[2015] UKFTT 0566 (TC)

TC04714

Appeal number: TC/2015/02192

VAT – notice of requirement to give security under para 4 of Schedule 11 to the Value Added Tax Act 1994 - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

RERESBY ARMS ROTHERHAM LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE HARRIET MORGAN
MEMBER GILL HUNTER

Sitting in public at Fox Court, 30 Brooke Street, London on 23 July 2015

Mr Kaney, as adviser to the Appellant, for the Appellant

Mr Haley, an officer of the Respondents, for the Respondents ("HMRC")

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DECISION

1. The appellant appealed against a notice of requirement to give security issued by HMRC under sub-para 4(2)(a) of schedule 11 to the Value Added Tax Act 1994 ("**VATA**").

Facts

2. The appellant was registered for VAT with effect from 22 October 2014.

3. HMRC served a notice on the appellant dated 15 February 2015 (the "**Security Notice**") together with a factsheet which included the following statement:

> "Under their powers in paragraph 4(2)(a) of schedule 11 to the Value Added Tax Act 1994, for the protection of the revenue HM Revenue and Customs require you, as a condition of your supplying goods or services under a taxable supply, to give security to them by cash deposit or guarantee in the form of a performance bond in the sum of £45,050.00 for the payment of any Value Added Tax which is or may become due from the appellant.
>
> Alternatively HM Revenue and Customs will accept £30,000 if monthly returns are submitted."

4. The Security Notice was signed by Mrs Julie Wild, an officer of HMRC. It was delivered to the appellant by hand delivery by Mr S. G. Hurt, an officer of HMRC, on 18 February 2015. A certificate of service was produced signed by Mr Hurt together with a handwritten note. The note recorded that Mr Hurt and a second HMRC officer, Jane Day, had attended the premises of the appellant at the Reresby Arms public house, Vale Road, Thryburgh, Rotherham S65 4DN to serve the Security Notice. They were informed by the barman that the director of the appellant, Mr Russell Hayler, was not at the premises. The Security Notice and a factsheet were left in a sealed envelope with the barman at the public house who promised to pass it on to Mr Hayler as soon as possible. It was also noted that on his return to the office, Mr Hurt had posted an identical copy of the Security Notice dated 18 February 2015 to the home address of Mr Hayler. The handwritten note was signed by Mr Hurt and Jane Day.

5. The appellant submitted an appeal to the tribunal in respect of the Security notice on 16 March 2015. The grounds of appeal were stated to be as follows:

> "It is the contention of the taxpayer that this is unreasonable in the context of the circumstances of the business and that the requirement may only result in a cessation of business rather than protection of the revenue. Further in terms of s 84(4E) and (4F) HMRC have failed to show that there has been an evasion or attempt to evade VAT or that it is likely without the requirement for security that VAT will be evaded".

6. At the hearing the parties agreed sub-s 84(4E) and sub-s 84(4F) VATA referred to in the grounds of appeal were not in point as HMRC were not in fact arguing that the appellant had evaded or attempted to evade VAT.

7. HMRC wrote to the appellant on 20 March 2015 noting that if the security in the amount of £45,050 or £30,000 (subject to monthly returns being furnished) specified in the Security Notice was not given, this was an offence under sub-s 72(11) VATA and that if the full amount of security was not supplied within 14 days, HMRC would have no alternative but to pass the matter to a criminal investigation team for them to be investigate further The letter also noted that if a criminal investigation was instigated the appellant would be liable to be prosecuted on all taxable supplies made after 19 February 2015.

8. The appellant wrote to HMRC on 21 April 2015 noting that an appeal had been made to the tribunal as regards the Security Notice and asking HMRC to confirm suspension of any enforcement action pending the resolution of the appeal.

9. Mrs Julie Wild, an officer of HMRC gave the following evidence and the following information was produced to the tribunal:

(1) Mrs Wild was the officer responsible for the issue of the Security Notice.

(2) At the time of the issue of the Security Notice, the appellant's first VAT return for the period 22 October 2014 until 31 January 2015 was not yet due. The appellant, therefore, had no outstanding VAT liability and no VAT compliance failure had arisen at that time.

(3) However, prior to the issue of the Security Notice, Mrs Wild and her colleagues had discovered that the director of the appellant, Mr Russell Hayler, was also the director of a number of other companies which had become insolvent with outstanding debts, including in some cases, substantial amounts of VAT owed to HMRC.

