



Neutral Citation Number [2026] UKUT 00392 (TCC)

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Applicant: Fisher Hirst Ltd	Tribunal Ref: UT-2025-000118
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE FOLLOWING ORAL HEARING

JUDGE ANNE REDSTON

1. This application concerns the time limits for making a VAT assessment.

BACKGROUND

2. On 23 November 2022, HM Revenue & Customs (“HMRC”) issued the Appellant with a decision and a VAT assessment of £63,600. The Appellant appealed to the First-tier Tribunal (“FTT”), and on 22 May 2025, the FTT refused the appeal by a decision published under reference [2025] UKFTT 00562 (TC) (“the Decision”). References in this PTA judgment to the paragraphs of the Decision are shown by [XX].
3. On 3 July 2025, the Appellant made an in-time application to appeal the Decision, and on 16 October 2025 the FTT refused that application. On 7 November 2025, the Appellant made an in-time application to the Upper Tribunal (Tax and Chancery) Chamber (“the UT”) for permission to appeal against the Decision (“the PTA Application”). The PTA Application was drafted by Mr Danny McNamee of McNamee McDonnell Solicitors, who had also represented the Appellant at the FTT hearing. I refused permission to appeal on the papers by a decision issued on 26 July 2026.
4. The Appellant applied for that decision to be reconsidered at a hearing. This took place on 9 October 2026 by video. Mr McNamee represented the Appellant. Mr Stuart Redpath, the litigator who had represented HMRC before the FTT, attended as an observer but did not make any submissions.
5. For the reasons set out below, permission to appeal to the UT is **refused**.

APPEALS TO THE UT

6. An appeal to the UT 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 UT has a discretion whether to give permission to appeal. It will be exercised if an application for permission to appeal demonstrates that it is arguable that the FTT made an error of law which was material to its decision. “Arguable” means an argument that carries a realistic as opposed to fanciful prospect of success. The discretion will also be exercised, exceptionally, if there is some other good reason to do so, such as if the appeal raises a point of law of general public importance.

THE DECISION

7. The Appellant is a scaffolding contractor in Northern Ireland; it uses plastic sheeting as a “wrap around” for buildings under construction, see [6]. The Commissioners in the Republic of Ireland (“RoI”) provided HMRC with five invoices issued by the Appellant to a company based in the RoI relating to the supply of plastic sheeting, see [5]-[6].

8. The Decision records that copies of those invoices were received by HMRC in June 2022, see [156]. However, Mr McNamee said at the beginning of the hearing that this was an error: the invoices were provided to HMRC by the RoI Commissioners in June 2020. Mr McNamee did not submit that the FTT approached the appeal on the basis that the invoices had not been provided to HMRC until June 2022. I agree with Mr McNamee on both points. It is clear from the Decision that (a) the invoices were received by HMRC from the RoI Commissioners in June 2020, and (b) the FTT were well aware of that fact, see [5]. I thus find that the reference in para [156] to the invoices having been provided to HMRC in June 2022 was a typographical error.

9. Having been provided with the invoices, Officer Hannan asked the Appellant for information, including purchase and sale invoices, contracts, orders, proof of payment, transport documentation and bank statements, see [13]. No information was received in response, or following a subsequent request issued on 29 September 2021, see [14]-[16].

10. On 9 March 2022, the Appellant’s owner and director, Mr Kieran Dynes, told Officer Hannan in a telephone conversation that the transactions had been omitted from the Appellant’s VAT return, see [17].

11. On 4 April 2022, Mr Dynes confirmed in writing that the sales had taken place and said that as they were to the RoI they were zero-rated, so that “the overall VAT position remained the same even although [sic] they had not been recorded in the VAT return”, see [19].

12. On 9 August 2022, the Appellant provided some further information to Officer Hannan, see [25], and on 21 November 2022, sent him five tachograph cards “as evidence to show that the goods were removed from the UK”, accompanied by a report from a Mr John Logue, who the FTT found to be an expert, see [29] and [60].

13. Officer Hannan did not accept that the tachograph evidence showed that the goods had crossed the Irish Land Border, see [29] and [40], and he informed Mr Dynes of this on the same day, adding that if the Appellant had any further information, it was to be provided urgently.

14. On 23 November 2022, Officer Hannan issued his decision and raised the related assessment. This was based on information in the five invoices, see [41], and was issued because the Appellant had not kept the evidence required by VAT Notice 725 to prove that the goods had been exported to the RoI, see [115]-[116].

15. The FTT refused the Appellant’s appeal, on the basis that the statutory conditions for issuing a VAT assessment set out in VATA s 73 had been satisfied, including best judgement and the related time limits.

