UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00271 (TCC)

Applicant: Ketan Patel	**Tribunal Ref: UT-2025-000135**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL FOLLOWING ORAL HEARING

DECISION NOTICE

JUDGE ANNE REDSTON

INTRODUCTION

1. On 5 September 2025, the First-tier Tribunal (Tax Chamber) ("the FTT") issued its decision ("the Decision") refusing Mr Patel's appeal against various assessments and closure notices issued by HM Revenue & Customs ("HMRC").

2. On 26 October 2025, Mr Patel made an in-time application to appeal the Decision; the FTT judge refused that application by a decision issued on 13 November 2025. Mr Patel acted as a litigant in person at the FTT, and when making that PTA application.

3. On 11 December 2025, Mr Samuel Brodsky of Counsel applied to the Upper Tribunal (Tax and Chancery) Chamber ("the UT") on behalf of Mr Patel for permission to appeal against the Decision ("the PTA Application"). This set out six grounds of appeal, which were different from those for which permission had been refused by the FTT judge.

4. I considered the PTA Application on the papers, and on 8 March 2026, gave permission on Grounds 3 and 5. I gave limited permission on Grounds 4 and 6, to the extent that they overlapped within Ground 3.

5. On 20 March 2026, Mr Patel made an application via his solicitors Brown Rudnick LLP for the PTA Application to be reconsidered at an oral hearing. His skeleton for that hearing, was drafted by Mr Brodsky; HMRC filed and served a skeleton drafted by Mr Quinlan Windle of Counsel.

6. Mr Brodsky's skeleton included new grounds of appeal; HMRC did not object to those grounds and they were admitted. Those grounds were amended in the course of the hearing, in the light of information provided by HMRC, as was Ground 3. Mr Brodsky subsequently confirmed the wording of Grounds 7, 8 and 9 and the new wording of Ground 3.

7. The oral hearing took place on 8 July 2026 by video. Mr Brodsky represented Mr Patel, and Mr Windle represented HMRC. Mr Patel and his solicitors also attended, as did solicitors from HMRC's Solicitor's Office together with Mx Lunt, the litigator at the FTT hearing.

8. I was provided with a bundle of almost 500 pages ("the UT Bundle"); two FTT bundles totalling 1,000 pages (together, "the FTT Bundle") and a bundle of authorities.

9. For the reasons set out below, I now give permission on Grounds 2, 7, 8 and 9. I amend my permission on Ground 3 in the light of clarification received from HMRC during the hearing.

10. Thus Mr Patel has permission on all Grounds other than:

(1) Grounds 1 and 6 for which permission is refused; and

(2) Ground 4, because this Ground is encompassed within Grounds 3, 7, 8 and 9 and so falls away

11. In this judgment, paragraphs of the FTT Decision are referred to as [XX] and paragraphs of the PTA Application as §XX.

THE LAW

12. An appeal to the UT from a decision of the FTT can only be made on a point of law (Tribunals, Courts and Enforcement Act 2007, s 11). The UT has a discretion whether to give permission to appeal. It will be exercised to grant permission if there is a realistic prospect of an appeal succeeding, or if there is, exceptionally, some other compelling reason to do so (such as if the appeal raises a point of law of general public importance), see *Spirit Motor Company v HMRC* [2024] UKUT 00230 (TCC).

RELEVANT BACKGROUND

13. My understanding of the relevant background is taken from the Decision and from those parts of the FTT Bundle and the UT Bundle to which I was referred during the hearing. It is set out in more detail than is normally required in a PTA decision, in order to explain new Grounds 7, 8 and 9, and the amendment to Ground 3.

14. In August 2011, HMRC opened an enquiry into BTB Brew Technology UK Ltd ("BTB"), and established that Mr Patel, or entities or persons associated with him, had received sums from BTB, see [11].

15. On 17 July 2015, HMRC issued Mr Patel with discovery assessments for the three tax years 2009-10 and 2010-11, and 2012-13 ("the early years"), on the basis that he had been self-employed in relation to his work for BTB. The assessments for the first two of those years were based on the presumption of continuity, by applying the RPI to the figures assessed for later years, see [27], [28] and [82].