(4) The tribunal was directed to a list of the companies in which Mr Hayler had been a director as follows:

(a) Mr Hayler was a director of Anglo Pubs Ltd from 27 October 2011. The company was incorporated on 8 December 2010. It became insolvent on 3 April 2013 leaving outstanding insolvency claims of £54,404.17. It was described as having a "Trade Class" of "Management consultancy (not financial)". There were two other directors.

(b) Mr Hayler was a director of Haywin Leisure Limited from 11 August 2011. The company was incorporated on 11 August 2011. It became insolvent on 24 December 2012 leaving outstanding insolvency claims of £20,000. It was described as having a "Trade Class" of "Public Houses and Bars". There was one other director.

(c) Mr Hayler was a director of Active Pub Management Ltd ("**Active Pub**") from 16 April 2013. The company was incorporated on 7 January 2013. It went into liquidation on 4 December 2014 leaving substantial

amounts of VAT liabilities owing to HMRC as set out in (9) below. It was described as having a "Trade Class" of "Public Houses and Bars". There was one other director.

(d) Mr Hayler was a director of Active Pubs (North) Ltd ("**Active Pubs North**") from 23 July 2013. This company was incorporated on 23 July 2013. It went into liquidation on 4 December 2014 leaving substantial amounts of VAT owing to HMRC as set out in (9) below. It was described as having a "Trade Class" of "Management of Real estate (Fee/Contract)". There were no other directors.

(e) Mr Hayler was a director of Manor House Bradford Ltd from 25 September 2014. The company was incorporated on 19 September 2014. It appears that this company has ceased trading with outstanding VAT liabilities owed to HMRC of £1,936. It was described as having a "Trade Class" of "Public Houses and Bars". There was one other director.

(5) In making her decision Mrs Wild had particular regard to Mr Hayler's involvement in Active Pub and Active Pubs North. She described his involvement in the other companies as being in the back of her mind.

(6) She was concerned that Active Pub and Active Pubs North both had a poor VAT compliance record.

(7) A "Record of Compliance and Statement of Account" for Active Pub prepared by HMRC as at February 2015 showed the following:

(a) For the period 07/13, the company was 33 days late in submitting its VAT return and 124 days late in making full payment of the VAT due for that period of £17,949.43.

(b) For the period 10/13, the company was 6 days late in submitting its VAT return and 86 days late in making full payment of the VAT due of £16,207.67

(c) For the period 10/13, HMRC had subsequently issued an assessment to recover additional VAT due of £14,755 which was paid in full 167 days after the due date.

(d) VAT for the subsequent periods had not been paid as at the time when the company went into liquidation on 4 December 2014 as set out in (9).

(8) A "Record of Compliance and Statement of Account" for Active Pubs North prepared by HMRC as at 18 February 2015 was also produced showing a number of defaults in VAT payments leading to substantial outstanding VAT as at the date of its liquidation as set out in (9).

(9) When Active Pub and Active Pubs North Limited went into liquidation on 4 December they had outstanding VAT liabilities owed to HMRC of £103,991.20 and £41,181.33 respectively. Of these total amounts £11,951 and £715.45 represented unpaid default surcharge penalties imposed on Active Pub and Active Pubs North respectively under assessments made by HMRC under s

76(1) VATA. The balance in each case was VAT shown as due on returns and under notices of assessment of VAT made by HMRC pursuant to VATA.

(10) On its liquidation on 4 December 2014 Active Pub had total debts outstanding of £397,625.92. The creditors were HMRC as to almost one quarter of the total debts and otherwise suppliers to the business and local authorities and utilities companies. The tribunal was shown a report to members and creditors of Active Pub made pursuant to s 98 of the Insolvency Act 1986 which demonstrated these figures.

10. Mrs Wild explained that she had considered there was a significant risk to the revenue when she became aware of the pattern of Mr Hayler's involvement in the above failed companies. She was particularly concerned by the fact that he was a director of Active Pub and Active Pubs North both of which had poor VAT compliance histories and had gone into insolvency after relatively short periods of trading owing substantial amounts of VAT to HMRC. Mrs Wild thought it reasonable to conclude that the appellant was what she termed a "successor" or "phoenix" company to Active Pub in the sense that it appeared to be carrying on the same kind of business as Active Pub under the direction of Mr Hayler as director.

