[2018] UKFTT 0203 (TC)

TC06447

Appeal number: TC/2017/07854
TC/2017/07855
TC/2017/07856

VALUE ADDED TAX – INCOME TAX – NATIONAL INSURANCE CONTRIBUTIONS – notice of requirement to provide security – whether decision was flawed – no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

DERBY ACCESS SCAFFOLDING LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE JANE BAILEY
MR IAN PERRY

Sitting in public at Centre City Tower, Birmingham on 3 April 2018

Mr Holden, retired solicitor, for the Appellant

Mrs Checkley, presenting officer, for the Respondents

DECISION

Introduction

1. The Appellant's appeal is made against the requirement, imposed upon it by two Notices served on 14 June 2017, to provide security to the Respondents in respect of its liability to Value Added Tax ("VAT"), Income Tax due under the Pay As You Earn Regulations ("PAYE") and National Insurance Contributions ("NICs").

2. The two Notices of requirement under appeal had also been served upon Ms Belinda Raphael, the sole director of the Appellant, although there was no separate appeal to the Tribunal by Ms Raphael. Under the Notices, Ms Raphael was jointly and severally liable with the Appellant to pay the security required.

This Tribunal's jurisdiction on appeal

3. The Respondents' first notice was served under Paragraph 4(2)(a) of Schedule 11 to the Value Added Tax Act 1994. In an appeal against the imposition of a Notice of Requirement to provide security in respect of VAT, the Tribunal's jurisdiction is to assess whether it was reasonable for the Respondents to consider it was requisite for the Appellant to provide security. That jurisdiction was clearly set out in *John Dee Limited v Customs & Excise Commissioners* [1995] STC 941 where Neill LJ held (at page 952):

> It seems to me that the statutory condition (as Mr Richards termed it) which the Tribunal has to examine in an appeal under s 40(1)(n) is whether it appeared to the commissioners requisite to require security. In examining whether that statutory condition is satisfied the tribunal will, to adopt the language of Lord Lane, consider whether the commissioners had acted in a way in which no reasonable panel of commissioners could have acted or whether they had taken into account some irrelevant matter or had disregarded something to which they should have given weight. The tribunal may also have to consider whether the commissioners have erred on a point of law. I am quite satisfied however, that the tribunal cannot exercise a fresh discretion on the lines indicated by Lord Diplock in *Hadmor*. The protection of the revenue is not a responsibility of the tribunal or of a court.

4. The Respondents' second notice was served under Part 4A of the Income Tax (Pay As You Earn) Regulations 2003 and Part 3B of Schedule 4 to the Social Security (Contributions) Regulations 2001. There is apparently no case-law on the Tribunal's jurisdiction on an appeal against a Notice served under Part 4A or Part 3B. Given the similarity of the wording of Paragraph 4(2)(a) with the wording of Regulation 97N of the Income Tax (Pay As You Earn) Regulations 2003 and Paragraph 29N of Schedule 4 to the Social Security (Contributions) Regulations 2001, and in the absence of any arguments to the contrary from the parties, we consider our jurisdiction for the appeal against the Notice to provide security for PAYE and NICs to be the same as it is in the appeal against the Notice to provide security for VAT.

5. In considering the reasonableness of the Respondents, we do not take into account events which have happened subsequent to the issue of the Notice of requirement to provide security. As Dyson J set out in *Customs and Excise Commissioners v Peachtree Enterprises Limited* [1994] STC 747 (at page 751):

> In my judgment, in exercising its supervisory jurisdiction the tribunal must limit itself to considering facts and matters which existed at the time the challenged decision of the commissioners was taken. Facts and matters which arise after that time cannot in law vitiate an exercise of discretion which was reasonable and lawful at the time it was effected.

6. The original decisions to require security were taken on 14 June 2017. These decisions were affirmed by two review decisions, both taken on 5 October 2017. In limiting ourselves to the facts and matters which existed at the time, we focus upon the events at the time of the original decisions (14 June 2017), but updated with the events known at the time of the review decisions (5 October 2017) when considering the reasonableness of those later review decisions.

The issues to be determined

7. Therefore the issues for us to determine are whether, on 14 June 2017 and again on 5 October 2017, it was reasonable of the Respondents to consider it necessary for the protection of the Revenue to require the Appellant to provide the following security:

- £43,050 (or £28,700 if the Appellant filed monthly returns) in respect of VAT,
- £788.93 in respect of PAYE, and
- £13,368.06 in respect of NICs.