16. On 16 October 2020, HMRC issued discovery assessments for the three tax years 2016-17 through to 2018-19 ("the later years"). The last two of those assessments were based on the presumption of continuity, by applying the RPI to the figures for 2016-17.

17. On 28 July 2021 HMRC issued closure notices for 2011-12 and for 2013-14 through to 2015-16.

18. All the assessments and the closure notice amendments increased the tax due from Mr Patel, who appealed to the FTT. The FTT Bundle did not include all the bank statements provided by Mr Patel for the years 2011-12 through to 2015-16, or the detailed excel spreadsheet used by HMRC to analyse those statements, but it did include various HMRC summary schedules. Mr Patel had sent the original bank statements to HMRC and so did not

have copies. He had asked HMRC for copies before the hearing but they had not been provided. Mr Patel's skeleton argument for the FTT hearing said:

> "There are no workings that show which receipts in the bank statement are being deemed as unrecorded income.
>
> The calculations provided by the Respondent are not clear.
>
> There is no guarantee that an error has not occurred due to the method used to arrive at the unrecorded income.
>
> When undertaking investigative work (which is what the Respondent undertook) it is standard practice that figures flow back to source documents.
>
> The Appellant expected to see an excel sheet analysing the bank statements line by line which would then show a complete analysis of receipts and payments with sub totals for various categories."

19. Mr Patel had difficulty uploading the documents he wanted to be included in the FTT Bundle to HMRC's system, and they were received by HMRC on the day the FTT Bundle was due to be filed and served, some four weeks before the hearing.

20. His documents were not included in the FTT Bundle. His skeleton argument for the hearing includes this passage:

> "This skeleton argument only refers to documents in the Hearing Bundle that have been lodged by the Respondent. The Respondent has refused to include documents provided by the Appellant as they allege that the documents were sent late. The matter of whether the documents should be allowed will be heard at the start of the Tribunal Hearing. It is not clear how and when the Hearing Bundle will be updated if the documents from the Appellant are allowed. The Appellant is therefore unable to refer to its documents in this Skeleton Argument."

21. By their skeleton for the FTT hearing, HMRC asked the FTT to vary the "amount charged by" each of the closure notices and discovery assessments.

22. Mr Patel arrived at the hearing with paper copies of the same documents he had previously uploaded to the HMRC system, and some additional documents. The FTT decided to admit all the documents other than two which were judged to be not relevant, and an unknown number which were duplicates of documents already in the FTT Bundle. The FTT gave HMRC permission to make written submissions in relation to the admitted documents after the hearing, see [5]. A copy of those documents ("Mr Patel's Bundle") was included in the UT Bundle for this hearing; there are almost 250 pages.

23. The FTT hearing began on 14 October 2024; it was listed for four days but concluded after two. During the hearing, the parties made opening submissions, and Mr Patel and Officer Jones gave witness evidence. The FTT then gave oral directions as follows:

(1) for HMRC to provide Mr Patel with the excel spreadsheet underpinning their summary schedules, followed two weeks later by HMRC's closing submissions, which were to include HMRC's responses to the documents in Mr Patel's Bundle; and

(2) for Mr Patel to file and serve his closing submissions in response, 28 days later.

24. On 18 October 2024, those directions were confirmed in writing. On 22 October 2024, HMRC filed and served the excel spreadsheet. The covering email said HMRC had identified a transposition error which affected the earlier years; correcting the error reduced those assessments.

25. On 26 October 2024, Mr Patel wrote to the FTT and HMRC saying :

> "There is now uncertainty as to whether errors have occurred from extracting the information from the bank statement itself.
>
> I have repeatedly requested that a copy of the bank statements be sent to me and I made this point at the hearing. I am unable to request this from HSBC as the account is now closed."

26. On 12 November 2024, HMRC filed and served their closing submissions. The document runs to 421 paragraphs over 44 pages. It contains detailed criticisms of the documents in Mr Patel's Bundle, along with many other submissions, and ends by saying:

> "HMRC respectfully request that the Tribunal dismiss the appeal and amend The Assessments and The Closure Notices in line with the figures shown on the document titled Summary."