11. Mrs Wild felt that, in these circumstances, such was the risk to the revenue it was justified to require security to be given and to issue a security notice before the end of the appellant's first VAT accounting period for the required sum of £45,050 (or £30,000 if monthly returns were made). She felt the need to act quickly particularly as the last of the businesses Mr Hayler had been involved in, that of Manor House Bradford Ltd, had ceased trading very soon after it was incorporated.

12. Mrs Wild went on to set out how she had arrived at the figure for the security required to be provided by the appellant in the Security Notice:

(1) On its VAT registration form, the appellant had estimated it would have turnover for VAT purposes in the first 12 months of trading of £200,000.

(2) However, HMRC had noted from the VAT registration forms for Active Pub and Active Pubs North that, in each case, figures had been given for the estimated turnover for VAT purposes for the initial 12 months of trading of their respective businesses which were much lower than the actual turnover turned out to be. Active Pub gave a figure of £275,000 on the form but in fact the turnover for the initial 12 months was around £2 million. Active Pubs North gave a figure of £150,000 on the form but in fact the turnover for the initial 12 months was around £1.2 million.

(3) In view of Mr Hayler's involvement in the failed companies listed above and, in particular, his involvement in Active Pub and, that the appellant seemed to be carrying on the same type of business as Active Pub, Mrs Wild had concluded that the appellant appeared to be a successor company or "phoenix" company as regards Active Pub.

(4) Due to the substantial difference between the actual turnover in the initial 12 month period of trading and the estimated turnover given for the businesses of Active Pub and Active Pubs North, Mrs Wild had decided it would be

prudent to look at the recent actual turnover of Active Pub as a basis for setting the amount of the required security rather than the turnover estimated by the appellant.

(5) Therefore Mrs Wild had taken the declared net tax liability shown on the last four VAT returns submitted by Active Pub as the basis for her calculation and these returns were shown to the tribunal.

(6) The resulting figures stated in the Security Notice represented VAT which would be due over a six month period. The six month period was chosen as an estimate of the time which it would take to wind up a failing business and so protect HMRC in the event that the appellant became insolvent (as the other businesses in which Mr Hayler had been involved had).

13. Mrs Wild confirmed that she did not know if Mr Hayler was also a shareholder of Active Pub as well as a director and she was not aware if any assets had been transferred between the two companies. She had based her conclusion that the appellant was a successor to Active Pub on the basis that the two companies seemed to be carrying on a similar business, that Mr Hayler was a director of both companies and that there was a pattern of Mr Hayler acting as director of multiple businesses which had become insolvent. As regards the nature of the business it was noted that the VAT registration form for the appellant described its business as "temporary pub management" and the list Mrs Wild had produced for the other companies showed Active Pub as having a "Trade Class" of "Public Houses and Bars". Mrs Wild considered that in the circumstances this gave every indication that the two businesses were similar.

14. Mrs Wild noted that she would be prepared to look afresh at the security requirement, if the appellant asked for a review, in the light of current circumstances. It may be possible for the amount required as security to be reduced if the appellant had been compliant with its VAT obligations and if the turnover for VAT purposes was in actuality lower than the turnover figures used as the basis for the Security Notice.

Legislation

15. Sub-paragraph 4(2) of schedule 11 VATA provides:

> "If they think it necessary for the protection of the revenue, the Commissioners may require a taxable person, as a condition of his supplying or being supplied with goods or services under a taxable supply, to give security, or further security, for the payment of any VAT that is or may become due from [him]..."

16. Mrs Wild noted that she would be prepared to look afresh at the security requirement Sub-paragraph 4(4) of schedule 11 VATA provides that:

> "Security under sub-paragraph (2) above shall be of such amount, and shall be in such manner, as the Commissioners may determine."

Submissions

17. Mr Kaney made the following submissions on behalf of the appellant:

(1) It is not disputed that it is legal for HMRC to seek security under their powers in para 4 of schedule 11 VATA on the basis that they considered there to be a risk requiring the protection of the revenue. It is also not disputed that the contention that the security requirement may lead to the cessation of the appellant's business does not suffice for the security requirement to be removed.

(2) However, the appellant disputes the amount of the security sought. HMRC's determination of what should be provided as security must be reasonable. This means that the decision must be fair, rational, proportionate and legal (but as noted the appellant is not challenging the legality as such).

