NCN [2026] UKUT 00248 (TCC)

UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)

Applicant: Ist Alternative Medical Staffing Ltd	**Tribunal Ref: UT/2026/000026**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL FOLLOWING ORAL HEARING

DECISION NOTICE

JUDGE THOMAS SCOTT

1. The Applicant applies to the Upper Tribunal (Tax and Chancery) for permission to appeal against the decision of the First-tier Tribunal (Tax Chamber) (the "FTT") released on 7 November 2025 (the "Decision").

2. The Applicant applied to the FTT for permission to appeal but the FTT refused permission, in a decision dated 5 February 2026 (the "FTT PTA Decision"). In a decision on the papers issued on 16 March 2026 I also refused permission.

3. This is the decision following the Applicant's request for an oral hearing to reconsider my decision.

When does an appeal lie?

4. An appeal to this 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 Applicant must

demonstrate that it is arguable that the FTT made an error of law in reaching its decision which was material to that decision. "Arguable" means an argument which carries a realistic as opposed to fanciful prospect of success.

Background and the FTT's decision

5. The appeal to the FTT related to VAT assessments issued to the Appellant in respect of the supply of nurses and care assistants to NHS and private hospitals and care homes. The Appellant initially contended that the supplies were exempt under Group 7 Schedule 9 Value Added Tax Act 1994 ("VATA"), that it was entitled to rely on Notice 701/57, the Nursing Agencies Concession ("NAC") and that it could rely on a claim of legitimate expectation. It lodged a parallel judicial review claim regarding legitimate expectation, which was unsuccessful, including on appeal to the Court of Appeal.

6. At the direction of the FTT, the Appellant then filed amended grounds of appeal. The FTT directed that the grounds be limited to the argument that the relevant supplies were exempt under item 4 of Group 7, interpreted consistently with Article 132(1)(b) of the Principal VAT Directive ("PVD"), because they were "closely related" to a supply of medical care and the Appellant was a "state-regulated institution".

7. The legislation relevant to the appeal was as follows:

> (1) VATA Schedule 9, Group 7, Item 4, which exempts: "the provision of care or medical or surgical treatment and, in connection with it, the supply of any goods, in any hospital or state-regulated institution."
>
> (2) Article 132(1)(b) of the PVD, which exempts: "hospital and medical care and closely related activities undertaken by bodies governed by public law all, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;"
>
> (3) Article 134 PVD which provides that a supply of goods or services shall not be granted exemption as provided for in all the provisions of Article 132(1) which concern the supply of closely related goods/services (a) where the supply is not essential to the transactions exempted and (b) where the basic purpose of the supply is to obtain additional income for the body in question from activities carried on direct competition with those of commercial enterprises subject to VAT.
>
> (4) Note (8) to Group 7, Schedule 9 VATA ("Note 8"), which provides that "state-regulated" means "approved, licensed, registered or exempted from registration by any Minister or other authority pursuant to the provision of a public general Act, … Here "Act" means (a) an Act of Parliament …"

8. Importantly, as regards the issues in the appeal the FTT stated as follows, at [11]:

> There was substantial agreement between the parties on the law. This agreement being derived from the amended GoA drafted on the Appellant's behalf by Michael Firth KC and HMRC's skeleton argument, as confirmed in the hearing. It was agreed that:

(1) Item 4 needed to be interpreted in a way which conformed with the provisions of Articles 132(1)(b) and 134 Principal VAT Directive.

…

(4) Further, to qualify for exemption, a supply which was factually established to be closely related to the provision of hospital and medical care, must be supplied "by" a duly recognised establishment of similar nature to a hospital or medical treatment centre i.e. a state-regulated institution as defined in Note 8. The reference to such supplies being in hospitals in Item 4 being so construed.

(5) The exemption under Item 4 for closely connected supplies did not require the supply under consideration to be made to the recipient of the medical care.

(6) To qualify under Item 4, the Appellant therefore needs to evidence both that:

> (a) it is in EU terms a duly recognised establishments of a similar nature to a hospital and in domestic terms a state-regulated institution meeting the terms of Note (8); and
>
> (b) the supply of staff made by it was closely related (in the sense informed by the terms of Article 134 PVD and the relevant case law of the Court of Justice of 3 the European Union (CJEU)) to the provision of medical care which was itself exempt under Item 4 provided by the hospitals and care homes which received the Appellant's supplies.

9. The FTT set out certain agreed facts at [16]:

Agreed facts

16. We start by setting out the facts which were agreed between the parties, as discerned from the Appellant's amended GoA and the factual basis on which the Appellant presented its judicial review. We note that during the hearing Mr Odong and Mr Ajayi variously presented evidence or made submissions which failed to recognise the factual concessions made in the amended GoA and/or the necessary factual basis on which the judicial review proceeded:

(1) The Appellant was, in the Relevant Period (and remains), an employment business such that the supplies it made in that period were supplies of staff contracted to the Appellant and provided by the Appellant to its client hospitals and care homes (see paragraph 6 *R (oao First Alternative Medical Staffing Ltd and another) v HMRC* [2021] EWHC 882 (Admin)).