27. That document included at least one change from the numbers in HMRC's skeleton argument in addition to the previously identified error in the spreadsheet.

28. On 10 December 2024, Mr Patel filed and served his closing submissions. He accepted that certain specific bank statements were in the FTT Bundle, but said others were omitted, and he repeated his application for all bank statements to be provided to him. He added that although he now had the excel spreadsheet, "without the bank statements being disclosed as part of the revised workings being sent there is no way to check whether the workings are correct". He also responded to some of the detailed points made in HMRC's closing.

29. On 5 September 2025, around nine months later, the Decision was issued. It includes a statement that the delay was due to "medical issues" but that it had been "substantially written in early 2025".

30. The Decision says at [26] that the 2009-10 discovery assessment was for tax of £101,194.05, and the following paragraph reads (my emphasis):

> "HMRC requested that **this** be reduced to £55,008, based on estimated revised profit of £55,000 and foreign bank interest of £8."

31. As the previous paragraph had set out the tax charged by the assessment, Mr Patel understood that the FTT had reduced the tax to £55,008.

32. In relation to the tax year 2012-13, the Decision said "Assessment: £136,414.70 issued 17 July 2015", and continued at [30], again, my emphasis:

> "HMRC requested that **the assessment be amended to increase the amount assessed** to £170,006. This was based on identified taxable deposits in Mr Patel's bank accounts of £176,931. Estimated expenses of £5,500 were deducted, based on analysis undertaken for other years. This gave an estimated revised profit of £171,431, which was rounded down to £170,000. Mr Patel also received foreign bank interest of £6."

33. Mr Patel understood that the FTT had increased the tax charged from £136,414.70 to £170,006.

34. There are similar paragraphs for other tax years.

35. In relation to each year, the Decision later states that:

> "Having considered the evidence before us and the submissions made, we find that the assessments in the revised amounts requested by HMRC…were reasonable."

36. Until the hearing of the PTA Application, Mr Patel, his solicitors and Mr Brodsky all understood that the FTT had, by the Decision, increased Mr Patel's tax for the years 2012-13 through to 2018-19 by a total of almost £1m, and reduced that for the early years.

37. However, Mr Windle was instructed to say that HMRC understood the Decision to be confirming amounts of *assessable income* and not amounts of tax, and that in consequence the FTT had reduced the figures in all the discovery assessments and the closure notice amendments for all the years.

GROUND 1

38. Ground 1 is that:

> "the FTT erred in law by concluding that HMRC had in fact "discovered" a loss of tax in circumstances where HMRC made no real attempt to ascertain Mr Patel's true liability for those years"

39. In the main body of the PTA Application, Mr Brodsky set out the case law which states that for a discovery assessment to be valid, the assessing officer must believe that there is an insufficiency of tax, and that belief must be reasonable. At §23, he limits the Ground to the last three years on the basis that Officer Jones simply used the presumption of continuity in those years. In oral submissions, Mr Brodsky said that it was not reasonable for an officer to use the presumption of continuity where there was other evidence, such as bank statements, that could have been requested from the taxpayer.

40. As the FTT said at [64], the threshold for discovery is relatively low. Officer Jones had examined the bank statements and other evidence for tax years 2011-12 through to 2015-16 and decided that income had been omitted from Mr Patel's returns for each of those years, see [82].

41. Mr Windle pointed out, by reference to the FTT Bundle, that Officer Jones had written to Mr Patel on 11 November 2019 saying that HMRC were intending to assess the later years on the basis of the 2015-16 figures, but inviting him to provide further evidence and saying this would be considered. Mr Patel did not provide further evidence. On 5 August 2020, Officer Jones wrote again, giving Mr Patel a further opportunity to provide evidence; she repeated that RPI would be used if he did not respond, and she set out the figures which would be arrived at if RPI were to be used. There was then a further delay of two months before the discovery assessments were finally issued on 16 October 2020. I reject Mr Brodsky's submission that "HMRC made no real or genuine attempt to obtain information in relation to the 2017 to 2019 tax years".

