UPPER TRIBUNAL

TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00356 (TCC)

Applicant: Anandpreet Powar	Tribunal Ref: **UT-2026-000056**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL FOLLOWING RECONSIDERATION AT ORAL HEARING

DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicant (Mr Powar) 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 9 December 2025 ("the Decision"). The Decision was made by the FTT following a hearing on 18 November 2025.

2. By its Decision the FTT struck out the Applicant's appeal against a personal liability notice ("PLN") imposed upon him under Schedule 41 of the Finance Act ("FA") 2008. This was on the basis that the FTT held that the Applicant's appeal against the PLN held no reasonable prospect of success pursuant to Rule 8(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

3. The PLN had been imposed by HMRC in the sum of £85,358.38 pursuant to paragraphs 4 and 22 of schedule 41 to the FA 2008. It made the Applicant personally liable for the penalty and excise duty assessments made against the company of which he was the director and sole shareholder, Drinks 4 Less (UK) Limited ("D4L").

4. References in square brackets [] are to paragraphs in the Decision unless context requires a different interpretation.

5. By a decision dated 17 April 2026 ("the PTA Decision"), the FTT refused the Applicant permission to appeal the FTT's Decision to the Upper Tribunal ('UT') on the 8 grounds of

appeal pursued. The Applicant's representative renewed the application to the UT for permission to appeal in-time within a month thereafter.

6. In a decision dated 21 May 2026 I granted the Applicant permission to appeal on grounds 2 and 3 of the five grounds of appeal then pursued. I refused permission on grounds 1, 4 and 5.

7. The Applicant then renewed his application for permission to appeal in respect of grounds 1 and 4 only, which he asked to be reconsidered at an oral hearing. That hearing took place by video on 10 September 2026. Mr Williamson of counsel appeared for the Applicant, relying on oral submissions and a skeleton argument dated 8 September 2026. I am very grateful to him for his assistance. Mr Powar also attended as an observer. HMRC did not appear nor were represented at the hearing but opposed the grant of permission, relying on a skeleton argument dated 3 September 2026.

UT's jurisdiction in relation to appeals from the FTT

8. 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.

9. 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 Background

10. The Applicant became the sole director of D4L on 8 September 2014 and remained in this position until the liquidation of D4L. At all relevant times he has also been the sole shareholder of D4L: see [9].

11. D4L registered for VAT with effect from 5 September 2011, with its business being initially described as a "wholesaler and distributor of drinks," before being refined on 28 May 2012 as "the wholesale of wine, beer, spirits and other alcoholic beverages." On 23 November 2011 D4L registered with HMRC as a "High Value Dealer" under 14(1)(a) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as well as being registered under AWRS.

12. D4L operated from a serviced office address in Greenford, as well as operating warehouses first in Slough, and then in Greenford. The Applicant's role within D4L was as both its guiding mind and primary employee. There were no other persons actively involved in D4L's operations at this time.

13. During the period it was trading, the Applicant understood that it was necessary for D4L to undertake due diligence on suppliers of wholesale alcohol. From July 2015 he instructed third party companies to undertake due diligence on its suppliers. While contents of some of these

reports raised concerns about D4L's suppliers, none of the Applicant's advisors recommended ceasing trading with any supplier.

14. During the period D4L traded there was a series of engagements with HMRC, including visits from officers to D4L's warehouses in Greenford. This engagement culminated in HMRC issuing 11 excise assessments against D4L for a sum of £195,105 on 10 October 2016 ("the Excise Assessments"). These Excise assessments were upheld by HMRC on statutory review on 14 February 2017 ("HMRC's 14 February Letter").

15. HMRC also issued a penalty in respect of the excise assessments for a sum of £85,358.38 on 22 September 2017, alongside the PLN against the Applicant. The Applicant appealed the PLN on 26 April 2017 to the FTT (collectively "the excise proceedings").

