submissions upon this correspondence and which is now relied upon by the Applicant before the UT as constituting a claim and refusal for the purposes of s.32 TMA. The reasons it gave were rational and its exercise of discretion was rational – it decided it was not appropriate to make a formal determination about these documents in the absence of submissions upon these. The FTT did not fail to consider these documents at the hearing or subsequently after post hearing submissions but decided not to make a determination upon them given the absence of submissions upon the. This cannot be construed as an error of law given that the s.32A TMA issue was not argued in this way at the relevant time at the hearing or in post hearing submissions.

44. The only mentions of the emails were in the Applicant's witness statement but not as part of any submission that they were the decisions under appeal or that they gave rise to a double assessment claim and refusal for the purposes of s.32 TMA. Likewise, in the post hearing submissions, there was no mention of the emails of March 2022 and HMRC's email of January 2024. In the Applicant's submissions the only reference to March 2022 was to the fact that the Applicant had disputed the tax figures since that time. There was no reference to the March 2022 emails in the context of s.32 TMA.

45. The Applicant demonstrably had an opportunity after the hearing and when providing post hearing submissions on the application of section 32 TMA, to explain why the exchange of emails in HMRC in March 2022 and prior to or following the notice of appeal in October 2023 constituted a claim, refusal and appeal for the purpose s.32 TMA, but failed to do so. He provided no further emails than those already served. The FTT was entitled therefore to exercise its discretion not to decide the point when it was not properly argued and not a point identified in the grounds of appeal.

46. Further and in any event, as the FTT stated at [30], even though the FTT decided the email of 23 March 2022 might be construed as a claim to HMRC in respect of double assessment for the purposes of section 32 TMA, and HMRC's response in January 2024 might be construed as a refusal which might bring the appellant's position within the ambit of section 32 TMA, the Applicant's appeal dated October 2023 could not be against HMRC's subsequent refusal in January 2024. Again, there was no arguable error of law in this finding or conclusion.

Ground 3

47. The Applicant suggests that [29] of the Decision is incorrect and not only did he include the email dated 23 March 2022 in his witness statement but also referred to it during the video hearing before the FTT on 16 April 2025. Mr Street for HMRC, who attended that hearing,

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However, as per our response to that email, the original partnership figures present on your returns for the year in question related to Echo Number 2 Film Partnership, rather than Invicta Film Partnership No.14. There were no partnership figures entered for Invicta for the years 2003/04 to 2005/06, so while it may initially appear as though we are adding a reworked figure to an existing one, we are in fact adding a new figure while leaving the existing figure of a different partnership unamended.
I have included both emails mentioned for ease of reference.
As previously stated, I have based this response on our previous interactions; if in your most recent email your mention of miscalculations was referring to another issue, then please do respond with elaboration on this point so we can investigate further…"

submitted that it was not referred to in submissions and does not appear in his notes of the hearing although they are not verbatim.

48. The Applicant does not appear to have taken or provided any notes of the hearing himself and does not appear to have requested any notes or recording of the FTT hearing in support of this ground. There is nothing in writing to gainsay the FTT's finding. In those circumstances I do not consider it arguable that the FTT Decision erred when stating the March 2022 emails were not the subject of submissions during the hearing. I cannot find any arguable error of law in the FTT's finding of fact that the emails were not referred to during the hearing.

49. In any event, this ground is not in any way material.

50. The FTT of its own initiative raised the possibility of the email of 23 March 2022 constituting a s.32 TMA claim in its Decision even though this was not addressed in post hearing submissions. It accepted there was reference to that email in the Applicant's witness statement. It had invited submissions on the s.32 TMA issue as part of post hearing submissions. It gave rational reasons at [29] for not deciding the provision's applicability to the March 2022 correspondence because the parties did not address it. There was no arguably material error of law in the FTT exercising its discretion not to decide a point not originally raised by the parties and then not addressed in post hearing submissions so as to enable a just and fair decision to be made on the issue.

51. In any event, it found at [30] that there was no appeal against any refusal of a s.32 TMA claim because the only arguable refusal by HMRC occurred subsequent to the notice of appeal to the FTT.

