UPPER TRIBUNAL

TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00101 (TCC)

Applicants: AFSHIN SAJEDI, AKRAM RAFIE, PHILLIP HALL AND TRUSHA PILLAY	Tribunal Ref: **UT-2025-000085**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicants apply 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 6 March 2025 ("the Decision"). The Decision was made by the FTT following a hearing on 13 June 2024.

2. The FTT dismissed the Applicants' appeals against the decisions of HMRC to issue closure notices which amended their stamp duty land tax ("SDLT") returns in respect of the acquisition of properties ("the New Properties"). In 2017 the Applicants purchased the New Properties and in 2020, around three years subsequent, two of the Applicants disposed of 1% interest in their only previous main residences ("the Existing Properties") to the other two Applicants (their partners). The FTT decided that the acquisitions of the New Properties attracted the higher rate of SDLT because the acquisitions did not relate to the replacement of the Applicants' Existing Properties.

3. For the purposes of the appeal, it was agreed by the parties that, but for para.3(7)(ba) of Sch.4ZA to Finance Act 2003, the purchases of the Existing Properties would qualify as replacements for the Applicants' main residences and so fall outside the scope of the higher rates of SDLT for additional dwellings. Para 3(7) provides that:

> "For the purposes of sub-paragraph (5) the purchased dwelling is also a replacement for the purchaser's only or main residence if—
> (a) on the effective date of the transaction ("the transaction concerned") the purchaser intended the purchased dwelling to be the purchaser's only or main residence,

(b) in another land transaction whose effective date is during a permitted period, the purchaser or the purchaser's spouse or civil partner disposes of a major interest in another dwelling ("the sold dwelling"),
(ba) immediately after the effective date of that other land transaction, neither the purchaser nor the purchaser's spouse or civil partner has a major interest in the sold dwelling, and
(c) at any time during the period of three years ending with the effective date of the transaction concerned the sold dwelling was the purchaser's only or main residence."

4. The FTT decided that, based upon a statement of agreed of facts, most of the requirements in para.3(7), Sch.4ZA FA 2003 were met (see [FTT/94-95]). It accepted that a 1% interest in the Existing Properties constituted a "major interest" for the purposes of para.3(7)(b), Sch4ZA, FA 2003 (see [116]).

5. The sole issue in contention between the parties was whether or not the commencement provisions in Sch.11 to the FA 2018, amending Sch.4ZA FA 2003 so as to include para.3(7)(ba), applied in relation to the purchases of the New Properties (the 'Commencement Issue'). On the Commencement Issue, the FTT held in the Applicants' favour that para 3(7)(ba) did not apply because the transactions acquiring the new properties took place before 22 November 2017 (see [FTT/78]):

> '78. In our view, the commencement provision requires that we only look to the date of the New Property purchases to decide whether or not paragraph 3(7)(ba) applies to those purchases. As those purchases fall before the key date of 22 November 2017, paragraph 3(7)(ba) does not apply to them.'

6. Nonetheless, notwithstanding the parties' agreement, the FTT concluded that the Applicants had not relevantly "disposed" of their major interests in their respective Existing Properties for the purposes of para.3(7)(b), Sch.4ZA FA 2003 ("the Disposal Issue").

7. By a decision dated 17 July 2025 ("the PTA Decision"), the FTT granted the Applicant permission to appeal the Decision to the Upper Tribunal ('UT') on two grounds of appeal (ground 1, in part, and ground 3). However, the FTT refused the Applicant permission to appeal on the other grounds of appeal pursued (grounds 2, 4 and 5).

8. The Applicants renewed their applications to the UT for permission to appeal in-time in respect of all five grounds of appeal on 13 August 2025.

UT's jurisdiction in relation to appeals from the FTT

9. 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.

10. 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

11. The five grounds on which the Applicant seeks permission to appeal are that the FTT:

> (1) Was not entitled to determine the "Disposal Issue" in the manner it did ("Ground One");
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> (2) Reached a conclusion on the Disposal Issue that was not open to it on the basis of its other findings ("Ground Two");
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> (3) Erred in its construction and application of the term "disposes" in paragraph 3(7)(b) ("Ground Three");
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> (4) Misread and misapplied the case law leading on from *WT Ramsay Ltd v IRC* [1982] AC 300 ("Ramsay") ("Ground Four"); and
>
> (5) Erred on the basis set out in Edwards v Bairstow [1956] AC 14 ("*Edwards v Bairstow*") ("Ground Five").