Appellant's submissions

8. Mr Holden, on behalf of the Appellant, had filed a Summary of the Appellant's Case prior to the hearing. This Summary, updated on the day of the hearing, set out five strands of argument, which can be summarised as follows:

A. The original decisions to serve Notices requiring security were flawed because the Respondents had not entered into any prior consultation with the Appellant;

B. The Notices were unreasonable in view of the Appellant's forecasted level of profit;

C. The review decisions could not be fair because they had been undertaken by employees of the Respondents;

D. The Appellant's situation was factually different to the situation of the Appellants in *The Southend United Football Club Limited v HMRC* [2013] UKFTT 715, *John Dee Limited* and *Rosebronze Limited v Commissioners of Customs & Excise* (1984) LON/84/154; and

E. It was an over-riding principle of Administrative law that decisions should be made in a fair and reasonable manner and that had not happened in this case.

9. We set out these submissions in greater depth when discussing them below. The Appellant submitted that the appeal should be allowed.

Respondents' submissions

10. The Respondents' submission was that it was reasonable for the Respondents to require security in the light of the information available at the time of the decision.

11. Mrs Checkley submitted that when the original decisions were taken to require security, there had been serious non-compliance on the part of a predecessor to the Appellant, and that the Appellant (trading under the same name, from the same premises, in the same trade and with a common director to that predecessor) was already non-compliant. The predecessor had entered into a Time To Pay ("TTP") arrangement in respect of significant arrears in order to have an earlier Notice of Requirement set aside, but had then failed to comply with the terms of that TTP, eventually going into liquidation. The liquidators report showed that the predecessor owed a significant amount of unpaid tax, default surcharges, interest and penalties.

12. Although the Appellant argued that it had instructed new accountants and put in place new management systems, Mrs Checkley submitted that these were unknown when the original decision to require security was taken. Although the Respondents had been informed of these changes by the date of the review decisions, the only change visible to the Respondents at the time of the original decision was that the Appellant had taken over from its predecessor and PAYE and NICs were already outstanding. The Respondents referred to the legal principles set out in *John Dee, Peachtree, Rosebronze, Mr Wishmore Limited v The Commissioners of Customs & Excise* [1988] STC 723 and *Southend United*, and sought the dismissal of the appeal.

Facts found

13. We heard evidence from two witnesses: Ms Raphael, the sole director of the Appellant, and Ms Wild, the original decision maker. We consider both witnesses to be truthful. On the basis of the witness evidence and the documents in the bundle before us, we find the following facts:

a) B C Scaffolding Limited was incorporated on 14 April 2009. The main activity of B C Scaffolding was the supply, erection and removal of scaffolding. It was registered for VAT and operated under the Construction Industry Scheme ("CIS"). The directors of B C Scaffolding Limited were Mr Colin Kibble, who was also the sole shareholder, and Ms Belinda Raphael. Until 26 February 2017, B C Scaffolding Limited was called Derby Access Scaffolding Limited (the current name of the Appellant), and it traded from an address in Derby.

b) Almost from its inception, B C Scaffolding Limited was late in paying VAT with the VAT due under the return for period 08/09 paid 71 days late. B C Scaffolding Limited was late in paying its VAT for each quarter thereafter with the delay in paying increasing until it exceeded two years. B C Scaffolding Limited entered the default surcharge regime in period 02/10 and incurred default surcharges for its late payment from period 08/10 onwards.

c) The Respondents do not have records for PAYE and NICs arrears prior to 2013/14. Their records from 2013/14 onwards show that B C Scaffolding Limited was significantly late in paying its PAYE and NICs each month.

d) On 20 May 2015, B C Scaffolding Limited entered into a TTP with the Respondents to pay its arrears. This resulted in the withdrawal of a Notice of requirement to provide security for VAT which had earlier been served on B C Scaffolding Limited.

e) In 2015, B C Scaffolding Limited entered into a three year contract with a large contractor. A large amount of equipment was required to meet the terms of this contract. The directors of B C Scaffolding Limited considered this a sensible investment given the length of the contract. However, the job specification was subsequently changed, causing loss to B C Scaffolding Limited, and the contract was terminated after only nine months.

f) Between 2015 and 2017, B C Scaffolding Limited suffered two break-ins, with the loss of tools and equipment. At around this time B C Scaffolding Limited spent £100,000 on new equipment. This purchase was funded by a loan.