(3) It is not reasonable, fair or proportionate for Mrs Wild to have based the security requirement on the turnover of the business of Active Pub on the facts available to Mrs Wild when the decision was made. It was not sufficient to discharge their obligations for HMRC to "close their eyes" and not to make reasonable further enquiries as to the precise nature of the business of Active Pub and that of the appellant and the nature of Mr Hayler's involvement in those businesses. The failure to do this was a breach of the duty of fairness. An officer of HMRC had been sent to serve the Security Notice on the appellant but HMRC had not seen fit to seek to obtain further information whether during the course of that visit or otherwise. Mrs Wild had based her conclusion on the nature of the businesses on inadequate information which she had not sought to clarify.

(4) Had HMRC made further reasonable enquiries they would have discovered that the two businesses of the appellant and Active Pubs were quite different and so was the nature of Mr Hayler's interest in the two businesses:

> (a) The appellant was running a single local community pub, the Reresby Arms in Rotherham. Mr Hayler was both a director of the appellant and the sole owner of the appellant. As such, the estimated annual turnover for this type of local pub business of around £250,000 was entirely reasonable.
>
> (b) Active Pub was in the business of pub management of around 60 pubs. Mr Hayler was a director of this company but was not a shareholder in it and had no ownership rights. He was really just an employed executive of this business. This business had a much higher annual turnover, given it related to management of a number of pubs, of around £4.5 million.

(5) Given the differences in the two company's business and the nature of Mr Hayler's involvement in those businesses it cannot be said that the appellant is in any sense a successor company to Active Pub. It is not reasonable for Mrs Wild to have based the security requirement on the turnover of Active Pub.

18. Mr Hayley made the following submissions for HMRC:

(1) Mr Hayler had a pattern of involvement in companies which had become insolvent as Mrs Wild had described.

(2) In particular Mr Hayler had been a director of Active Pub and Active Pubs North both of which had a poor VAT compliance record and had gone into liquidation on 4 December 2014 owing substantial amounts of VAT to HMRC as Mrs Wild had described.

(3) It was reasonable to assume that the appellant was carrying out a similar activity to Active Pub for the reasons set out by Mrs Wild.

(4) The report of Active Pub's creditors show that HMRC was the largest single creditor as it was owed around 25 per cent of the total amount owed by Active Pub when it went into liquidation. In effect that company had used the VAT collected to subsidise its failing business leaving HMRC with a substantial debt of £103,991.20.

(5) On the basis of the decision in *CCE v Peachtree Enterprises Ltd* [1994] STC 747 the question for the tribunal is whether the decision to impose security was one that could not reasonably be arrived at. This includes consideration of whether irrelevant matters have been taken account of and whether relevant matters have been disregarded. The tribunal is limited to considering the facts and matters known at the time the disputed decision was made.

(6) On the basis of the facts as known to Mrs Wild at the time, it was reasonable for her to conclude that there was a significant risk to the revenue, that the appellant would have greater turnover than that declared and for her to base her calculations of the security required on the turnover of the previous similar business of Active Pub in which Mr Hayler had been involved.

Discussion

19. It is established that the jurisdiction of the tribunal in an appeal against a requirement to provide security under sub-para 4(2) of schedule 11 VATA is limited to being a supervisory function. In the *Peachtree Enterprises* case to which we were referred, Dyson J (as he then was) described the tribunal's jurisdiction as follows, at [751]:

> "It is important to start by stating that it is common ground that the jurisdiction of the tribunal is only supervisory. The appeal before the tribunal is not by way of a rehearing (see, for example *Customs and Excise Comrs v J H Corbitt (Numismatists) Ltd* [1980] STC 231 at 239, [1981] AC 22 at 60 per Lord Lane). This was accepted in the present case by the chairman himself. He put the matter clearly and, in my view, accurately in his decision in these terms:
>
> > 'The jurisdiction of the tribunal in cases such as this where the Commissioners are exercising discretionary powers has been clearly established in previous cases. It is, for instance, clear that the tribunal cannot substitute its own discretion for that of the

> Commissioners for the tribunal has no discretion in these matters. If it is alleged that the Commissioners have reached a wrong decision then there can be a question of law but only of a limited character. The question would be whether their decision was unreasonable in the sense that no reasonable panel of Commissioners properly directing themselves could reasonably reach that decision. To enable the tribunal to interfere with the Commissioners' decision it would have to be shown that they took into account some irrelevant matter or had disregarded something to which they should have given weight.'
>
> 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 that it was effected."

