

**UPPER TRIBUNAL****TAX AND CHANCERY CHAMBER****Neutral Citation Number: [2026] UKUT 00368 (TCC)**

Applicant: Alesen Direct Solutions Limited	Tribunal Ref: UT-2026-000075
Respondents: The Commissioners for His Majesty's Revenue and Customs	

**RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL
FOLLOWING ORAL HEARING**

DECISION NOTICE**JUDGE RUPERT JONES****Introduction**

1. The Applicant (or “company”), Alesen Direct Solutions Limited, 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 13 March 2026 (“the Decision”). The Decision was made by the FTT following a hearing on 18 February 2026.
2. In its Decision the FTT refused the hardship application made by the Applicant to the FTT pursuant to section 84(3B) of the VAT Act 1994.
3. References in square brackets [] are to paragraphs in the Decision unless context requires a different interpretation.
4. The FTT in refusing the hardship application was prepared to accept that at the time of the hearing the Applicant currently had insufficient funds to pay the VAT in dispute. Nonetheless it found that the real cause of this was not the requirement to pay the sum pending the resolution of the appeal but the Applicant’s own deliberate act in paying away the monies which would otherwise have been available to it for that purpose – see [28]-[29] of the Decision:

“28...Even if (which we are not persuaded by – both from a legal perspective and the because of the lack of corroborative evidence) the Appellant is currently unable to recover any funds from PPBeer this is a clear case of the Appellant being the author of its own misfortune in the

sense that it created its own hardship (and did so in full knowledge of, and with a view to bypassing, its obligation to pay the VAT in dispute)

29. Therefore, the only reason why the Appellant is able to claim hardship is because it put itself in that position. Following the approach in *NT Ada Ltd v HMRC* [2019] UKFTT 333(TC) at [33], that is not a good reason for the appeal to be permitted to proceed without payment upfront of the VAT in dispute.”

5. By a decision dated 28 May 2026 (“the PTA Decision”), the FTT refused the Applicant permission to appeal the FTT’s Decision to the Upper Tribunal (‘UT’) on the grounds of appeal pursued.

6. The Applicant, acting through its director Alex Senechko, renewed the application to the UT for permission to appeal in-time within a month thereafter on 20 June 2026. On 18 August 2026 I refused permission to appeal to the UT on the papers on all four grounds of appeal then pursued.

7. The Applicant renewed its application for permission to be reconsidered at an oral hearing before the UT. That hearing took place by video on 28 September 2026. Both Oleg and Alex Senechko, father and son, appeared for the Applicant at the hearing, the latter making oral submissions. Milan Chudasama, litigator of HMRC, appeared for the Respondents making oral submissions in reply. I am grateful to them all for their assistance.

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.

Summary of relevant law

10. The requirement to pay (or deposit) the VAT assessed before an appeal may proceed is found in the Value Added Tax Act 1994, section 84(3). However, subsection (3B) provides that this is not necessary if either:

- (1) HMRC are satisfied (on the application of the appellant) that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship [which HMRC were not] – or
- (2) the Tribunal so decides.

1. At [27]-[30] of the Decision the FTT applied the binding authority of *Revenue and Customs v Elbrook (Cash & Carry) Ltd* [2017] UKUT 181 (TCC) at [27]-[28] and *Total 2* at [45]-[47]:

‘27. There are, however, circumstances where this normal rule may not be applied. Relying on *ToTel 2*, Mr Watkinson submitted that it was open to the tribunal to consider the question of hardship by reference to circumstances at an earlier date from that of the hearing. He argued that the tribunal may take into account whether the appellant is himself responsible for putting himself in a position where he cannot pay the tax due, and that would include by delaying the hearing so that at the time of the hearing he cannot pay the tax due without hardship.

28. We accept that those are relevant factors for the FTT to consider. But it is important, we consider, for the tribunal to be mindful of the statutory question, and the relevance of those factors in that context. The question is not as simple as enquiring whether there has been a delay, or even whether the delay has been caused by the appellant. The question is one of causation, and we can do no better than to refer to the decision of Nugee J in this respect in *ToTel 2*, at [45] – [47]:

“[45] I consider that the principle ... that the tribunal can take into account the fact that transactions have been undertaken with a view to avoiding payment of the disputed tax, can best be reconciled with the statutory language (with its apparent requirement to assess the question of hardship at the date of the hearing) as follows. The statute requires the tribunal to decide whether the requirement to pay or deposit the amount determined ‘would cause’ the appellant to suffer hardship. In the example I have given, it may well be that the appellant will be in financial difficulty if he now has to find the £100,000. But the real cause of that is not the requirement to pay or deposit the £100,000; the real cause is the appellant’s own deliberate act in paying away the £200,000 which would otherwise have been available to him for that purpose.