16. HMRC also denied a claim by D4L for a deduction of input tax in respect of 179 transactions between February 2013 and May 2016 under the doctrine in *Axel Kittel v Belgium C-439/04* ("Kittel"), as well as a corresponding assessment for £182,455 on 3 March 2017. HMRC issued penalties against D4L for £83,019.70 on 17 July 2017, as well as a personal liability notice against the Applicant in respect of the VAT penalty on 22 July 2017, both pursuant to its powers within Schedule 24 Finance Act 2008 ("Schedule 24") (collectively "the VAT proceedings"). These were all appealed by D4L on 26 April 2017, and the Applicant on 7 August 2017.

17. HMRC finally refused to approve D4L under the Alcohol Wholesaler Registration Scheme ("AWRS") in October 2016. D4L appealed this refusal in 2017 ("the AWRS proceedings").

18. On 31 July 2018, the FTT directed that the VAT proceedings, the excise proceedings and the AWRS proceedings be consolidated, and the substantive hearing of these proceedings be stayed pending the outcome of litigation on the appropriate interpretation of Regulation 6(1)(b) of the Excise Goods (Holding Movement and Duty Point) Regulations 2010 ("the Regulations"), *Davinson & Robinson v HMRC* [2018] UKUT 437 (TCC).

19. This consolidation was reconsidered by the FTT on 27 June 2019, and the excise proceedings were deconsolidated from the VAT proceedings and the AWRS proceedings.

20. On 12 January 2024, D4L's liquidator informed the FTT that it was withdrawing from the VAT and AWRD proceedings. This left the only live issue for the FTT in the VAT proceedings the question of the PLN. The Tribunal note that following D4L entering liquidation on 16 November 2023, the liquidator notified the FTT on 12 January 2024 that it was withdrawing the company VAT appeals and AWRS appeal). In other words, D4L withdrew from:

a. TC/2017/03710 – The Kittel appeal;

b. TC/2017/05998 – The Kittel VAT penalty (Schedule 24 to Finance Act 2007); and

c. TC/2017/02766 – The AWRS refusal.

21. The effect of the withdrawal was that D4L accepted that it knew or should have known its transactions were connected with VAT fraud, and that it was correctly refused an AWRS refusal.

The May FTT decision

22. Between 9 and 16 April 2024 the FTT heard the separate appeal by the Applicant against the PLN VAT penalty. The FTT considered whether the Applicant, as sole director, knew or should have known that D4L's transactions were connected with the fraudulent evasion of VAT for the purposes of his appeal against the Schedule 24 Personal Liability Notice (i.e. TC/2017/06223): *Powar v Revenue and Customs (Penalties - Personal Liability Notice - Company of which Appellant was sole director subject to VAT assessment on Kittel basis)* [2024] UKFTT 415 (TC) (17 May 2024) ("the May FTT Decision").

23. The FTT rejected the Applicant's appeal against the VAT PLN in the May FTT Decision.

24. In the May FTT Decision the FTT cited the MTIC sentencing remarks in related criminal proceedings at [May FTT/66]. The FTT found that the Applicant knew that D4L's transactions were connected with the fraudulent evasion of VAT. It stated:

> "96. For these reasons we consider that Mr Powar, and therefore the Company, not only should have known the transactions were connected to fraud but that it is more likely than not that Mr Powar actually knew of that connection.
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> 97. It therefore follows that, at the time they were submitted to HMRC, the Company's VAT returns were inaccurate in that they contained a claim for a deduction of input tax to which it was not entitled and Mr Powar knew that.
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> Whether inaccuracies deliberate.
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> 98. Given our conclusion that Mr Powar knew that the VAT returns submitted to HMRC were inaccurate, it follows that the inaccuracies in those VAT were deliberate.
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> 99. As such, it is not necessary for us to consider the position in relation to "should have known" (as opposed to knew) of the connection to fraud other than to note it was not disputed in Bachra that if it had been found that there was actual knowledge that the transactions were connected to the fraudulent evasion of VAT, the inaccuracy would have been deliberate.
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> Whether attributable to Mr Powar
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> 100. Mr Powar accepts that, as he was responsible for everything done by it, the actions of the Company were wholly attributable to him.
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> Whether the penalty and PLN were correctly calculated.
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> 101. Given our conclusions in relation to the other issues it follows that Mr Powar is liable to the PLN. We agree with HMRC that as Mr Powar did not tell HMRC about the inaccuracies in the VAT returns before having any reason to believe that these had been or were about to be discovered that the disclosure was prompted.
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> 102. The calculation of the PLN, including adjustments made for disclosure as required by paragraph 10 of schedule 24, is summarised above (see paragraph 55). We agree with the conclusion that there should be no reduction for "Telling" as Mr Powar has continued to maintain the VAT returns were accurate. We understand that the maximum deduction has been given for "Helping" and "Giving access", leading to the correct percentage of the potential lost revenue being applied, albeit to the revised and reduced amount of £164,448.37, in accordance with the calculations produced by HMRC during the hearing having accepted that it could not be established that several of the deal chains could be traced to a fraudulent loss of VAT.

