



TC06771

Appeal number: TC/2017/05283

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

UBI LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JANE BAILEY

Sitting in public at Centre City Tower, Birmingham on 17 April 2018

The Appellant did not appear and was not represented

Ms Siobhan Brown, presenting officer, for the Respondents

DECISION

Introduction

- 5 1. This appeal is against the Respondents' Notice of Requirement, dated 19 January 2017, to provide security to the Respondents in respect of its liability to Income Tax due under the Pay As You Earn Regulations ("PAYE") and National Insurance Contributions ("NICs").

My decision to proceed in the absence of one of the parties

- 10 1. The Appellant's appeal was listed for 10:00 on 17 April 2018. This date was in accordance with the dates to avoid provided by the parties and, in particular, met the Appellant's request that the hearing not take place on any date in the period 1 January to 31 March 2018 when it was very busy. The parties were instructed to attend the hearing venue half an hour before the hearing was due to commence. However, no
15 one had appeared on behalf of the Appellant at the Tribunal by 10:00 on the day of the hearing. I asked the Tribunal clerk to telephone the Appellant's director, Dr Li, (on the mobile telephone number provided on the Appellant's appeal form and also in a recent email from Dr Li to the Tribunal) to enquire if he, or anyone else, would be attending on behalf of the Appellant.
- 20 2. The clerk made three telephone calls to Dr Li's number. The first and third of these calls were ended by the recipient before the clerk could speak, and there was no answer to the clerk's second call. I was satisfied from my inspection of the Tribunal file that the Appellant had been correctly notified of this hearing, and that the address to which the notification had been emailed in January 2018 was the most recent email
25 address held by the Tribunal and was in use by Dr Li as recently as December 2017. From Dr Li's absence and the reaction to the clerk's telephone calls, I was satisfied that the Appellant had chosen not to attend the hearing or to instruct an agent to attend on its behalf. HMRC had attended the Tribunal and were ready to proceed with the hearing. In the circumstances I considered it was in the interests of justice that the
30 hearing should proceed in the absence of the Appellant.

My decision to dismiss the Appellant's appeal

3. As noted above, this appeal is against a Notice of Requirement, dated 19 January 2017, that the Appellant provide security to the Respondents in respect of its liability to PAYE and NICs.

This Tribunal's jurisdiction on appeal

4. The Respondents' 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. In considering whether it was reasonable for the Respondents to consider it was requisite for the Appellant to provide security, my
40 jurisdiction is supervisory. In relation to this aspect the appeal against a Notice to

provide security for PAYE and NICs is the same as if it was an appeal against a Notice to provide security for VAT – see *D-Media Communications Limited v Revenue and Customs Commissioners* [2016] UKFTT 430 (TC).

5. That jurisdiction was clearly explained in *John Dee Limited v Customs & Excise Commissioners* [1995] STC 941 where Neill LJ held (at page 952):

10 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.

6. So, in considering whether it was reasonable for the decision-maker to have required security at the time that security was required, I do not take into account any events which have happened following the issue of the Notice. As Dyson J set out in *Customs and Excise Commissioners v Peachtree Enterprises Limited* [1994] STC 747 (at page 751):

25 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.

7. The original decision to require security was taken on 19 January 2017. This decision was affirmed by a review decision, dated 5 June 2017. All events since then are irrelevant when considering whether it was reasonable for the decision-maker to have required security.

8. In *D-Media*, the Tribunal held that the Tribunal had an appellate jurisdiction with regard to other aspects of the appeal.

The issues to be determined

9. Therefore, the issues for me to determine are whether, on 19 January 2017 and again on 5 June 2017, it was reasonable of the Respondents to consider it necessary for the protection of the Revenue to require the Appellant to provide security. The security sought was:

- £43,667.90 in respect of PAYE, and
- £67,496.68 in respect of NICs.

10. If I am satisfied that it was reasonable for the Respondents to require security, I consider whether the security sought was appropriate in the circumstances of the case.

Onus and standard of proof

11. The burden of proof in this appeal is upon the Appellant. The standard of proof
5 is the civil standard, of the balance of probabilities.

12. Therefore, for the Appellant to succeed in this appeal, it must persuade the Tribunal that the decision to require security was, at the time it was taken, either a decision which no reasonable decision-maker could have reached or that it was flawed in the sense that irrelevant matters were taken into account or relevant matters were
10 not taken into account.

Findings of fact

13. On the basis of the papers before me I find as follows:

a) On 29 September 2003 the Appellant was incorporated under the name Universal Business Limited. The Appellant's business was described as
15 "management consultancy activities". The Appellant changed its name to the current on 11 February 2008. The Appellant's directors are Dr Zhong Li and Ms Jm Yong. The sole shareholder is Ms Jean Li.

b) The Appellant has been registered with the Respondents as an employer since 31 May 2013. From the Real Time Information ("RTI") records printed on 18
20 September 2017 and available in the bundle, I am satisfied that in 2013/14, the Appellant paid the correct amount of PAYE and NICs on time on only seven months out of twelve, but that in 2014/15, the Appellant paid all of the PAYE and NICs it owed within the period. From the Respondents' RTI records, I am satisfied that in 2015/16, the Appellant made the first four monthly payments of
25 PAYE and NICs (for May – August) in full in the period. However, the Appellant did not make full payment within the period for September, October or November 2015.