[46] This seems to me the most satisfactory way both to enable the tribunal to take into account the fact that the appellant is himself responsible for being unable to pay, and to respect the statutory language which requires the tribunal to assess whether the requirement to pay or deposit the tax would cause the appellant hardship rather than assessing whether it would have caused him hardship.

[47] But if this is right, then similar considerations apply where the appellant has been responsible for delaying the hearing of the application. If for example, the appellant can easily afford the £100,000 when the appeal is brought, but is responsible for the hearing of the hardship application being delayed by two years, by which time he will be in difficulties if he has to find it, I do not see why the tribunal should not conclude in an appropriate case that the appellant is again himself the real cause of any hardship that may be caused. Had he not delayed the application, the requirement to pay or deposit the tax in issue would not have caused him hardship, so it is not so much the requirement that is the real cause of the hardship as his own delay.”

Grounds of Appeal

2. The Applicant relied on four grounds of appeal before the Upper Tribunal in the notice of appeal dated 20 June 2026 in the box titled ‘Reason for appealing’. I refused permission on those grounds for the reasons given in my decision on the papers dated 18 August 2026. At the hearing, Mr Oleg Senechko relied on only one ground of appeal which I address below.

Discussion, Analysis and Decision

Misapplication of the hardship test and failure to answer the relevant statutory question

3. Mr Oleg Senechko argued that the hardship test was wrongly applied by the FTT who applied the test at the wrong point in time – he contended the Decision was based upon the previous financial situation of the company, when it had funds, and not at the time that it applied for hardship.

4. He submitted that previously there was money owing to the company for its ongoing building project and there was a financially stable business. However, at the time of the hardship application, the company did not have any financial stability nor any money on account - hence the reasons to apply for hardship. He argued that this is why the hardship test was not correctly applied by HMRC nor the FTT. They applied the test on the basis of the company's previous financial situation and not at the present time of the hardship application. He contended that HMRC based their decision on bank statements from the past year and a half alleging that the director, Alex, intentionally withdrew money. He disagreed – they did not withdraw the money – they just refunded the money to the customer, MS (who was the mother of Oleg and grandmother of Alex). The company could not make any further progress with the construction project which had been supposed to go on for a further 2 years. Therefore, because the project was not completed, the company did not have any profits and profits would only have appeared at the end of the project if it had been completed. As they did not continue with the project their customer was that first person who was owed something and MS, the customer, was repaid a long time before the application for the hardship was made.

5. This ground of appeal does not hold a realistic prospect of success and there is no arguable error of law in the FTT Decision. I refuse permission to appeal on this ground. The FTT did not arguably misdirect itself as to the statutory test for hardship and did not wrongly apply the point of time at which the test should be determined.

6. The FTT correctly identified that the hardship test should be applied as of the date of the hearing - rather than at the time of the application or at any earlier point in time – but that there are circumstances where prior events leading up to the hearing can be taken account such as to where the Applicant is found to be responsible for putting itself in a position where it could not pay; see [25] of the Decision (applying [27]-[28] of *Elbrook* and [33](4)&(10) of *NT Ada Ltd*):

“25. The leading case in this area is the Upper Tribunal’s decision in *HMRC v Elbrook (Cash & Carry) Limited* [2017] UKUT 181 (TCC). The principles derived from that case were usefully summarised by this Tribunal in *NT Ada Ltd v HMRC* [2019] UKFTT 333 (TC) at [33] with the references therein to paragraphs in the Upper Tribunal’s decision in *Elbrook*.

(1) The purpose of the provisions is to strike a balance between the abuse of the appeals mechanism by employing it to delay paying disputed tax and the stricture of having to pay or deposit the disputed sum as the price of entering the appeal process; the relief afforded by the “hardship” provisions should not be applied so as to operate as a fetter on the right of appeal ([19]).

...

(4) The test is to be applied to the position at the date of the hearing ([26]). This means that the Tribunal should not “speculate as to what might become available to the appellant in the future” ([22] & [26]). It should focus on “immediately or readily available resources” ([21]).

(5) The fact that the appellant may have the necessary cash or other readily available resources may not be determinative, if hardship would result from using it (or them) in paying the disputed sum ([22]).

...

(10) Although the test is to be applied by reference to the circumstances at the date of the hearing (see [33(4)] above), that does not mean that events leading up to that time are necessarily ignored. The Tribunal can take into account “whether the appellant is himself responsible for putting himself in a position where he cannot pay..., and that would include by delaying the hearing so that at the time of the hearing he cannot pay... without hardship” ([27], endorsed at [28]). The basis for this is that the “real cause” of the appellant’s inability to pay without hardship may be his own prior actions.