g) In her role as director, Ms Raphael oversaw the accounts and payroll for B C Scaffolding Limited. Ms Raphael was aware of the increasing tax arrears. The Respondents conducted a VAT assurance intervention at around this time, finding under declarations of approximately £39,000 VAT by the Appellant for the periods 05/15, 11/15 and 02/16.

h) B C Scaffolding Limited continued to accrue arrears of VAT, PAYE and NICs. The Respondents were concerned at this increasing indebtedness and on 19 July 2016 a further Notice of requirement to provide security for VAT was served on B C Scaffolding Limited. B C Scaffolding Limited subsequently entered into another TTP arrangement with the Respondents, and the Respondents withdrew their Notice of requirement. However, B C Scaffolding Limited did not make the payments agreed under the TTP.

i) On 8 August 2016, B C Scaffolding Limited paid £2,000 towards its outstanding VAT. The Respondents allocated this to the VAT due for periods 02/14 and 05/14. This was the last VAT payment made by B C Scaffolding Limited.

j) In January 2017, Ms Raphael took professional advice with regard to the indebtedness of B C Scaffolding Limited.

k) On 20 January 2017, the Appellant was incorporated. It took its current name on 26 February 2017, when it swapped names with B C Scaffolding Limited, and the Appellant's website shows that it trades from the address from which B C Scaffolding Limited used to trade. Its sole director and sole shareholder is Ms Belinda Raphael, one of the directors of B C Scaffolding Limited. The Appellant's trade is the supply, erection and removal of scaffolding.

l) On 27 March 2017, B C Scaffolding Limited sold its assets to B C Holdings Midlands Limited, a company of which Ms Raphael is also a director, for £57,540. After transferring its employees to the Appellant, B C Scaffolding Limited ceased trading and joint liquidators were instructed to assist Ms Raphael in the decision procedure.

m) On 26 April 2017, the joint liquidators were appointed. The liquidators' report of 8 May 2017 showed that B C Scaffolding Limited was insolvent, with assets of £77,073 and debts totalling £298,429.76. The liquidators calculated the debt owed to the Respondents to be £227,465. The Respondents calculations show the amounts owed to them as £219,885.69 in VAT, default surcharges, penalties and related interest, and £37,598.41 PAYE, NICs and related interest.

n) The Appellant took over the on-going contracts of B C Scaffolding Limited, renting the equipment it required for these contracts from B C Holdings Midlands Limited. The Appellant was registered for VAT from 20 February 2017.

o) In its first few months of trading the Appellant experienced cash flow difficulties and also some teething difficulties with its new operational systems. On 22 April 2017 the Appellant was due to pay £1,689.99 in respect of PAYE and NICs due under its first monthly return (month 12). The Appellant failed to make this payment.

p) In May 2017, the Respondents began to consider whether it was necessary to require the Appellant to provide security. Ms Wild was the officer who took the decision to issue the two Notices requiring security for VAT, PAYE and NICs to the Appellant. In considering whether security was required Ms Wild considered all the records which were available to her in order to build up a picture of the Appellant. The information considered by Ms Wild included:

    i. the records submitted by the Appellant to the Respondents and to other official bodies (such as Companies House);

ii. the history of the Appellant, the history of B C Scaffolding Limited (as a relevant linked company) and Ms Raphael's history and involvement with other companies;

iii. the compliance record of B C Scaffolding Limited, the size of its debt to the Respondents on liquidation and the period over which this debt extended;

iv. the amount of tax and NICs outstanding from the Appellant – as at 14 June 2017, the Appellant owed £1,689.99 in PAYE and NICs for its first month. The Appellant's first VAT return was not due until 7 July 2017;

v. the notes and records on the Respondents' systems, such as the notes made by members of the Respondents' Debt Management team when in discussion with B C Scaffolding Limited;

vi. the outcome of any TTP arrangements, with the Appellant and with any linked company, including whether any had previously failed, and the record of the Appellant and any linked company in relation to VAT default surcharges, Corporation Tax and the directors' personal Self Assessment records; and

vii. information publicly available about the Appellant and its director, which appeared reliable, such as details on the Appellant's own website.

q) On the basis of all of this information, Ms Wild concluded that it was requisite to require security from the Appellant for the protection of the revenue. On 14 June 2017, the Respondents issued the Appellant and Ms Raphael with:

- Notice of Requirement to give security for VAT under Paragraph 4(2)(a) of Schedule 11, and
- Notice of Requirement to give security for PAYE and NICs under Part 4A of the Income Tax (Pay As You Earn) Regulations 2003 and Part 3B of Schedule 4 to the Social Security (Contributions) Regulations 2001.

r) Ms Wild did not enter into dialogue with the Appellant or Ms Raphael prior to service of the Notices, but did continue to monitor the position after the Notices had been served.

s) On 7 July 2017 the Appellant filed its first VAT return and paid the VAT of £6,599.87 due under that return. However, on 22 July 2017 the Appellant failed to pay £4,549.63 due in respect of PAYE and NICs.

t) On 13 July 2017, the Appellant's agent sought a review of the decision and provided the Respondents with details about the demise of B C Scaffolding Limited and with the Appellant's Monthly Profit and Loss forecast for the years ended January 2018 and 2019.

u) On 2 August 2017, Ms Wild sent a letter to the Respondents providing more detail about how she reached her decision. The Appellant's agent reiterated the request for a review.

v) On 5 October 2017, the Respondents issued their review decisions, confirming the original notices. In concluding that the Notice should not be withdrawn the review officers took into account the additional information supplied by the Appellant, and noted the increasing indebtedness of the Appellant.

w) On 26 October 2017, the Appellant appealed to the Tribunal.

x) As at the date of the hearing before us (3 April 2018), the Appellant was continuing to trade. The Appellant's accounts for its first year of trading had not yet been prepared but Ms Raphael's belief was that the turnover for the year ended January 2018 would be £420,000, an increase on the £384,000 forecast.

y) Ms Raphael told us that the Appellant's next VAT return was due to be filed by 7 April 2018 and that by close on 3 April 2018, the Appellant would have paid the VAT due under that return. Ms Raphael also informed us that (as this was month 12) the Appellant was up to date with its PAYE and NICs. The Appellant was managing its PAYE and NICs monthly in conjunction with the CIS deductions it suffered. The Appellant put aside the VAT as payments were made to it so that funds were available when the Appellant filed its quarterly return.

z) Ms Raphael explained that the Appellant's management systems had settled down and that the Appellant was now managing to meet its tax obligations as they fell due. Ms Raphael received management information on a monthly basis and believed she had a better understanding of the financial position of the Appellant. Ms Raphael's belief was that the Appellant was on "the right track", and that the Appellant would continue to trade profitably and meet its tax commitments.

Conclusions reached

14. The burden of proof in this appeal is upon the Appellant. Given the nature of the jurisdiction, we consider whether the Appellant has established that the original decision or review decisions were decisions which no reasonable decision-maker could have reached or that any was flawed in the sense that irrelevant matters were taken into account or relevant matters were not taken into account.

The first strand of the Appellant's argument

15. The Appellant's first strand of argument, challenging the original decision that it was requisite to require security, was that this decision was flawed because before reaching this decision, the Respondents did not enter into a dialogue which would have given the Appellant the opportunity to provide further information, specifically:

a) The Appellant's forecast of profits over the next two years;

b) A reminder of the government's policy of encouraging small businesses; and

c) The extent of the operational and management changes put in place to ensure better control of quotations, costs and financial reporting.

16. Mr Holden also submitted that a dialogue with the Appellant, or a warning letter, might have prompted the Appellant into an earlier instruction of its professional advisor who could have conducted negotiations with HMRC.

17. As a matter of principle, there is no obligation upon the Respondents to seek further information from a taxable person before making a decision. Mr Holden accepted that this was the case. It is clear from the Respondents' factsheet that a Notice of requirement may be sought without prior warning. Therefore it is difficult to see how the Respondents could be said to have made an error of law in not taking a step which they were not obliged to take. We conclude that the Respondents did not make an error of law in failing to enter into dialogue concerning the security requirement with the Appellant prior to the issue of either Notice.

18. As we noted as the conclusion of the hearing, it clear from *Peachtree* that if the taxpayer considers there is further relevant material or that the facts have significantly changed, then the correct course of action is to submit that material to the Respondents and to seek a re-consideration. As Dyson J said at p 752:

> If after a requirement has been made under para 5(2) fresh material comes to light or into existence which the taxpayer considers justifies a modification of the requirement, the taxpayer may ask the commissioners to reconsider the matter. The commissioners have a duty to reconsider in the light of the fresh material in those circumstances.