c) During 2014/15 and the first part of 2015/16, the Appellant had not made any declarations to the Respondents in respect of its liability to pay PAYE or NICs.
30 In December 2015, for the first time, the Appellant declared a liability to pay PAYE and NICs. The total PAYE and NICs declared by the Appellant for December 2015 was £7,914.53. The due date for payment was 22 December 2015. By 22 December 2015, only £6,252.75 had been paid. £1,661.78 remained outstanding.

d) I am satisfied that each of the succeeding months of 2015/16, the Appellant paid less in PAYE and NICs than it had declared it was liable to pay (including no
35 payment at all in February 2016). This was also less than the RTI records showed should have been paid. By the end of 2015/16, the Appellant had declared it was liable to pay the Respondents £52,951.31 in PAYE and NICs for
40 December 2015 – April 2016. The total amount of PAYE and NICs the

Appellant had paid for this period was 23,757.12, leaving the sum of £29,194.19 outstanding. The Respondents' RTI records, which I accept, show that of the £110,511.82 which should have been paid in 2015/16, only £81,277.79 was paid on time.

- 5 e) During May to August 2016, the Appellant declared (and so was due to pay) a total of £42,649.20. The Appellant made no payments by way of PAYE or NICs at all during this period, and so the sum due to the Respondents increased.
- f) On 6 September 2016, Dr Li telephoned the Respondents' debt management team to ask why the Appellant was being chased for sums it did not owe. Dr Li asserted that no amount was outstanding from the Appellant.
10
- g) On 7 September 2016, the Respondents received from the Appellant, early payment of all the PAYE and NICs declared by the Appellant as being due to be paid on 22 September 2016.
- h) On 13 September 2016, the Respondents debt management team received a fax from the Appellant's accountant setting out the payments the Appellant had made by way of PAYE and NICs. The Appellant's accountant and a member of the Respondents' debt management team spoke by telephone on 14 September 2016, and agreed that the Respondents' figures were correct and that there was a large amount of outstanding PAYE and NICs due from the Appellant. On 16 September 2016, Dr Li spoke to a member of the Respondents' debt management team and confirmed the Respondents' figures were correct. Following that telephone call, the Appellant and Respondents agreed a time to pay ("TTP") arrangement for the Appellant to pay the outstanding PAYE and NICs.
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- i) On 31 October 2016, the Respondents received from the Appellant, late payment of all the PAYE and NICs declared by the Appellant as being due to be paid on 22 October 2016. However, the Appellant had failed to make any of the payments due under the TTP agreement to reduce the outstanding debt.
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- j) On 3 November 2016, the Respondents cancelled the TTP arrangement due to the Appellant's non-compliance.
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- k) On 14 November 2016, the Appellant made early payment of all of the PAYE and NIC it declared for that month.
- l) On 12 December 2016, the Respondents wrote to the Appellant, warning that if the Appellant did not pay the amount of PAYE and NICS which was outstanding then there was a risk the Respondents would require the Appellant to provide security.
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- m) On 15 December 2016, the Appellant made part payment of all of the PAYE and NIC it declared for that month. On 20 December 2016, the Appellant paid the outstanding amount for the PAYE and NICs due for December 2016, and

also paid £1,661.78 in satisfaction of the PAYE and NICs which was due for December 2015.

- 5 n) On 21 December 2016, an officer of the Respondents rang the Appellant and spoke to one of the Appellant's directors. That director was warned of the risk it was running; it was suggested that the Appellant should agree a new TTP arrangement to avoid being served with a Notice to provide security. The director agreed to ring the Respondents' debt management team to try to agree a further TTP arrangement; however, no one from the Appellant subsequently telephoned the Respondents' debt management team.
- 10 o) On 19 January 2017, the Respondents issued a Notice of Requirement to the Appellant to give security in respect of PAYE and NICs. The persons who were required to give security were the Appellant, Dr Li and Ms Li. They were jointly and severally liable to give the full amount of security by 28 February 2017. At that stage the arrears of PAYE and NICs was £69,046.58. The total amount sought by way of security was £111,164.58. The Notices were served personally on Dr Li and Ms Li, and delivered to the Appellant at its business address. An affidavit of service was provided in the bundle of documents before me.
- 15
- 20 p) From January 2017, the Appellant did not declare any liability to PAYE and NICs. The Respondents' RTI records show that the Appellant should have paid £20,965.35 in PAYE and NICs for January 2017 but only £203.78 was received.
- 25 q) On 14 February 2017, Dr Li telephoned Ms Wild (the Respondents' decision-maker) to say that the Appellant wished to appeal against the Notice requiring security on the basis that there was a TTP arrangement in place. Dr Li was informed that that TTP arrangement had been cancelled in November 2016. Dr Li also told Ms Wild that there were two PAYE accounts for the Appellant, which had resulted in the misallocation of funds, and that a further payment had been made that day towards the outstanding PAYE. Ms Wild explained that the references cited by Dr Li related to the same PAYE scheme, and that there was only one PAYE scheme for the Appellant.
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- r) Also, on 14 February 2017, Dr Li emailed the Respondents seeking a review of the decision to require security. In that email Dr Li explained that the Appellant had asked its accountants to reconcile the payments made by the Appellant. The RTI records show that the Appellant paid its PAYE and NICs in full in February 2017.
- 35
- s) The decision-maker set out in her view of the matter in a letter dated 15 March 2017, confirming that the Notice of Security was required. The Appellant was told that if it wanted to challenge the decision then it must appeal or seek a review within 30 days. No PAYE and NICs was paid in March 2017.
- 40 t) On 13 April 2017, Dr Li emailed Ms Wild seeking to appeal the notice to provide security. In that email Dr Li asserted that the Appellant had had steady