(11) The Tribunal should make its assessment on the basis of the most up-to-date available information. The burden lies on the appellant to establish hardship, so it is normally incumbent on the appellant to adduce the necessary evidence to satisfy the Tribunal ([29]). Absence of contemporaneous accounting evidence may justify the Tribunal in placing little, if any, weight on an oral assertion that the appellant is unable to afford to pay.

(12) Within the above parameters, the decision of the Tribunal is a value judgment on the basis of the evidence before it ([16]).”

7. The FTT correctly applied this law in coming to its conclusions at [27]-[30] of the Decision as addressed above.

8. Further, the FTT did not fail to give adequate reasons explaining why funds which it accepted were not available to discharge the VAT liability should nevertheless be treated as causing no hardship. It gave sufficient reasons at [11]-[20] and [27]-[30] of the Decision. Following its review of the evidence, at [18]-[20] the FTT concluded:

“18. Our foregoing conclusion is also reinforced by the various other contentions made by the Senechkos in relation to the return of the £40,000-odd. It was suggested orally that the full sum was to be repaid to MS (consistent with the contention recorded at ¶16 above) but that MS had requested that £23,000-odd be directed to PPBeer. Once it transpired that PPBeer was a company under Mr Oleg Senechko’s control, this suggestion became far less plausible and we unhesitatingly reject it. We also note that it is inconsistent with what Mr Alex Senechko initially wrote to Ms Fereday about the transfer to PPBeer being made because the Appellant had the opportunity to “help” PPBeer (see ¶11(27) above). We reject Mr Oleg Senechko’s suggestion to us that Mr Alex Senechko “mis-spoke” in that earlier e-mail, because not everything that Mr Alex Senechko wrote was supervised by his father. We doubt that any of this correspondence was drafted by Mr Alex Senechko without his father’s oversight. However, even if we are wrong in that regard, we cannot see how any director of a company can mistake a request by a customer to direct a payment to a third party for a decision to make an advance to that third party to help it out: even more so, when the third party is a company under the control of the director’s father.

19. Furthermore, we do not accept what was suggested in the e-mail correspondence that the “agreement” to make a payment to PPBeer was made in April, shortly before the Appellant learned that it needed to pay the VAT in dispute notwithstanding its appeal in this Tribunal. We were not supplied with any evidence to corroborate this request (company accounts or bank statements to demonstrate PPBeer’s need for financial assistance, nor any memorandum of the

loan agreement³). Consequently, we had no real reason to accept that this “agreement” could not be broken once the Appellant (as the Senechkos asserted) finally realised that the VAT had to be paid. Indeed, the first payment to PPBeer was made on 14 May 2025 over two weeks after the Appellant first made its hardship application to HMRC. For completeness, we note that we could see no reason why (had the “agreement” been made before 25 April 2025, as was asserted by Mr Alex Senechko in his correspondence) it then took (depending on the actual date of this asserted “agreement”):

- (1) nearly three weeks or for it to be given effect; or
- (2) even longer.

20. Our decision is that decisions to make the payments to MS and PPBeer were both made after the company realised that the VAT was payable by the company (subject to it succeeding with a hardship application) and the principal intention of the Senechkos (and, thus, that of the company) was to create the impression of relative impecuniosity so as to side-step the need to pay the tax in dispute upfront.”

9. The conclusion at [20] was a finding of fact that the FTT was entitled to make on the evidence before it on the balance of probabilities. The FTT made no arguable error of law in relation to its fact finding as identified in *Edwards v Bairstow* [1956] AC 14. It came to a decision that a properly instructed tribunal could properly or reasonably make on the evidence before it. It took into account all the relevant evidence, it did not fail to take into account relevant or take into account irrelevant evidence; it came to rational, reasonable conclusions which were not perverse; and it made findings of fact and came to conclusions that a properly instructed tribunal could arrive at based upon the evidence before it. The FTT gave sufficient reasons for its findings at [16]-[20] and [27]-[30] of the Decision. There was sufficient evidence relied upon and cited to support the findings and conclusions made.

Conclusion

10. I know that this decision will come as a disappointment to the Applicant and its director. Nonetheless, my jurisdiction is limited to considering errors of law on appeal. Permission to appeal to the Upper Tribunal is refused on all grounds of appeal as they do not hold realistic prospects and do not raise arguable errors of law in the FTT Decision.

Signed:

Date: 28 September 2026

JUDGE RUPERT JONES

JUDGE OF THE UPPER TRIBUNAL