Ground 4

52. There is no arguably material error by the FTT at [30] of the Decision. The point that the FTT was entitled to conclude is that the Applicant's appeal to the FTT was made in October 2023 but HMRC's arguable refusal of a s.32 claim was in an email in January 2024 (as cited above and at page 86 of the FTT bundle).

53. I accept that there in no arguable error of law in the FTT deciding that the applicant's email of 23 March 2022 might have constituted a claim to double assessment for the purpose of s.32 TMA and HMRC's email of January 2024 might arguably constitute a refusal of a claim. HMRC's email of January 2024 replies to the Applicant's email dated 18 December 2023 which is not provided Its contents are set out in the footnote above. The email arguably concedes that the Applicant's email dated 23 March 2022 may have been a claim for double assessment in the same cause because of the double accounting for the same profit 'the Invicta amounts essentially being taken into account twice".

54. However, even if HMRC's email is an arguable refusal of such a claim, it definitely post dated the appeal being made to the FTT in October 2023. Therefore even if this email did constitute a refusal of a claim by HMRC for the purposes of s.32(2) TMA, which might then

be appealed to HMRC and onwards to the FTT, it was sent two months after the appeal to the FTT had already been made. It was not the subject of the appeal.

55. Therefore the FTT did not arguably err at [30] in finding that the appeal to the FTT in October 2023 could not have been against HMRC's arguable refusal of a s.32 TMA claim in January 2024. There was no error in the FTT's conclusion, as set out in the Decision that, on the evidence before it, no such application to HMRC had been made and refused when the Applicant brought his appeal on 11 October 2023.

56. The FTT was not asked to exercise its discretion to treat the appeal dated October 2023 as an appeal against the later decision of January 2024. Nor were any submissions made that the appeal to the FTT should also include an appeal against the decision of January 2024 (something that the FTT might have been entitled to do by waiving procedural requirements for notification of an appeal to HMRC or the FTT pursuant to the FTT Rules). In any event it would have been entitled to exercise its discretion not to treat the appeal to the FTT as one in relation to the later decision of January 2024 for similar reasons to the reasons it gave at [29] of the Decision – there were no submissions made about this.

57. The FTT rationally and fairly took into account that the email from the Applicant dated 23 March 2022 and the email from HMRC in January 2024 were not referred to by either party in their post hearing submissions in June 2025. I have re-read those submissions to confirm this is correct. The FTT was entitled to decide that it would not consider whether those documents could be construed as a s.32 claim and refusal when it had received no submissions upon them and they did not form part of the appeal grounds to the FTT.

58. As before, the Applicant's appeal to the FTT did not purport to be against any decision of HMRC of March 2022 or January 2024. That correspondence was not mentioned in the appeal grounds and no issue of double taxation or s.32 TMA was raised in the appeal grounds. The Applicant appended HMRC's letter dated 29 September 2023 to his notice of appeal to the FTT, which in turn referred to HMRC's correspondence of 18 August 2023.

59. However the Applicant relies on the continuing course of correspondence between March 2022 and September 2023 as constituting a claim and refusal for the purposes of s.32 TMA. This point was not taken before the FTT and in any event does not give rise to an arguable error on the FTT's part. HMRC's letters of August / September 2023 contained the decisions that were subject to the appeal the FTT and the letter of 29 September 2023 was explicitly identified by attachment to the notice of appeal (although the letters of 18 August and 8 September 2023 were included by implication).

60. There was no error in the FTT finding that the letters from HMRC from August and September 2023 were in respect of a consequential amendment notice and utilisation of losses as that is what they were stated to be (hence they were not refusal of claims against double assessment and could not arguably be construed to be). The Applicant has not sought to challenge these conclusions.

61. While the FTT of its own initiative, considered whether to treat the appeal to the FTT as an appeal made for the purposes of s.32 TMA, and received post hearing submissions on this issue, it was not required to decide an issue that was not a ground of appeal. It was entitled to exercise its discretion in the way it did not to determine the issue, and for which it gave rational reasons at [29] of the Decision. This was a case management decision it was entitled to reach.

62. To the extent that the Applicant specifically relies on the earlier correspondence of March 2022 (his emails of 22 and 30 March 2022 and HMRC's reply dated 25 March 2022) as constituting the claim and refusal for the purposes of s.32 TMA this does not give rise to an arguable error of law in the FTT's Decision.