19. The facts of the Appellant's case also do not support the Appellant's first argument. The Appellant argued that if a dialogue had been opened then there would have been more information available to the Appellant. The implication was that this information would have been sufficiently convincing that the Respondents would not have considered it requisite to issue either Notice. However, when the Appellant's further information was submitted to the Respondents after the original decision had been taken, the Respondents did not change their mind. The officers undertaking the review both had the benefit of the additional material which the Appellant wished to have taken into account, and in both cases the original decision was affirmed.

20. Therefore, even if (contrary to our conclusion above) it was an error of law for the Respondents to fail to enter into further dialogue with the Appellant, we consider it inevitable that the Respondents would have reached the same decision if they had taken into account any, or all, of the further information outlined by the Appellant. This conclusion that it was inevitable that the same decision would have been reached is based upon the fact that the Respondents' review decisions – taken with the benefit

of the Appellant's further material – reaffirmed the original decision to require security. Therefore we reject this first strand of the Appellant's argument.

Second strand of Appellant's argument

21. As its second strand, the Appellant argued that the Notices were unreasonable in light of the Appellant's forecasted profit over the two years to January 2019. As the profit forecasts were not available to Ms Wild, we take this as a challenge to the reasonableness of the review decisions to confirm the amount of the security sought. By the date of the review decisions, the reviewers had the profit forecast but were also aware that the Appellant's indebtedness to the Respondents had increased.

22. The Respondents' explanation for the amount of security sought was that it had been calculated on the basis of the likely amount of VAT due over the next six months (estimated from an average of the VAT due under the most recent four VAT returns filed by the Appellant's predecessor as the Appellant had yet to file a return), and the likely amount of PAYE and NICs due over the next four months (estimated from the one employer's return filed by the Appellant). This is the conventional basis and takes into account the period (of at least three months) which it would take the Respondents to institute winding up proceedings should they have cause to do so.

23. Given that the purpose is the protection of the revenue, we do not consider the amount sought or the Respondents' method of calculation to be unreasonable. The legislation enables the Respondents to seek security for the payment of any VAT, PAYE or NICs that is, or may be, due. Therefore it was necessary for the decision-maker to have regard to the likely amount of VAT, PAYE and NICs which would be lost if the Appellant failed to pay in the way its predecessor had done.

24. The Appellant's profit level is not relevant to the amount of VAT, PAYE or NICs which is, or may be, due to the Respondents. VAT is a turnover tax, not a tax based on profitability. Similarly neither PAYE nor NICs is calculated with reference to the Appellant's level of profit.

25. Therefore we consider the original decision-maker was right to base her decision to seek security upon the amount of VAT, PAYE and NICs likely to be due, based upon the returns which had been submitted by the Appellant and its predecessor. We consider that the review decision-makers we right not to vary these amounts based upon the Appellant's forecasted level of profit over 2018 and 2019. It follows that we reject the Appellant's second strand of argument.

The third strand of the Appellant's argument

26. The third strand of the Appellant's arguments was that the statutory review process was flawed because the review decision (affirming the original decision) was taken by an employee of the Respondents and such an employee would inevitably be prejudiced in favour of the Respondents. This was described as a flaw in the system.

27. Mr Holden did not pursue this argument with any vigour, perhaps due to having been reminded of the decision of this Tribunal in *Ashley David Transfers Limited v*

HMRC [2016] UKFTT 0657 which had firmly rejected such a submission. We record that there was no evidence at all that the reviews which took place in this case were biased or that the reviewing officers were prejudiced when making their decisions.

28. We reiterate the conclusions reached in *Ashley David Transfers*. No flaw, either specific to a review, or in the nature of the review process determined by Parliament, could affect the reasonableness of the original decision which (of necessity) must be taken before there is the option of a review. The original decision-maker might anticipate the possibility of a review being requested or of an appeal being made to this Tribunal but if a decision-maker was concerned about the possibility of challenge then such a fear would lead him or her to make a decision which was more in favour of an appellant, not further against. For the avoidance of doubt we do not accept that an original decision could be unfair simply because the Appellant has a statutory right to a review, conducted by the Respondents, in addition to a statutory right to appeal to this Tribunal.

29. Similarly, we not accept that a review decision is unfair simply because it is taken by an employee of the Respondents. The review decision-maker would also be aware that the Appellant could appeal to this tribunal if dissatisfied with the outcome of the review.