(2) The Appellant was originally registered by the Care Quality Commission (CQC) but ceased to be so registered in 2010 (and therefore prior to the Relevant Period).

(3) The qualified and registered medical staff provided by the Appellant to its clients are engaged in the provision of medical care, such medical care being provided by the Appellant's client using their skills and expertise of the

> workers place by the Appellant, but subject to the direction, supervision and control of the clients.

10. Having set out its views on the documentary evidence, the FTT then dealt with the evidence of Mr Odong, a director of the Appellant. The FTT was critical of that evidence in a number of respects. In relation to whether or not the Appellant was "regulated", the FTT said this, at [26]:

> It was stated in Mr Odong's witness statement that post 2010 the Appellant was regulated and licensed by the Purchasing Agency of NHS Suppliers and other bodies. However, in evidence and cross examination that position was refined. Mr Odong accepted that the Appellant was no longer directly licenced, approved or registered under statute with any regulatory body. In 2010 nursing agencies were no longer required to be registered with the CQC and sole responsibility for meeting CQC requirements fell on the hospitals and other state-regulated institutions providing the care to patients. However, he explained that the Appellant was nevertheless indirectly subject to the same regulatory regime because the hospital or state-regulated institution could only comply, so far as the provision of care was through agency workers provided by the Appellant, by imposing obligations to vet, screen, train and appraise on the Appellant. Those obligations were audited by the Appellant's clients and were, therefore complied with.

11. The FTT made detailed and comprehensive findings of fact, including, relevantly, the following, at [27]:

> **Findings of fact**
>
> 27. From the evidence we have summarised above we find the following facts in addition to the agreed facts set out in paragraph 16 above:
>
> (1) The Appellant has not evidenced, and Mr Odong accepted that the Appellant was not regulated under any other statutory licence, approval or registration in connection with the provision of medical care.
>
> (2) Any registration as an employment business under the Employment Agencies Act 1973 is not relevant to the issues we must determine as such businesses are expressly excluded from regulation, in the Relevant Period, under the Health and Social Care Act 2008 by virtue of Schedule 1 paragraphs 1 and 13.
>
> (3) We infer that the Appellant worked under a system of framework and master vendor agreements with NHS Trusts including those identified in the documents summarised at paragraphs 17(6) - 17(8) but we cannot determine the terms on which workers were provided and thereby the obligations imposed on the Appellant by the NHS. However, we consider that it is reasonable to infer that the obligations imposed were similar to those set out in the BUPA contract summarised at 17(13).
>
> (4) Contracts with such state-regulated institutions do not represent licencing, authorisation or registration pursuant to an Act of Parliament.

…

(11) Although we have accepted that the Appellant was subjected to the same requirements placed on its clients pursuant to their CQC registration and regulation the indirect imposition of these requirements does not represent the licencing, approval or regulation of the Appellant pursuant to an Act of Parliament.

…

12. The FTT set out its conclusion as follows:

LEGAL REQUIREMENTS FOR EXEMPTION AS A CLOSELY CONNECTED SUPPLY

28. For supplies which are not themselves supplies of medical care to be exempt they must be closely related to medical care and must be supplied by an entity meeting the requirements of Note 8.

State regulated institution

29. This appeal fails because the Appellant does not meet the requirements of Note 8. This follows from the agreed fact set out at paragraph 16(1) and our findings at 27(1), 27(2) and 27(11) above.

13. At [29], the FTT noted that this conclusion disposed of the appeal, but having heard argument on the point from both parties the FTT considered it appropriate to indicate what its decision would have been on the second issue before it, namely whether or not the supplies were "closely related" to supplies of medical care. The FTT decided that, if the Appellant had been a state-regulated institution, its services would have been "in principle" closely related to medical care, but that they would have breached Article 134, and thereby failed to satisfy the second condition for exemption (as well as the requirement to be "state-regulated"): [44].

Grounds of appeal: a general observation

14. It has been necessary to describe the Decision in some detail because an unusual feature of this appeal is the extraordinary extent to which the grounds of appeal put forward on behalf of the Applicant have varied, both materially and repeatedly. The FTT recorded that this had been the case before and indeed during the hearing: [8] and [16]. That continued following the Decision. Having been refused permission by the FTT, the grounds put forward to this Tribunal were then different to those put to the FTT. Following my refusal of permission on the papers, Mr Odong then renewed his application and sent to the Tribunal grounds which differed again. On the day before the scheduled oral renewal hearing, Mr Odong then sent to the Tribunal a skeleton argument which apparently abandoned all previous grounds, and put forward new grounds based on yet another asserted error of law. Further written submissions from Mr Odong continued on the day of the renewal hearing and afterwards.