20. That this is the correct approach was endorsed in the Court of Appeal in *John Dee Limited v Customs and Excise Commissioners* [1995] STC 941 and in the House of Lords in *Lindsay v Commissioners of Customs and Excise* [2002] STC 508 where Lord Phillips of Worth Maltravers MR (as he then was) said, at [40]:

> "... the Commissioners will not arrive reasonably at a decision if they take into account irrelevant matters, or fail to take into account all relevant matters".

21. On this basis the appellant's appeal can succeed only if we consider that, at the time the Security Notice was issued, HMRC did not reasonably arrive at the decision to issue the Notice in the stated amount. It is not sufficient that we ourselves might have reached a different conclusion. HMRC will be taken not to have reasonably arrived at their decision if they have taken into account irrelevant matters or failed to take into account all relevant matters.

22. Our view is that, on the evidence presented (and we found Mrs Wild to be a credible witness), HMRC did not arrive at their decision to impose a security requirement on the appellant for £45,050 (or £30,000 if the appellant makes monthly returns) on an unreasonable basis.

23. The factors which HMRC took into account (as set out at 9 to 13 above) were highly relevant in considering whether there was a risk to the revenue. Mrs Wild took into account, in particular, that the director of the appellant, Mr Hayler, had been involved in Active Pub and Active Pubs North also as a director, that both of those companies had traded for relatively short periods and had become insolvent with substantial amounts of VAT owing to HMRC at the time of their liquidation.

24. We also consider that HMRC did not unreasonably arrive at their decision that they could not rely on the figure put forward by the appellant as its expected turnover

for its first 12 months of trading in determining the level of security required. HMRC took this view based on the pattern of substantial differences in the figures given for the estimated turnover, compared with the actual turnover, of the two failed businesses in which Mr Hayler had been involved of Active Pub and Active Pubs North. The unreliability of the turnover figure must be a relevant factor in assessing the risk to the revenue and the level of security required to protect against that risk.

25. In deciding then to use the turnover of Active Pub as the basis for computing the security requirement, Mrs Wild took into account that Mr Hayler had been a director of that company also, it had gone into liquidation within 18 months of its incorporation owing £103,106 of VAT and its business was pub management which seemed to correspond to that of the appellant. Mrs Wild concluded that the two businesses were similar as the appellant's business was described on the VAT registration form as "temporary pub management" and that of Active Pub was classed as "Public houses and bars".

26. Mr Kaney, on behalf of the appellant, disputes HMRC's decision to use the turnover of Active Pub in this way. He contends that HMRC should have investigated the circumstances further. This would, he asserts, have revealed that the appellant's business was very different to that of Active Pub and that the appellant was merely an employed executive of that Active Pub and not the owner (as he is of the appellant). The argument is that, given these differences, it was unreasonable to use the turnover of Active Pub as the basis for calculating the security requirement.

27. As set out above, it is clear from the decision in *Peachtree* that the tribunal should not consider facts and matters arising after the relevant decision in exercising its supervisory function. Here the tribunal is not asked to consider subsequent facts or matters but rather facts or matters which, it is asserted, existed at the time HMRC made their decision, were not known to HMRC but which HMRC should have known had they made due investigation.

28. In the course of explaining that he had based his decision in the *Peachtree* case in part on principles of administrative law, Dyson J made the following limited reference to the issue of whether a tribunal can consider fresh material on facts existing at the time of the decision, at [751 j]:

> "Turning to principles of administrative law, there is no authority to support the proposition that a court in exercising supervisory jurisdiction in public law may assess the reasonableness of a decision by having regard to facts and matters arising subsequent to the taking of the decision. In fact, the conditions are very circumscribed in which fresh material, relevant to matters which existed at the time of the decision (but unknown to the decision maker) may be admitted on judicial review (see *R v Secretary of State for the Environment, ex p Powis* [1981] 1 WR 584 at 595-597, and, in particular, the citations (at 596-597) from *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014 at 1052, 1076 which emphasise that the only relevant material is that existing at the time of the decision).

29. Mr Justice Dyson then went on, in the same passage, to expand on his reasons as to why subsequent facts should not be taken into account by the tribunal:

> "The case where matters only come into being after a decision is plainly a fortiori the case where matters exist at the time of the decision but are unknown to the decision-maker. It would, in my judgement, be quite contrary to principle to allow a person seeking to impugn a decision by invoking the supervisory jurisdiction of a tribunal to rely on matters which the decision-maker cannot be criticised for not having taken into account. The vice of the approach adopted by the tribunal in the instant case is that as soon as the tribunal considers the effect of matters which the decision-maker did not take and could not have taken into account, the tribunal is abandoning its supervisory or reviewing role and assuming the mantle of administrative decision-maker".