> 103. We also agree with HMRC's conclusion that there are no special circumstances for which an additional reduction can be made.
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> Conclusion
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> 104. Therefore, for the reasons above the appeal is dismissed and the PLN confirmed in the sum of £74,823,63."

25. The Applicant applied for permission to appeal the May FTT Decision but this was refused by the FTT and the UT, both on the papers and after an oral reconsideration on 16 December 2025.

The FTT Strike Out Decision

26. As noted above, the FTT Decision, granted HMRC's strike out application on the basis that there was no "realistic prospect of the Applicant proving his case." The FTT decided at [52] that HMRC did not need to prove to establish the excise duty PLN under paragraph 4 of Schedule 41 was that the Applicant knew no excise duty had been paid on the goods – all they needed to prove was that the duty had not been paid and that the Applicant had dealt with the goods. That conclusion is the subject of grounds 2 and 3 on which permission has already been granted. It is arguable that before attributing a deliberate penalty to the officer of a company under paragraph 22 of Schedule 41, that officer must know that duty has not been paid.

27. The FTT had earlier reached conclusions on the issue which is relevant to the grounds of appeal pursued – namely whether excise duty had been paid on the goods.

28. The FTT found that all the goods within D4L's supply chain were linked to smuggling, and that the Applicant had not yet provided any evidence there had been any duty paid: [38]-[39]. The FTT also placed reliance on HMRC's 14 February Letter and the findings in the May 2024 Decision at [40] of the Decision.

29. The FTT took the view that the issue of due diligence and reasonable care were "comprehensively" addressed in the May FTT Decision, and that the Applicant had not yet provided full evidence: see [41-42, 45].

30. The FTT stated at [38]-[45]:

> "38. The VAT decision refers to evidence relied upon from criminal proceedings. As stated above, the goods in the supply chains traced to D4L were smuggled goods. The decision of Judge Brooks and Member Gable states that the supply chains traced to D4L were part of a "large-scale movement of smuggled … alcoholic drinks". As such, no duty would have been paid on those goods.
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> 39. HMRC's letter of 14 February 2017 to D4L (entitled 'Outcome of Departmental Review') states that no evidence of duty payment on goods purchased by D4L had been provided up to that point in time. That position has not changed. We find that no evidence of duty payment has been provided by the Appellant. Neither has the Appellant stated that any evidence relating to duty payment is to be forthcoming.
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> 40. HMRC's letter of 14 February 2017 also details the supply chain and entities involved with respect to the excise issues. Included are suppliers such as Mr Cash & Carry Ltd, Seltran Trading Ltd, Purity Supplies Ltd and Gujarr Ltd amongst others. These are some of the same suppliers detailed in the VAT decision. Mr Carey submitted