15. Like the FTT, I have fully taken into account that Mr Odong is effectively a litigant in person. However, that does not mean that the normal principles of procedural fairness can simply be ignored. Both this Tribunal and HMRC have been obliged to spend an inordinate amount of time considering grounds of appeal against the Decision which, following scrutiny,

have simply been replaced by yet more grounds. The process has increasingly resembled an extended game of whack-a-mole. Importantly, the FTT has not been given the opportunity to respond to the ground of appeal proposed by Mr Odong in the oral renewal hearing. That is far from satisfactory. Nevertheless, I have decided to consider on its merits the ground proposed by Mr Odong in the oral renewal hearing, but taking due account of issues of procedural fairness.

Ground of appeal pursued in oral renewal hearing

16. Before the oral renewal hearing, Mr Odong sent to the Tribunal an "Opening Statement" and a skeleton argument. The Opening Statement reads as follows:

> May it please your Honour.
>
> Before I take the Tribunal through my written skeleton argument, I wish to provide a brief roadmap identifying the narrow legal issue raised by this renewed application.
>
> This application does not seek to re-argue the facts found by the First-tier Tribunal.
>
> Nor does it seek the retrospective application of any concession, administrative practice, or extra-statutory treatment.
>
> The central question is whether the First-tier Tribunal applied the correct legal test when interpreting Note 8 to Group 7 of Schedule 9 to the Value Added Tax Act 1994.
>
> The Tribunal treated the absence of direct Care Quality Commission registration as determinative of the Applicant's eligibility for exemption.
>
> However, Note 8 does not refer only to institutions that are registered. Parliament expressly included institutions that are approved, licensed, registered, or exempted from registration.
>
> The Applicant's case is that, following the Health and Social Care Act 2008 reforms, the Tribunal was required to consider whether the Applicant fell within that statutory category of institutions exempted from registration.
>
> The Applicant respectfully submits that the First-tier Tribunal never determined that question.
>
> The remaining grounds, including HMRC's published interpretation of the post-2010 framework and HMRC's subsequent cancellation of the Applicant's VAT registration in 2017, are relied upon only as evidence supporting that primary point of statutory construction.
>
> Accordingly, the issue before this Tribunal is not whether the Applicant ultimately succeeds on the substantive VAT exemption claim, but whether it is arguable that the First-tier Tribunal failed to consider and determine a material

statutory question arising from the words "exempted from registration" in Note 8.

17. The skeleton argument clarifies that the error of law now asserted to have been made by the FTT, and for which permission to appeal is sought, is that Note 8 includes a reference to institutions which are “exempted from registration” by the relevant type of Act, and the Applicant is so exempted, but the FTT failed to consider this issue and determine it in the Applicant’s favour. The FTT, it is said, erroneously treated the absence of CQC registration as determinative, whereas in fact the Applicant was exempted from registration. From 2010, nursing agencies such as the Applicant were exempt from registration, as recognised by HMRC’s published guidance. The FTT failed to consider the post-2010 regulatory framework. Additionally, it failed to take account of material evidence, being HMRC’s own interpretation of the post-2010 regime. The FTT also erred in not concluding that, because it was exempted from registration, the Applicant fell within Article 132(1)(b) of the PVD as a “duly recognised establishment of a similar nature”.

Discussion

18. I have concluded that this ground does not identify any material error of law which is arguable with a prospect of success which is realistic as opposed to fanciful.

19. I agree that Note 8 to Group 7 refers to “state-regulated” as meaning, inter alia, “exempted from registration” pursuant to a provision of a public general act of Parliament. Mr Odong now argues that this encompasses the Applicant, because the activities which it carries out have been “exempted” from registration with the CQC since 2010.

20. Although Mr Odong did not identify any Act which provides this exemption, I understand him to be referring to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (SI 2014/2936). Those Regulations set out various types of activity which are regulated for the purposes of the 2008 Act, which is the Act which provides for CQC registration. Under Schedule 1 of the Regulations, which lists those activities which are regulated under the 2008 Act, paragraph 13 states as follows:

> **Nursing care**
>
> 13.—(1) Subject to sub-paragraph (2), the provision of nursing care, including nursing care provided in a person's own home which is not—
>
> > (a) provided as part of any other regulated activity, and
> >
> > (b) exempted from being a regulated activity under any other paragraph in this Schedule.
>
> (2) The following types of provision are excepted from sub-paragraph (1)—
>
> > (a) the supply of nurses to a service provider by an undertaking acting as an employment agency or employment business for the purposes of that provider carrying on a regulated activity,