30. The passage from the *Peachtree* decision cited in 28 rather leaves open the question as to the correct approach for the tribunal in circumstances where material facts exist at the time the decision is made but those facts are unknown to HMRC. However, looking at the principles set out by Dyson J (as cited at 19 and 29 above), our view is that it is within the scope of the tribunal's supervisory function to consider whether HMRC have failed to take into account a material fact in their decision, which is in existence at the time of the decision, as result of an unreasonable failure to take steps to ascertain that fact. Such a matter is not a fact which HMRC "could not have taken into account" or which HMRC "cannot be criticised for not having taken into account" (see the passage from *Peachtree* in 29 above). It seems to us that it must be an essential element of determining "whether no reasonable panel of Commissioners properly directing themselves could reasonably reach the decision" to consider not only facts which, at the time of the decision, were known but also facts which ought reasonably to have been known.

31. However, before making any such assessment the initial task for the tribunal must be to consider the substantiation for the asserted facts. The tribunal cannot find that HMRC have failed to take into account material facts or have taken into account irrelevant facts if the asserted facts are without any substantiation (to the required standard). As regards the asserted facts in this case:

> (1) The information provided to the tribunal indicates that, contrary to Mr Kaney's assertion, Mr Hayler was the owner of Active Pub. He is shown in the liquidation report for Active Pub dated 4 December 2014 as owning 100 shares in that company and the statement of affairs in that report shows only 100 shares in issue.
>
> (2) As regards the nature of the two businesses, the information provided supports the position that Active Pub was a pub management business. The liquidation report for Active Pub dated 4 December 2014 refers to the business as being "to act in temporary pub management, operating struggling, failing or closed sites on behalf of major pub companies e.g. enterprise inns, punch taverns on a tenancy at will basis".

(3) There is little evidence, however, as to the nature of the appellant's business. As noted, the description put in the VAT registration form was that the appellant's business was "temporary pub management". From the evidence given by HMRC it is clear that the appellant's business premises were at the Reresby Arms public house and that it was operational as a public house at the time the HMRC officer hand delivered the Security Notice. The note of the HMRC visit made by HMRC referred to the public house and recorded that the Security Notice was left with the barman. Also, of course the name of the appellant, Reresby Arms Rotherham Limited, indicates that the appellant's business may relate to that single pub. This does not suffice for us to conclude that the appellant's business was that of operating this public house only. Whether it was so confined and was not a business involving wider pub management is a matter of pure speculation without further information.

32. We conclude that there is not sufficient substantiation for the assertion that the nature of the two businesses and of Mr Hayler's involvement in those businesses was materially different for us to find that was the case. On that basis we are unable to find that Mrs Wild failed properly to take into account material facts available about the businesses or took into account irrelevant facts. We cannot make a finding as to whether or not a material fact ought reasonably to have been known and taken into account when there is no sufficient substantiation that the asserted fact itself is true.

33. In any event, in all the circumstances, taking into account the information HMRC had as to Mr Hayler's involvement in a number of failed businesses, it seems to us that it was reasonable for HMRC to proceed to seek security and to base the amount of the security on the turnover of Active Pub on the basis of the information then before them without making further investigation (which may or may not have revealed that the position was as Mr Kaney asserts). It was not unreasonable for HMRC to conclude from the information then available to HMRC that the level of risk required swift action for the protection of the revenue and that the information they had at that time sufficed as a prudent basis for determining the amount of security required. The information HMRC had indicated that the business of Active Pub and the appellant were similar and it was not unreasonable, given the history of unreliability of turnover figures given by the companies Mr Hayler had been involved in, for HMRC to use the turnover figures for that company as the basis for the security requirement.

34. It seemed from Mr Kaney's comments that the appellant was not pursuing the argument stated in the grounds of appeal that the security required would put it out of business. Our view is in any event that this is not a relevant consideration in relation to considering whether security is required for the protection of revenue or the amount of security. Whether the company is able to trade or not in view of the security requirement or amount is a consequence of the security requirement. The legislation is concerned with protection of revenue. It does not suggest that this objective is intended to be balanced against or subject to the objective of enabling the person upon whom the requirement is imposed to continue trading.

Conclusion

35. For all of the above reasons, the appeal is dismissed.

36. 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.

HARRIET MORGAN
TRIBUNAL JUDGE

RELEASE DATE: 17 NOVEMBER 2015