63. First the FTT never received submissions on the correspondence and therefore made no decision about it other than that there was no evidence of a refusal by HMRC prior to the notice of appeal in October 2023.

64. Second, I have nonetheless considered the March 2022 correspondence and whether it would give rise to a jurisdiction to appeal to the FTT under s.32 TMA even if it is a new point on this appeal.

65. HMRC's reply to Mr Kelly dated 25 March 2022 states:

> " Fri, 25 Mar 2022. 10:33 [HMRC]
>
> Dear Mr Kelly,
>
> Thank you for your email dated 23 March 2022.
>
> When we start our investigations, we use the details that have been supplied within the tax returns you submitted for the relevant years, we then amend these with the figures we have been given by the partnership and from there we calculate what the difference is, be that a refund due to you or tax that must be repaid. The way in which an SA302 is set out is the left side is copied from your decaled tax return and the right side is showing what amendments we have made and the difference in tax.
>
> For 2002-2003 we could see that you had completed 2 separate partnership pages one for The Echo Number 2 Film Partnerships and the other for Invicta Film Partnership No.14 LLP. We are only looking into your involvement with Invicta Film Partnership No.14 LLP, therefore we checked what you have declared for this year. Your declared figure was a loss of £95611 .00. When we then looked at the actual partnership loss for you it was £47386.63. We revised this loss, also taking into account your profit from The Echo Number 2 Film Partnerships and this resulted in a underpayment of tax by £16317.86.
>
> For 2003-2004, your tax return only contained information for The Echo Number 2 Film Partnerships. So when looking at Invicta Film Partnership No.14 LLP as there was no profit or loss declared we again used the figures provided by the partnership. This was a loss of £41554.82. Our revised side of the SA302 shows your profit from The Echo Number 2 Film Partnerships as well as the loss from lnvicta Film Partnership No.14 LLP and this resulted in an overpayment of tax in that year of £16622.00.

For 2004- 2005, again your tax return only contained information for The Echo Number 2 Film Partnerships. So when looking at Invicta Film Partnership No.14 LLP as there was no profit or loss declared we again used the figures provided by the partnership. This was a profit of £3853.92.

Our revised side of the SA302 shows your profit from The Echo Number 2 Film Partnerships as well as the profit from Invicta Film Partnership No.14 LLP and this resulted in an underpayment of tax in that year of £1541 .20.

For 2005-2006, again your tax return only contained information for The Echo Number 2 Film Partnerships. So when looking at lnvicta Film Partnership No.14 LLP as there was no profit or loss declared we again used the figures provided by the partnership. This was a profit of £4148.24.

Our revised side of the SA302 shows your profit from The Echo Number 2 Film Partnerships as well as the profit from Invicta Film Partnership No.14 LLP and this resulted in an underpayment of tax in that year of £1991 .04.

Please also find attached as requested our letter issued to you which is dated 3 May 2017 and not 27 May 2017, however it does explain that the initial review of your returns suggested that you were not eligible for settlement

If you have any further queries, please do not hesitate to contact us."

66. The Applicant's reply to HMRC dated 30 March 2022 states:

"I also don't believe your assertion is correct that my tax returns for the years you refer to only contained information for the Echo Number 2 Fim Partnership (Matrix'). Please could you let me have copies of the original paper returns, as submitted, not after processing by yourselves?

Overall, it seems to me, that you are saying you will demand income tax and interest based on figures that you have made up rather than the facts?

I believe these are the facts:
The results for my share of the Invicta partnership's results, as revised, are:

Invicta Revised (per Invicta)
FYend P&L Loan Int Ttl
3 (47,387) 0 (47,387)
4 (41,555) (1335) (43,490)
5 3,854 (3,464) 390
6 4,148 (3352) 797

The results for my share of tie Echo No 2 partnership's results, as originally reported to HMRC. were:

Matrix Entered Originally
FY end P&L Loan Int Ttl
3 3,177 (4,400) (1,224)

4 3,477 (4,303) (826)
5 5,021 (4,183) 838
6 6,950 (4,027) 2,923
However, after double checking as pvt of this dialogue with yourselves, I realised that the tax returns I submitted for 02/03 and 03/04 had errors and the correct figures are:

Matrix Should Be
FYend P&L Loan Int Ttl
3 2337 (4,400) (2,064)
4 **2,637** (4,303) (1,666)
5 **5,021** (4,183) 838
6 **6350** (4,027) 2323
This means that the figures on which any revised assessment should be based are:

Revised (Matrix corrected)
FY end P&L Loan Int Ttl
3 (45,050) (4,400) (49,451)
4 (38,918) (6,238) (45,156)
5 8,875 P,647) 1,228
6 11,098 (7,379) 3,719

And this means the difference between your proposed assessment (the SA302's you provided based on the figures your revised incorrectly) and the actual liability is:

MK Rev (MK Error corrected) V HMRC Rev
FYend P&L Loan Int Ttl Tax
3 (839) 1 (838) (335)
4 (6,077) (0) (6,077) (2,431)
5 (3,886) 0 (3,886) (1,554)
6 (4,271) 0 (4,271)_ (1,708)
(6,029)

If the above is correct, then the additional tax payable should fall from the £6,121 you are (incorrectly) demanding to £92?
Given the above: may I suggest that you give a further extension to your deadline so that you can consider revising your assessment?
Kind regards
Mke”

67. The first point to note is that the law requires a fair approach to interpreting the nature of these emails. No specific nor precise wording nor reference to the provision itself are required for the purposes of making and refusing a s.32 TMA double assessment claim.

68. However, it is not obvious that the emails of 25 and 30 March 2022 on any fair reading constitute a refusal of a claim to double assessment or an appeal against a refusal for the purposes of s.32(2) and (3) TMA. The two emails do not refer to double assessment, being taxed more than once for the same cause, a refusal of a claim for more than one assessment of the same sum or an appeal against such.

69. On a fair and natural reading this correspondence of 25 and 30 March 2022, even read in the context of the email dated 23 March 2022, the two emails do not appear to give rise to any formal refusals or appeals to HMRC, even if it can by implication be read as disputing figures based on double assessment. The emails naturally and reasonably read as being part of ongoing dispute as to the correct figures for the tax calculation without HMRC making any final determination or the Applicant making any formal appeal but seeking to resolve matters informally in correspondence at that stage.

70. Likewise, on any construction, the Applicant's email dated 30 March 2022 when asking HMRC to consider a revision of the assessment does not naturally read as an appeal to HMRC against a refusal for the purposes of s.32(3) TMA. There is no such formal action requested, even if the words 'appeal' or 'challenge' or the like do not appear within it: the email concludes "may I suggest that you give a further extension to your deadline so that you can consider revising your assessment?". No further correspondence is provided and there is no evidence that the Applicant concluded by asking for such a revision.

71. No correspondence has been provided after 30 March 2022 but before August 2023 that suggests that the Applicant went so far as to make a formal appeal to HMRC against the calculations contained in HMRC's email of 25 March 2022 – let alone that a challenge was brought on the basis of a double assessment.

72. The FTT was therefore entitled to find that it was only the Applicant's email of 23 March 2022 and HMRC's email of January 2024 that could arguably constitute a claim and refusal for the purpose of s.32(1) and (2) TMA. By implication it also found that there was no appeal brought any refusal under section 32(3) TMA.

73. Even if HMRC's email of 25 March 2022 could be construed as HMRC's refusal of a claim, any appeal from any decision of HMRC for the purposes of s.32(3) TMA would have to have been brought to HMRC's decision on 25 March 2022. Even if the Applicant's email of 30 March 2022 could be construed as a purported appeal to HMRC by the Applicant, there was no such arguable review decision made by HMRC in respect of such an appeal made thereafter. Likewise, the Applicant did not make an appeal to the FTT following the 30 March 2022 email.

74. Therefore, even if the Applicant's email of 30 March 2022 could constitute an appeal against HMRC's decision of 25 March 2022, thereafter there is no identified review decision of HMRC in respect of the appeal to HMRC which could then be also appealed to the FTT. The appeal made to the FTT in October 2023 was found to be in respect of HMRC's decisions in August / September 2023 and not from any decision of HMRC on 30 March 2022 (particularly when the notice of appeal did not suggest it was an appeal against any decision in March 2022).