30. In making this submission, Mr Holden also referred to the absence of a reference in either Notice to the Respondents' internal guidance manual on seeking security. This guidance manual is published on the Respondents website and (with the exception of the sections which have been redacted in the public interest) the manual is available to anyone who cares to view it. Mr Holden argued that there was procedural unfairness is not drawing this manual to the attention of a person on whom a Notice had been served.

31. We do not accept that the Respondents' failure in either Notice to draw attention to its publicly available guidance manual can make the decision to seek security unreasonable. The steps which the Appellant might have taken once the Notices had been served cannot affect the validity of the decision taken. Any competent advisor would have been aware of the guidance manual and could have viewed it if he or she considered it relevant in challenging the reasonableness of the decisions taken.

The fourth strand of the Appellant's argument

32. The fourth strand of the Appellant's argument was that the factual background in this case was different to the background to the appellants in *Southend United*, *John Dee* and *Rosebronze*. Mr Holden argued that in *Southend United* the Appellant had a long history of defaulting whereas the Appellant in this case had only been trading since 27 March 2017 and so as at 14 June 2017, it had a very limited history. In arguing that the facts of *John Dee* and *Rosebronze* could be distinguished from the present case, Mr Holden submitted that if there had been prior consultation then the Respondents would have been aware of the management and operational systems implemented by the Appellant and which differed from the management of its predecessor.

33. It is clear that the factual matrix relevant to the Appellant is unique to the Appellant, and so it will always be possible to point to factors which differentiate the facts of the Appellant's case from the background to the appellants in reported decisions. However, what emerged from Ms Wild's evidence was that in considering whether it was requisite to seek security from the Appellant, Ms Wild took into account only the facts and matters which were relevant to the Appellant. The decision was taken after consideration of the risk presented by the Appellant, and not simply because one or more facts was similar to the facts of a reported decision.

34. Therefore, we do not consider it relevant that the facts of the Appellant's case do not exactly match the background of the appellants in other cases. The reported decisions enunciate relevant principles and provide helpful guidance on the interpretation of the legislation, but they do not mean that it cannot be reasonable for the Respondents to seek security when there is a shorter period of default or less indebtedness. We do not consider that the differences between the backgrounds to *John Dee*, *Southend United* and *Rosebronze* on the one hand, and the Appellant on the other hand, mean that it was unreasonable or unfair for the Respondents to have issued the Notices to the Appellant.

The fifth strand of the Appellant's argument

35. Mr Holden accepted that his fifth strand of argument was a summation of the points made in his first four strands. However, one separate point which we have not so far covered concerns Mr Holden's submissions on the Respondents' decision to issue a Notice to Ms Raphael. As noted above, there is no separate appeal by Ms Raphael. Nevertheless we consider it appropriate to consider Mr Holden's arguments in respect of Ms Raphael.

36. Mr Holden argued that it appeared that the Notice had been automatically issued to Ms Raphael simply because she was a director, and that the decision to issue her with a Notice was unreasonable and unfair. Mr Holden suggested that issuing a Notice to a director as well as a company had the effect of piercing the corporate veil.

37. We do not agree that the corporate veil has been pierced. Parliament has given the Respondents the power to make any or all of a number of persons responsible, jointly and severally, for providing security. Under cross-examination Ms Wild explained that a decision about issuing a Notice to a director depended on the extent to which a director controlled the company and the payments it made. Ms Wild gave the example of puppet directors to whom a notice would not be issued because they had no control.

38. Ms Raphael's evidence made it clear that she is the true director of the Appellant and that, as sole director, she controls the Appellant. Therefore, it must be the case that Ms Raphael controls the payments made by the Appellant. Given that control, and given that the Respondents consider protection of the revenue is required, we do not consider it unreasonable for the Respondents to seek security from Ms Raphael personally as well as the Appellant.

Conclusion

39. The Appellant has failed to satisfy us that either the Respondents' original decisions to require security from the Appellant, or the review decisions confirming the original decision, contained an error of law or was so unreasonable that no commissioners, properly directed, could have reached those decisions. Therefore the Appellant's appeal is dismissed.

40. Our decision was communicated verbally to the parties at the conclusion of the hearing on 3 April 2018. We informed the parties that our written decision would be issued shortly thereafter.

41. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JANE BAILEY
TRIBUNAL JUDGE

RELEASE DATE: 24th APRIL 2018