> that there is a complete overlap of suppliers relating to both the VAT and excise issues. That was not challenged by the Appellant and we so find.
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> 41. At the hearing, it was submitted on behalf of the Appellant that he would like the opportunity to present evidence relating to reliance upon third parties in respect of administrative tasks dealing with due diligence. We were directed to the Appellant's skeleton argument (specifically to paragraph 21) which states that certain administrative functions were delegated to other companies, namely Hydra Enhanced Analytical/Sertorius Solutions (the two operating as the same entity), Bachuus Solutions, and Tiberius Solutions Ltd.
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> 42. The issue of due diligence is comprehensively addressed in the VAT decision (principally at paragraphs 69 to 85). Briefly, we will refer to two of a number of instances detailed in the VAT decision where inconsistencies between documents attached to due diligence reports and other correspondence did not have any effect on whether or not D4L traded with the supplier concerned.
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> 43. In relation to Mr Cash & Carry, it is stated in the VAT decision that: "… it dealt with Mr Cash & Carry (see paragraph 35, above) even though it had received an undated introductory letter in which Mr Cash & Carry had described itself as a "leading international distributor of Spirits, Wines, Bears (sic) and Soft Drinks from around the world" despite the "Business activity description" in a VAT certificate that had been sent with the introductory letter being "Undifferentiated goods-producing activities of private household for own use".
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> 44. Another instance in the VAT decision in respect of due diligence related to D4L having begun to trade with AK Suppliers Ltd prior to a due diligence report having been commissioned by D4L in respect of AK Suppliers Ltd.
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> 45. We find that the Appellant has not provided any specific detail at all of any evidence that he would seek to adduce in relation to demonstrating that reliance upon third party providers could potentially absolve him of his personal responsibility. We are cognisant also that the strike out application was made almost a year ago (on 5 December 2024) and the Appellant has, therefore, had ample time since then (and earlier in time) in which to provide or at least specify evidence that would be forthcoming in that respect. That has not been done."

31. The FTT also decided that striking out the appeal would not conflict with the Applicant's right to a fair trial under article 6 of the European Convention on Human Rights ("ECHR"): see [47]-[49].

Grounds of Appeal

32. The Applicant relied on the skeleton argument of Mr Williamson dated 14 September 2026 in respect of the two renewed grounds of appeal:

> Ground 1: That the FTT had engaged in a determination of disputed facts which was impermissible bearing in mind the proper scope of the rule 8(3)(c) of the FTT rules;
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> Ground 4: That the FTT's exercise of its powers of strike out were contrary to article 6 of the European Convention on Human Rights ("ECHR")

Discussion, Analysis and Decision

Ground 1

The Applicant's argument

33. Mr Williamson relied on four sub-grounds

34. First, he submitted that the FTT improperly engaged in an impermissible "Mini-trial". He argued that there is a realistic prospect of success of showing that the FTT exceeded the remit of the strike out procedure in the findings of fact it made. He highlighted the following three instances where a concluded finding of fact was reached: (1) The FTT concluded that excise duty had not been paid on any goods handled by the Applicant: [38-39]; (2) The FTT appears to have concluded that there was no possibility of the Applicant being able to show reasonable reliance on third parties: [41-45]; and (3) The FTT concluded that the Applicant had dealt with the goods within the meaning of regulation 6(1)(b) of the Regulations: [51].

35. Second, he submitted that the FTT reached inappropriate conclusions on evidence available. He contended that it is more than merely arguable that the FTT erred in law by failing to apply the standard in *Gohil* and *Three Rivers* when considering the relevance of the evidence presented to it. The FTT should only exercise its power to strike out on factual where documentary evidence is so "effectively unanswerable" that no further oral or written evidence can outweigh the doubt the documents cast on the case. On the present facts, this is simply not the case. The only documentary evidence that the FTT relied on in the present case was: (1) The May FTT Decision which covered a wholly different matter and contained findings on an entirely different legal test regarding VAT; (2) A set of sentencing remarks referenced within the May FTT Decision at [66], which are used as evidence of "smuggling" despite the fact this was a remark not related to the issues in the criminal trial; and, (3) HMRC's letter dated 14 February 2017, which not only does not bear on many of the questions under appeal, but itself contains assertions by HMRC.

36. Third, he submitted that the FTT's approach failed to consider the possibility of further evidence. Mr Williamson submits that the issues with the FTT's application of the test in Rule 8(3)(c) are compounded by its failure to consider the possibility of further oral and written evidence coming to light at the time of trial, a factor considered vital in *The First De Sales Ltd Partnership and others v Revenue and Customs Commissioners* [2018] UKUT 396 (TCC) at [33] ("*FDS*") *FDS* (v) and *FDS* (vi), and that there is a realistic prospect of them showing this at a substantive hearing. The FTT did not apply this test. Instead, it dismissed any arguments about the possibility of further evidence on the basis that none was "identified.