75. Furthermore, even if the Appellant's email dated 30 March 2022 were to be treated as an appeal to HMRC against a refusal of a claim on 25 March 2022, which the Applicant would have to suggest was HMRC's operative refusal, a further 18 months passed before the Applicant then made appeal to the FTT in October 2023.

76. Finally, the Applicant has not produced any other correspondence between 30 March 2022 and the other referenced correspondence of August and September 2023 which could arguably give rise to a refusal of a claim or appeal to HMRC for the purposes of ss. 32(2)-(3) TMA.

77. In those circumstances the Applicant cannot rely on a continuing course of correspondence that arguably gave rise to a section 32 TMA claim, refusal and appeal to HMRC prior to the notice of appeal being lodged to the FTT in October 2023.

Ground 5

78. The FTT recorded HMRC's submissions at [11(5)] of the Decision:

> (5) Mr Kelly's remedy to his assertion that he does not owe this tax is to make a claim for overpayment relief. HMRC have advised him of this.

79. There was no arguable error in the FTT recording that this was HMRC's submission. I have seen correspondence advising the Applicant of his ability to claim overpayment relief in the bundle.

80. In any event, this is wholly immaterial to the Decision on the lack of jurisdiction to hear the appeal brought.

Ground 6

81. This does not give rise to any arguable error of law by the FTT in its Decision. The FTT's Decision was limited to deciding a question of jurisdiction as a matter of law in respect of a strike out application. The Decision was not concerned with whether or not all of the Applicant's criticism of HMRC's conduct were correct or whether the correct tax liability had been assessed.

82. In any event, the FTT went further then it needed to go to ensure fairness by raising s.32 TMA of its own initiative – only to decide that it could not determine the issue having given the parties the opportunity to address it on the issue.

83. I have also rejected some of the Applicant's criticisms of HMRC's conduct in Ground 1 above even though these are not material to the outcome of the appeal in any event.

Is an appeal academic in any event?

84. In exercising my discretion whether or not to grant permission to appeal I have also had regard to the question of whether there remains any tax liability in dispute between the parties anymore and whether granting permission would give rise to an academic appeal.

85. Subsequent to the FTT's Decision dated 10 July 2025, HMRC wrote to the Applicant on 31 July and 15 September 2025. In a letter dated 15 September 2025 a new officer wrote stating that HMRC were making further amendments to the Echo 2 partnership pages on the Applicant's returns for the years ending 2004, 2005 and 2006. A Self Assessment statement was provided following the above amendments and before and after calculations were

provided. HMRC considered this resolved the issues outstanding, including the tax under appeal.

86. He accepted the Amended Partnership Profit figures now provided by HMRC for 2005 and 2006 so there was no longer any dispute about the tax arising for those years. However, he continues to contest the Amended Partnership Profit figure for 2004 given by HMRC of £3,477 which he suggests should be around £2,637. This difference of about £800 in profit would give rise to a difference of about £300 in his tax liability which he submits is not due.

87. Therefore he submits that there is still an extant dispute with HMRC regarding about £300 in tax liability. Therefore an appeal to the UT is not rendered academic by this subsequent decision.

88. Further, he submits that HMRC have now agreed the figures he suggested for his tax returns for 2005 and 2006 in the amounts he first suggested in his email of 30 March 2022 as highlighted in bold above. Rather than being pleased, Mr Kelly appears to have been frustrated, if not angered by this decision. He was upset that it had taken over 3.5 years of correspondence and litigation to arrive at this position.

89. He also considered that HMRC already knew at the time of the FTT hearing in April 2025 that it would concede his tax calculations but had nonetheless contested the appeal without disclosing this.

90. Finally he submitted that a further reason that his appeal to the UT was not academic was that he wished to claim his costs in respect of approximately 150 hours he had spent in contesting the FTT proceedings.

91. I address these points in turn.

92. I reject any suggestion that HMRC had conceded the Applicant's tax calculations before or at the time of the FTT hearing and Decision or that they had failed to disclose this information and continued to contest his appeal.

93. The face of the letters dated 31 July 2025 and 15 September 2025 make clear HMRC have reviewed the position following the FTT's Decision and following further telephone conversations they have had with the Applicant. HMRC did not mislead the Applicant at the time of the FTT hearing although it is regrettable that they did not undertake a substantive review of the Applicant's tax liability before the FTT hearing rather than relying on a jurisdictional point at that stage.