12. By its decision on the permission application (the "PTA Decision"), dated 17 July 2025, the FTT:

> (1) Granted, in part, permission to appeal on Ground One.
> (2) Refused permission to appeal on Ground Two.
> (3) Granted permission to appeal on Ground Three;
> (4) Considered that Ground Four was included by Ground Three, and so refused permission on this ground save to the extent that it is restating Ground Three; and
> (5) Refused permission on Ground Five.

Discussion, Analysis and Decision

13. I grant permission to appeal on the first four grounds of appeal for the reasons set out in the Applicants' 'Reasons for Appealing' document which accompanies their notices of appeal dated 13 August 2025. I consider that Grounds 1-4 hold realistic prospects of successfully arguing that the FTT erred in law in its conclusion on the Disposal Issue.

14. I refuse permission to appeal on ground 5. This is for a number of reasons. The substance of the Applicant's challenge is to the FTT's interpretation and application of the words 'disposes of' in para (3)(b). This is a question of law which is amply addressed by grounds 3 and 4. The underlying facts are not in dispute – the date, amounts and manner of transfers of the interests in the Existing Properties are agreed and not capable of dispute. Therefore, even if the conclusion on disposition is a mixed question of fact and law, rather than purely a question of law, sufficient facts were established by the FTT and the only question left is one of law - whether these facts amount to a disposition of property for the purposes of the legislation. For example, for the purposes of property, rather than tax, legislation there is a statutory definition of the words 'disposes of'. Section 205(1) Law of Property Act 1925 of England and Wales provides General Definitions including the following definition of 'disposition' of land:

> "disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and "dispose of" has a corresponding meaning;

15. Further and in any event, Ground 2, on which permission is granted, addresses the challenge to the conclusion on the Disposal Issue on the basis of it not being open to the FTT as result of the factual findings which the FTT made.

16. Finally and alternatively, the Applicants have not identified any finding of fact (let alone a finding on any disputed factual issue) that they say is perverse, irrational or unreasonable – that no tribunal properly instructed could have found on the evidence before it. The FTT relied upon a statement of agreed facts between the parties. The guidance on *Edwards v Bairstow* appeals is set out below and not satisfied by the application made.

17. The test in *Edwards v Bairstow* [1956] AC 14 (HL) for when an error of law may be established in relation to a finding of fact is that: ***"no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal".*** This is not simply that there was insufficient evidence to support the FTT's factual findings but there was no evidence at all or that the findings were perverse or unreasonable. In *Volpi v Volpi* [2022] EWCA Civ 464 ("Volpi"), Lewison LJ set out a more recent summary of the legal position in appeals on points of law challenging findings of fact.

18. If a finding of fact is to be challenged as made in error of law, the onus is on the Appellant to identify all the evidence which was relevant to each finding of fact and show that it was one the tribunal was not entitled to make– see *Georgiou v Customs and Excise Commissioners* [1996] STC 463, at 476:

> "… for a question of law to arise in the circumstances, the appellant must first identify the finding which is challenged;
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> secondly, show that it is significant in relation to the conclusion;
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> thirdly, identify the evidence, if any, which was relevant to that finding; and
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> fourthly, show that that finding, on the basis of that evidence, was one which the tribunal was not entitled to make.
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> What is not permitted, in my view, is a roving selection of evidence coupled with a general assertion that the tribunal's conclusion was against the weight of the evidence and was therefore wrong. A failure to appreciate what is the correct approach accounts for much of the time and expense that was occasioned by this appeal to the High Court."

Conclusion and right to reconsideration

19. Permission to appeal to the Upper Tribunal is **granted on grounds 1-4. I refuse permission to appeal on Ground 5.**

20. If the Applicants are dissatisfied with the decision in relation to Ground 5, they may apply to the Upper Tribunal under Rule 22(4) and (5) of the Upper Tribunal Rules for the application to be reconsidered at an oral hearing (which may be requested to take place by telephone, video or in person). The application for an oral hearing must be made in writing within 14 days after the date on which this decision notice is issued.

Signed: **Date: 24 September 2025**

JUDGE RUPERT JONES

JUDGE OF THE UPPER TRIBUNAL