37. Fourth, he argued that the FTT reversed the burden of proof. In the FTT Decision, the FTT placed substantial weight on HMRC's failure to adduce, or identify, particular pieces of evidence. As identified in *Crawford*, the burden of proof in strike out applications falls on the applicant – in this case, HMRC. While paying lip-service to the burden of proof at [24], the FTT's approach reverses this burden; they effectively require the Applicant to provide or identify full evidence, while letting HMRC succeed based only on the May FTT Decision and the unsubstantiated HMRC 14 February Letter. He contended that there is a realistic prospect

of the Applicant showing that, by doing this, the FTT failed to properly apply the test in Rule 8(3)(c).

Conclusion

38. Ground 1 – this ground is unarguable and I refuse permission to appeal as it does not hold realistic prospects of success.

39. The FTT did not arguably misapply Rule 8(3)(c) and was entitled to determine contested factual and evaluative issues in deciding whether there was no reasonable prospect of the Applicant's appeal against the excise duty PLN succeeding on the basis that excise duty had been paid on the goods.

40. First, the FTT did not arguably carry out an impermissible 'mini-trial' and explicitly stated it was not doing so – see [37] - but cited and applied at [20] of the Decision, the binding authority of *FDS*. I consider that the FTT correctly set out and applied the law for strike out at paragraph 20 of the decision. It correctly identified and set out the principles from *The First de Sales Limited v The Commissioners for HM Revenue and Customs* [2018] UKUT 396 (TCC).

41. The FTT was entitled to take into account the findings and underlying evidence relied upon by the May FTT Decision in the VAT penalty decision as admissible in so far as these were relevant and overlapped with or were identical to the issues in the excise duty PLN appeal. It gave sufficient reasons for its finding that excise duty had not been paid on the goods at [37]-[40].

42. The FTT did not simply rely upon the May FTT Decision, but also the sentencing remarks in the Crown Court in criminal proceedings and HMRC's February 2017 decision letter. All of this evidence supported HMRC's case that the Applicant's appeal against the excise duty PLN had no prospects of successfully establishing that excise duty had been paid. It was all admissible evidence to establish the excise duty had not been paid on the goods. Furthermore, the FTT was entitled, as it did at [39]-[45] to take into account and place reliance on the lack of any positive evidence provided by the Applicant that excise duty had been paid. The directions in respect of the strike out application by HMRC permitted the Applicant to file evidence in response to the application yet the Applicant filed none whatsoever. In those circumstances, the FTT was not required to balance competing evidence: there was evidence of significant weight filed in support of HMRC's case and none filed in response. The FTT was entitled to come to the conclusion that this satisfied the threshold for the strike out and it did not arguably misapply Rule 8(3)(c) in doing so.

43. The FTT did not go beyond the "evidential scope of a strike out application". It enquired of the Applicant during the hearing about evidence that could be produced in respect of the duty point and there was no category of evidence advanced (nor was there any submission that any particular evidence could be adduced beyond that set out at [41]). However, for the reasons given at [42], that was bound to fail. Finally, the FTT cannot sensibly be said to have approached a fact sensitive issue in the wrong way. If it were otherwise the FTT would never

be capable of striking out matters where there were a mere assertion (without any evidence in support) of some facts disputed. That would be plainly incorrect.

44. Second, the FTT did not arguably rely on inappropriate conclusions for the reasons set out above. It came to conclusions that it was entitled to reach on the evidence presented. In circumstances where the Applicant was given the opportunity to file evidence on the issues of whether excise duty was paid and did not do so and to file any further evidence on the lack of due diligence conducted but did not do so there was no countervailing evidence that would establish these being irrational or otherwise unlawful conclusions.

45. The FTT was entitled at [38] of the Decision to conclude that, "As stated above, the goods in the supply chains traced to D4L were smuggled goods. The decision of Judge Brooks and Member Gable states that the supply chains traced to D4L were part of a "large-scale movement of smuggled ... alcoholic drinks". As such, no duty would have been paid on those goods". I am satisfied that the FTT properly applied the principles as to the test for the strike out test to the facts of this case in respect of finding that no excuse duty had been paid on the goods.