94. As HMRC's letter of 31 July 2025 states:

> "We've recently concluded tribunal proceedings regarding your appeals against our amendments to the Invicta 14 film partnership. I'm now reviewing your case in light of the tribunal's decision.
>
> Having looked at the case history, I'd like to apologise on behalf of HMRC for how we

> handled this dispute. While we must defend certain technical points at tribunal, such as time limits for claims and appeal rights against specific notices, we should have worked with you to resolve the core issues before it reached that stage.
>
> I now intend to explore alternative ways to resolve the adjustments to your tax returns for the years ending 5 April 2003, 2004, 2005 and 2006. I've summarised what I understand to be your position for each year below."

95. Thereafter the letter of 15 September 2025 provided the revised adjustment to the returns which the Applicant now mostly accepts.

96. While it is technically right that there still remains a potential dispute between the Applicant and HMRC regarding around £300 in tax, it is by no means clear that this will need to be resolved by the FTT or UT.

97. HMRC complain that the Applicant has not previously communicated his dissatisfaction with the figure for the year ending 2004 and assumed he had accepted all the figures. While it is right to say that the Applicant has not previously identified this difference, he had not stated in writing that he has accepted the figures in the letter dated 15 September 2025. Now the remaining dispute has been identified, it may well be that the parties can resolve the relatively small remaining dispute.

98. In other circumstances, I might have adjourned my permission decision pending the hope that the tax liability might be fully resolved but it is clear that the Applicant does not consider that resolution of the tax liability would render the appeal academic in any event.

99. The Applicant would like to claim his costs (as a litigant person) for approximately 150 hrs of time he claims he spent in conducting the FTT litigation.

100. There are some difficulties with this. First, there was no costs award made by the FTT in respect of the FTT proceedings. The case was not allocated to the complex category, neither party applied for costs, the FTT did not find either party to have conducted the litigation unreasonably (the only jurisdiction on which it could have awarded costs) and thus there is no costs award under appeal to the UT. Normally therefore, the position would be that the successful party in the UT would be entitled to their costs of the UT proceedings only (but not to the costs of the FTT proceedings where costs are not under appeal).

101. Technically the UT, if it allowed the appeal and remade the decision, could make any decision that the FTT would have been entitled to make when considering the original strike out application. In theory therefore it might be able to make an award of costs in respect of the FTT proceedings, albeit it would need to hear separate representations upon this. However, even if the UT allowed the appeal and remade the FTT decision, the strike out decision would be remade not striking out the appeal. Then, the case would have to be remitted to the FTT for the hearing of the substantive appeal on the basis there was jurisdiction to consider the dispute about tax liability.

102. Therefore the prospect of the Applicant being awarded costs in respect of the FTT proceedings by the UT, while possible, would depend on: a) being successful in the UT appeal; b) the FTT decision being remade so as to bring into play the UT's jurisdiction to make costs awards that the FTT could have made in respect of the FTT proceedings; c) a finding that HMRC had behaved unreasonably in respect of the FTT proceedings and d) that the Applicant was entitled to 150 hrs of preparation time and costs in respect of defending a strike out application (as opposed to corresponding with HMRC generally over a number of years – he would only be potentially entitled to costs from the appeal in October 2023 or more likely from the date of HMRC's strike out application in 2024).

103. I conclude that while technically there may remain a dispute concerning around £300 of tax and a claim for costs of the FTT strike out proceedings which has not previously been raised or decided, these are either relatively insignificant or remote issues. I would not have refused permission to appeal purely on the basis that any appeal to the UT would be academic, but there is a real question mark over the proportionality of any substantive appeal being heard at the UT against the strike out decision.

104. In any event, I have refused permission to appeal purely on the basis of an absence of an arguably material error of law in the FTT's Decision.

Conclusion on grounds

82. 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.

83. It is apparent that the Applicant considers that he has been unjustly treated by HMRC, and it does appear that the underlying dispute as his tax liability has mostly been resolved in his favour after many years, but ultimately the UT's jurisdiction is limited to considering appeals on points of law from the FTT.

Conclusion

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

Signed:	**Date: 27 FEBRUARY 2026**
JUDGE RUPERT JONES	
JUDGE OF THE UPPER TRIBUNAL	