42. The FTT found that Officer Jones "believed that the Appellant had received income he had not declared [which] had resulted in an insufficiency of tax"; that she had made a discovery and her belief that there was an insufficiency of tax was reasonable, see [66] and [68].

43. Mr Brodsky relied on *Lowe v HMRC* [2024] UKFTT 826 (TC) to support his submission that this was an error of law. However, in *Lowe* the assessing officer's witness statement makes no reference to (a) the officer making a discovery; (b) the date of the discovery, or (c) the basis on which the discovery had been made. In addition, the assessing officer did not attend the hearing. There is no relevant parallel between *Lowe* and the FTT hearing of Mr Patel's appeal.

44. The fact that Officer Jones used the presumption of continuity does not mean that her belief was not reasonable: it plainly was. Ground 1 has no reasonable prospect of success and permission to appeal on this Ground is refused.

GROUND 2

45. Ground 2 relates to the years 2011-12, 2013-14, 2014-15 and 2015-16, when HMRC issued closure notices and amendments to Mr Patel's SA returns. It reads:

> "the FTT erred in law in failing to make any findings as to the validity of the enquiries or closure notices which charged Mr Patel to tax."

46. I refused to give permission on this Ground on the papers. However, Mr Patel's skeleton argument for the FTT hearing (which was provided as part of the UT Bundle) said:

> "The procedural questions of whether The Assessments and The Closure Notices are valid – and whether the Respondents made a discovery for the purposes of s29 TMA 1970 – also need to be addressed by the Tribunal."

47. I find that Ground 2 is arguable and give permission to appeal.

GROUND 3

48. Ground 3 reads as follows:

> "The FTT erred in law in its application of the burden of proof where HMRC were seeking to increase the amount of the original assessments and/or closure notices. As a consequence, the FTT failed to make a finding that the increased assessments/closure notices were proved to the proper standard."

49. I gave permission on this Ground on the papers, on the basis that the FTT had *increased* the tax assessed on Mr Patel, which was my understanding at that time. I said it was arguable that the FTT had made an error of law by conflating (a) the original HMRC assessments (where the burden rested on Mr Patel) and (b) the increases to those assessments under TMA s 50(7) (where the FTT was required to take the approach in *Stirling Jewellers v HMRC* [2020] UKUT 245 (TCC) ("*Stirling*") at para 55.

50. However, in the light of the information provided by HMRC in the course of the oral hearing (see §37), this Ground requires amendment, as does the related permission. The Ground is amended as follows:

> "The FTT erred in law in its application of the burden of proof where HMRC were seeking to **change** the amount of the original assessments and/or closure notices. As a consequence, the FTT failed to make a finding that the increased assessments/closure notices were proved to the proper standard."

51. I find that this Ground is arguable and give permission to appeal.

GROUND 4

52. Ground 4 reads:

> "The FTT erred in law accepting HMRC's assertions as to what was contained in certain bank statements, without requiring HMRC to adduce those statements, and by adopting an inconsistent approach to its evaluation of the evidence."

53. Mr Brodsky supported this Ground by saying (italics in original):

> "It was therefore wrong for the FTT to dismiss Mr Patel's evidence of the true quantum of his receipts and expenses on the basis that his figures were contained principally within *"spreadsheets which he had created with no supporting evidence provided for the entries"* (FTTD [40]), but then to accept HMRC's position based on HMRC's spreadsheets, which were themselves provided without the underlying bank statements as supporting evidence. That approach set one standard for the taxpayer and another for HMRC. It was an error of law."

54. I refused this Ground on the papers, saying:

> "The difficulty with this Ground is that it does not specify the years which are said to have been wrongly decided on the basis of incomplete evidence. If Mr Brodsky is seeking by this Ground to submit that the increased assessments were based on HMRC's schedules, while Mr Patel's schedules for the same year were unfairly rejected, that is essentially encompassed within Ground 3, as being a challenge to the way the FTT made its findings about the increased assessments. If it goes wider, permission to appeal is refused because the Ground is insufficiently pleaded and thus does not identify an arguable error of law."

55. In his skeleton for the oral hearing, Mr Brodsky explained this ground by reference to (a) what he had understood to be increased assessments by the FTT, and (b) the FTT's failure to ensure that Mr Patel was provided with the bank statements. This Ground is now encompassed within Grounds 3, 7, 8 and 9 and so falls away.