46. Third, the FTT was not directed to any specific or detailed forthcoming evidence from or on behalf of the Applicant that might yet be available in circumstances where none had yet been served. The FTT was entitled to come to the conclusions that it did on the evidence available at the time. The FTT expressly asked the Applicant's representative during the course of the hearing what evidence was held that duty had been paid which could be provided. She indicated that the Applicant wanted an opportunity to provide evidence which could possibly provide evidence. That was an equivocal statement at best, and provided no concrete evidence or even what category of evidence the Applicant intended to produce to show this. There was no detail of what the evidence that would be sought to be presented might be. The FTT was entitled to disregard it.

47. Fourth, I have already addressed the issue of the potential reversal of the burden of proof when granting permission to appeal on grounds 2 and 3 and this adds nothing to the grounds for which permission has already been granted.

48. There is no arguable error of law in respect of Ground 1.

<u>Ground 4</u>

The Applicant's submissions

49. Mr Williamson further submits, that there is a realistic prospect of success in showing that the approach of the FTT constituted a breach of the Applicant's rights pursuant to article 6 of the ECHR. The basic principle when applying article 6 of the ECHR is that the proceedings, "viewed as a whole," must be "fair" within the meaning of the article: *Jones v Birmingham CC* [2023]. UKSC 27 ("*Jones v Birmingham*") at [35]. This requires an analysis of each case on its individual facts.

50. The Applicants accept this issue was not before the FTT during the hearing of the strike out application; nonetheless, Mr Williamson argues that it forms a defect in the FTT's reasoning that the prospect of further documents arising through the use of its own disclosure procedures.

51. He submits that, when properly evaluated, the Applicant has a realistic prospect of successfully arguing that proceedings against the Applicant were not fully fair. The Applicant takes the view for the following two reasons:

52. First, the reliance the FTT placed on the May FTT Decision deprived the Applicant of a fair opportunity to present his case; by using this as a basis for striking-out the Applicant's claim, the Applicant lost the opportunity to present particular evidence and arguments which bore on the questions relevant to the Excise Proceedings. Second, the FTT's decision to strike out the appeal deprived the Applicant of an opportunity to present his case through the use of witness evidence. The strike out procedure is inappropriate for dealing with questions requiring witness evidence, but the Applicant's case – particularly on the issue of reasonable excuse and deliberate behaviour – turns largely on this. By striking out the case, the FTT deprived the Applicant of the right to be properly heard as required by article 6.

53. Mr Williamson accepted that the case law establishes that the strike out procedure generally is compliant with the ECHR, and the Applicant does not submit otherwise: see *CF Booth* at [24]. However, Mr Williamson submits that in the present instance, the FTT fell into unfairness in the procedure it adopted.

Conclusion

54. This ground holds no realistic prospects of success. I refuse permission to appeal upon it.

55. There was no arguable procedural unfairness in the FTT making its Decision pursuant to Rule 8(3)(c) – nor arguable breach of article 6 ECHR: the right to a fair trial. There was a hearing in relation to the strike out application at which the Applicant had the opportunity to serve and rely upon evidence, as directed, which the FTT noted he did not do – see [39] and [45]. Further he had the right to make written and oral submissions opposing the application which his representative took up. Thereafter, the FTT considered the Applicant's case as presented but found that the strike-out test was satisfied giving a fully reasoned decision in support of its conclusion.

56. The terms of Rule 8(3)(c) themselves are not in breach of Article 6 – the rule sets a high threshold before an appeal may be struck out before a substantive hearing. In so far as the complaint is made as to the FTT's reliance on the earlier May FTT Decision in order to make its Decision – the findings and underlying evidence contained in this decision regarding the Applicant's PLN for VAT were admissible but the FTT did not rely on these earlier proceedings as binding, determinative nor conclusive (it declined to decide whether the Applicant's appeal against the excise duty PLN was abusive but considered its substance). Instead, the FTT considered all the evidence presented on behalf of HMRC afresh together

with the lack of evidence provided on behalf of the Applicant. The Applicant had a fair opportunity to present his case.