THE GROUND OF APPEAL

16. The Appellant seeks permission to appeal on the basis that the FTT should have found that the assessment was not made by the time limit in VATA s 73(6)(b), namely within:

“one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge.”

17. Mr McNamee explicitly confirmed at the hearing that the Appellant was not seeking permission to appeal on the basis that the FTT should have found that the transactions were zero-rated because there was sufficient evidence that they had been exported to the RoI. The only ground of appeal was that set out above, relating to time limits.

THE SUBMISSIONS

18. In his written and oral grounds, Mr McNamee made the following submissions:

- (1) Officer Hannan’s last piece of evidence was the five invoices, which had been received in June 2020, over two years before the assessment was issued.
- (2) The FTT wrongly applied the test at s 73(6)(b).
- (3) The FTT’s approach deprived that subsection of all effect.

The five invoices

19. Mr McNamee’s main submission was that:

- (1) HMRC had based its assessment on the invoices, which they had held since June 2020;
- (2) it would have been clear to HMRC at or around the same time, that these sales had not been entered into the Appellant’s VAT returns; and
- (3) HMRC therefore had all the information they needed to issue the assessment, without spending time considering whether the sales were zero-rated, but failed to act until November 2022.

20. In *DCM (Optical Holdings) v HMRC* [2022] UKSC 26 at [18]-[22], the Supreme Court confirmed the approach taken in *Pegasus Birds v C&E Commrs* [2000] STC 91. In particular, at [20] of their judgment, the Court emphasised that when considering s 73(6)(b), the focus is on “the subjective opinion of the relevant HMRC official” and that the officer’s view as to the adequacy of the evidence can only be challenged if it is “a perverse view, akin to *Wednesbury* unreasonableness”.

21. It was the Appellant’s position in correspondence with Officer Hannan that it had no liability to VAT because the transactions were zero-rated, and thus no assessment should be made. At the FTT hearing, it was part of the Appellant’s case that the assessment should be set aside for the same reason.

22. It was plainly neither perverse nor unreasonable for Officer Hannan to decide that he did not have adequate evidence to make an assessment until he had (a) sought information from the Appellant about its case that the goods had been exported, and (b) considered the information supplied to him by the Appellant. The contrary is not arguable.

The FTT’s approach

23. Mr McNamee also submitted that the FTT failed properly to apply s 73(6)(b) because of the passage at [157], which reads:

“We consider that HMRC were entitled to and attempted to obtain further information before issuing an assessment, and that they were not in a position

to so justify making an assessment until they had attempted to receive all the evidence they requested and then latterly acknowledge a failure to respond to their requests.”

24. Mr McNamee said that this misstated the statutory test, which is not whether HMRC are “entitled” to ask for further information; instead, they are required to assess within one year of receiving the last piece of evidence.

25. I find, however, that it is not arguable that the FTT misunderstood the statutory time limit. Under the heading “HMRC’s submissions”, the Decision records the following:

“122. The pertinent question therefore is, “When was the piece of information received by the Respondents that was critical to the assessment which was made?”

123. In this case, the “piece” of evidence obtained, on which to make the assessment notified on 21 November 2022, was received after RH issued his pre-assessment letter on 1 November 2022, requesting that the Appellant provide any evidence to support their contention that they had removed the goods in question from the UK to the ROI, being the submission of the tachographs.

124.No satisfactory evidence was provided and the Respondents subsequently issued the assessment on 23 November 2022.”

26. Thus, the FTT here expressly determined that the “last piece of evidence” was the tachographs. This is the key passage, not that set out at [157]. It is not reasonably arguable that the FTT failed to identify and apply the statutory test.

Subsection deprived of effect?

27. Mr McNamee’s other submission also rested on [157], set out above. He said that if the time limit at s 73(6)(b) did not run from the date the last piece of evidence was received, but instead from the date on which HMRC last asked an appellant if it had any further information, HMRC would be able to refresh the time limit by the simple device of asking that question, and this would deprive the subsection of any effect .

28. Here, the last piece of evidence was the tachographs, so this is not a case where a HMRC Officer failed to act on information received, and then sought to refresh the time limit, in the way suggested by Mr McNamee. Whether a refusal or failure to provide information is itself the “last piece of evidence” may be a relevant factor in a different appeal, but not in this one. This submission too is not arguable.

DECISION

29. For the reasons set out above, permission to appeal is refused.

Signed: Judge Anne Redston Judge of the Upper Tribunal	Date: 11 October 2026
---	------------------------------