GROUND 5

56. Ground 5 is as follows:

> "The FTT erred in law by failing to carry out any legal analysis of Mr Patel's employment status. Further, the FTT's factual analysis of Mr Patel's employment status was flawed and reached conclusions that no reasonable Tribunal could reach."

57. I have already given permission on the papers for Mr Patel to appeal on this Ground.

GROUND 6

58. Ground 6 is that:

> "The FTT erred in law in its application of the 'presumption of continuity', including by failing to give any or any adequate reasoning for why some years were chosen as the 'base year' for continuity into other years, and by elevating that presumption to the status of a legal principle."

59. The FTT reduced the assessments for the years 2010-11 and 2011-12 under TMA s 50(6) by applying the presumption of continuity. The FTT explained at §91 why they had rejected Mr Patel's submission that the presumption could not be used backwards.

60. In relation to the years 2016-17 through to 2018-19, the base year was 2016 because (a) Mr Patel had not provided bank statements for the later years, and (b) he did not provide any evidence that his income had been different in those years, see [89]-[91].

61. It is not an error of law for HMRC to use the presumption of continuity, although it comes with risks, as the UT explained in *Stirling* at [103]:

> "HMRC's strategy in their enquiry was to focus on the profits of one accounting period and, if they were successful in adjusting Stirling's tax liability for that accounting period, to rely on the presumption of continuity to adjust taxable profits for all other accounting periods in dispute. It was entirely open to HMRC to adopt that strategy, but it left HMRC vulnerable to a finding that the situation in certain accounting periods was different from that in APE 2011 so that the presumption of continuity was rebutted in those accounting periods and no adjustment would be made to the profits of such periods. From HMRC's perspective such an outcome would compare unfavourably to the result that might obtain if they performed a detailed enquiry in all accounting periods in dispute."

62. Mr Brodsky is right that the FTT sometimes uses the word "principle" rather than "presumption", but without more, this is not a material error of law.

63. To the extent that by this Ground Mr Patel is challenging the FTT's approach in determining the assessments, it is encompassed in Grounds 3 and 8. To the extent that it raises a separate challenge to the way in which the FTT applied the presumption of continuity (ie a failure to identify the base year), there is no arguable error of law and permission to appeal is refused.

GROUND 7

64. Ground 7 is as follows:

> "The FTT erred in law because it failed to make findings about the tax payable by Mr Patel and/or it failed to set out conclusions which could be understood by him or by the reasonable reader of the Decision. In particular, the Decision confused the tax assessed with the income chargeable.
>
> At [93] the Decision cites TMA s 50 as allowing the FTT to increase or reduce a (tax) assessment. The FTT was thus relying on TMA s 50(6) and (7), and not on subsection (8), which refers to changes to 'the amount assessed'. However, as now clarified by HMRC, their schedule and summaries related to profits and not to tax, and it was these figures which the FTT adopted and accepted. The FTT thus relied on the wrong statutory provision and this was a further error of law."

65. I agree that this Ground is arguable and I give permission to appeal.

GROUND 8

66. Ground 8 is as follows:

> "The FTT erred in law by not holding a hearing in relation to significant parts of the dispute between the parties, instead directing submissions on the papers. HMRC provided 45 pages of detailed analysis and it was not in the interests of justice for Mr Patel, a litigant in person, to be required to respond in writing to those submissions."

67. It is not an error of law for the FTT to direct that one or both parties provide further submissions on the papers. However, on the facts of this case, it is arguable that it was an error of law (see Rule 29 read with Rule 2) for the FTT to have proceeded in this manner and I give permission to appeal.

GROUND 9

68. Ground 9 is as follows:

> "It was an error of law for the FTT to make its Decision without first ensuring that Mr Patel had received and had time to consider the bank statement evidence on which HMRC had based their calculations."

69. I agree that this Ground is arguable and give permission to appeal.

Signed: JUDGE ANNE REDSTON **JUDGE OF THE UPPER TRIBUNAL**	**Date: 17 July 2026**