57. The UT in *CF Booth Ltd v The Commissioners for HM Revenue and Customs* [2022] UKUT 217 (TCC) dealt with a similar ECHR argument and rejected it. At paragraph 27 it noted that the third ground of appeal was as follows:

> "27. Further and in any event, in these proceedings which are criminal proceedings for the purposes of Article 6 ECHR, the findings in the earlier civil proceedings should not be taken to determine any issue, whether by the application of a principle of issue estoppel or abuse of process or otherwise ("Ground 3")."

58. At paragraph 56 of *CF Booth*, the UT, having considered a number of authorities, stated:

> "56. It is clear from cases dealing with the civil head of Article 6 that the right to a fair trial does not preclude a court or tribunal from striking out an action or giving summary judgment either on the grounds that it is an abuse of process or because there is no reasonable prospect of success: see *Rampal v Rampal (No 2) [2001] EWCA Civ 989 per Thorpe LJ at §32, Summers v Fairclough Homes Ltd [2012] UKSC 26 per Lord Clarke at §46 and Mannion v Ginty* [2012] EWCA Civ 1667 per Lewison LJ at §13."

59. At paragraph 58 the UT continued:

> "58. In our judgment, the essential requirement of Article 6 is that in the current proceedings the Applicant has a right to a fair trial, bearing in mind that fiscal penalties do not fall within the hard-core of the criminal law and that the "criminal-head" requirements of Article 6 do not (as the ECtHR found in Jussila) apply with their full stringency. The exact requirements necessary to ensure a fair trial will depend on the nature of the issue to be tried, its seriousness and all the circumstances of the individual case. What is required is a broad assessment of whether the particular charge brought against the Applicant is dealt with in a manner which provides a fair hearing when the proceedings are viewed as a whole."

60. There can be no doubt in the present proceedings that the Applicant received a fair hearing and was not shut out from presenting his case. The Applicant could have produced any evidence he wanted to show a prima facie case in support of his appeal in response to the HMRC's strike out application. He did not do so. He could have advanced specific evidence, or categories of evidence that he would have wished to advance. He did not do so other than to a limited extent and for which that evidence could not have assisted him (as found by the FTT at [42] – [44] of the Decision). Indeed, at [45] the FTT stated:

> "45. We find that the Applicant has not provided any specific detail at all of any evidence that he would seek to adduce in relation to demonstrating that reliance upon third party providers could potentially absolve him of his personal responsibility. We are cognisant also that the strike out application was made almost a year ago (on 5 December 2024) and the Applicant has, therefore, had ample time since then (and earlier in time) in which to provide or at least specify evidence that would be forthcoming in that respect. That has not been done."

61. The application of the strike out the test in Rule 8(3)(c) required the FTT independently to consider that HMRC had established their case with a high degree of conviction. The FTT was entitled to take into the account the absence of prima facie case raised by the Applicant in support of his appeal, despite having had the opportunity to present evidence and argument. There was no procedural or substantive error in the FTT deciding that the Applicant had failed to demonstrate his appeal had reasonable prospects of success (a relatively basic level) in order to avoid strike out in the first instance. The Applicant did not do this, and the fact that the consequence of this failure resulted in the Appeal being struck out does not mean that there has been an Article 6 breach. It is not material to this argument that a party may later want the opportunity to adduce evidence, or cross-examine witness or adduce evidence if it is given the opportunity to do so at the time and fails to take it. The Applicant was unable to specify any evidence it might credibly call at that time.

62. The Applicant had a fair opportunity to: (i) address the FTT, through Counsel, which he did, and (ii) the opportunity to serve evidence (which he did not do). There has been no arguable breach of Article 6 ECHR in this case.

63. This ground of appeal is not arguable and permission is refused.

Conclusion and right to apply for reconsideration

64. Permission to appeal to the Upper Tribunal is **refused on the renewed grounds of appeal, grounds 1 and 4.**

Signed:	**Date: 14 September 2026**
JUDGE RUPERT JONES	
JUDGE OF THE UPPER TRIBUNAL	