> (b) the introduction of nurses to an individual (other than a service provider) by a person (including an employment agency or an employment business) having no ongoing role in the direction or control of the service provided to that individual, …

21. The effect of paragraph 13 is that (broadly) the supply of nursing services by an employment agency, such as the Applicant, to a service provider which is regulated with the CQC do not require registration of the employment agency. As I have explained, that was common ground before the FTT. However, I do not consider that that means that the employment agency is, as a result, a "state-regulated institution". In *Slide & Seek Ltd v HMRC* [2014] UKFTT 512 (TCC), a similar argument was rejected by the FTT in the context of a claim for exemption under Item 9 of Group 7: [27]. The argument in that case was in fact stronger than in this case, because the relevant requirement for registration was subject to a series of what were specifically described by the drafter as "exemptions from registration".

22. Even if I am wrong about this, I do not consider it arguable that as a result of Note 8 the Applicant would fall within Article 132(1)(b) of the PVD. As applicable to an employment agency, this restricts the exemption from VAT to a duly recognised establishment *of a similar nature to a hospital or medical treatment centre*. The absence of a requirement for CQC registration in respect of certain activities cannot sensibly be argued to result in an employment agency satisfying this wording.

23. As an exemption from VAT, Item 4 must be construed strictly, and in conformity with Article 132. Before the FTT, this was agreed by the parties and the FTT, and it was also agreed that as a result the Applicant needed to establish that it was a duly recognised establishment of a similar nature to a hospital or medical treatment centre: [11](4) and (5) of the Decision.

24. I would also refuse permission to appeal on this ground, regardless of arguability, for the reason that the argument that the Applicant was a state-regulated institution because it was "exempted from registration" was not raised before the FTT.

25. In *Notting Hill Finance Limited v Sheikh* [2019] EWCA Civ 1337. Snowden J, who gave the leading judgment of the Court of Appeal, stated as follows, so far as relevant:

> 23. Surprisingly, however, [the White Book] notes do not refer to the most authoritative and frequently applied statement of the approach of an appellate court to the question of whether to permit a new point to be taken on appeal. That statement appears in the judgment of Nourse LJ in *Pittalis v Grant* [1989] QB 605 at page 611,
>
> > "The stance which an appellate court should take towards a point not raised at the trial is in general well settled: see *Macdougall v. Knight* (1889) 14 App. Cas. 194 and *The Tasmania* (1890) 15 App. Cas. 223. It is perhaps best stated in *Ex parte Firth, In re Cowburn* (1882) 19 Ch.D. 419, 429, per Sir George Jessel M.R.:
> >
> > > "the rule is that, if a point was not taken before the tribunal which hears the evidence, and evidence could have been adduced which by any possibility would prevent the point from succeeding, it cannot be taken afterwards. You are bound to

> take the point in the first instance, so as to enable the other party to give evidence."

… The principles were also recently restated by Haddon-Cave LJ in *Singh v Dass* [2019] EWCA Civ 360 at [15]-[18],

> "15. The following legal principles apply where a party seeks to raise a new point on appeal which was not raised below.
>
> 16. First, an appellate court will be cautious about allowing a new point to be raised on appeal that was not raised before the first instance court.
>
> 17. Second, an appellate court will not, generally, permit a new point to be raised on appeal if that point is such that either (a) it would necessitate new evidence or (b), had it been run below, it would have resulted in the trial being conducted differently with regards to the evidence at the trial (*Mullarkey v Broad* [2009] EWCA Civ 2 at [30] and [49]).

…"

26. Applying these principles, it is clear that this would be a new argument which could and should have been raised below. Even taking due account of the litigant in person status of the Applicant, an "exempt from registration" argument would have been flatly inconsistent with the arguments raised by the Applicant before the FTT.

27. Finally, although I have not relied on this point in refusing permission, I am not convinced that the ground for which permission was sought in the renewal hearing could have established an error of law which was material to the FTT's decision to dismiss the appeal. That is because it was necessary for the appeal to succeed that the Applicant satisfied two conditions. The ground of appeal relates only to the first of those issues. However, the FTT went on to give detailed reasons why, had it been necessary to determine the issue, the Applicant would have also failed the second condition (being that the services were "closely related" to medical care and not excluded by Article 134 of the PVD): [30]-[44]. In the renewal hearing, Mr Odong raised no arguable error of law in relation to that reasoning.

Grounds pursued previously

28. I did not understand Mr Odong to renew any application for permission for the grounds on which I refused permission on the papers. In any event, I have reconsidered the reasons for my written refusal, and remain firmly of the view that none of the previous grounds identify any arguable error of law.

Decision

29. The Application does not identify any material arguable error of law. Following reconsideration, permission to appeal is refused.

Signed: **Judge Thomas Scott**	**Date:02 July 2026**
Issued to the parties on: 02 July 2026	