5 growth, and that the Appellant had been making its monthly payments since September 2016 and that the balance (then estimated by Dr Li to be about £40k) would be cleared but “it may take a bit more time”. Dr Li argued that the Appellant did not present a risk which justified the Notice to require security and that the sum of £111k would cause the Appellant financial distress. Dr Li concluded:

May I suggest that HMRC suspend this security demand for 3 months until July 2017, allowing us to clear the outstanding balance of PAYE/NIC.

10 We will be working with your colleagues in HMRC to reconcile the PAYE payments record and clear the actual balance asap.

15 u) On 19 April 2017, Ms Wild asked Dr Li to clarify whether the Appellant requested a review or wished to appeal to the Tribunal. On 23 April 2017, Dr Li emailed Ms Wild again, requiring a review. Dr Li again claimed (incorrectly) that the Appellant had been making its monthly payments since September 2016, explained that the Appellant’s business was seasonal, and asserted that the Appellant would continue to make payments and did not present a threat to the revenue.

20 v) In April 2017, the Appellant paid £8,930.23 of the £9,692.49 in PAYE and NICs which was due. In May 2017, the Appellant paid £1,451.92 of the £6,048.88 which was due.

w) On 5 June 2017, the Respondents issued their review decision. The review decision maker noted:

- 25 • the total PAYE and NICs outstanding when the Notice of Requirement had been served on 19 January 2017 was £69,046, but the total PAYE and NICs outstanding as at 31 May 2017, had increased to £114,654;
- the Appellant’s claim to have seasonal cash flow issues was not reflected in the fact that nearly £30,000 was still outstanding from the year 2015/16;
- 30 • the Appellant’s claim to have engaged with HMRC’s debt management and banking team was not correct as, following the Appellant’s 21 December 2016 promise to set up a further instalment arrangement, there had been no further contact from the Appellant; and
- 35 • the Appellant’s claim that an increase in revenue over 2017 would result in the payment of tax was not reflected in the Appellant’s behaviour in previous years when revenue had increased but the outstanding tax had not been paid.

x) On the basis of these points, the reviewing officer considered that the Appellant was a threat to the revenue, and security was required. The reviewing officer upheld the quantum of the security in the amounts originally sought.

y) By letter dated 14 June 2017, Ms Wild wrote to the Appellant seeking the security required. Ms Wild warned the Appellant that failure to provide security was an offence under Section 684(4A) of the Income Tax (Earnings) and Pensions Act 2003.

5 z) On 3 July 2017, the Appellant appealed to this Tribunal. The Appellant requested:

10 Please can we ask HMRC hold back the security demand of over £111k for now and review the case in December 2017 to give us more time to manage through business growth and clear all the backlog balance by November 17 and we believe that there should be no security demand required any more in December 17.

15 aa) The Appellant did not refer to its previous commitment to clear the outstanding amount of PAYE and NICs by July 2017 or explain why this deadline had not been met. With its Notice of Appeal, the Appellant provided an additional sheet of paper with extended grounds (which are set out below). At the conclusion of the extended grounds, the Appellant stated:

Our appeal –

20 We have made our commitment to work closely with HMRC to clear current backlog balance of PAYE/NIC by November 2017 and will keep up to date PAYE and NIC payment on monthly basis moving forward.

25 Please can we ask HMRC to hold back the security demand of over £111k for now and review the case in December 2017 to give us more time to manage through business growth and clear all the backlog balance by November 2017 and we believe that there should be no security demand required any more in December 2017.

The Appellant's submissions

14. As the Appellant was not represented, either by a director or by another representative, and did not produce any documents, the only material I have before me setting out the Appellant's case is the Appellant's Notice of Appeal to the Tribunal (set out above and below). I summarise those grounds as following under the following three headings:

- The Appellant was a growing business with a good track record of making payment and so did not present a risk to HMRC in respect of its PAYE and NICs obligations
- 35 • The Appellant was working to clear the balance owed to the Respondents
- The security required would cause significant financial distress to the Appellant

15. I discuss the Appellant's submissions further below.

The Respondents' submissions

16. Having read the papers before the hearing, once I had decided to proceed in the absence of the Appellant, I informed Ms Brown of my conclusion that the Appellant's grounds, taken together, did not have any reasonable prospects of success. Although a taxpayer with a good record of payment could challenge the reasonableness of a decision to require security on the basis of that record, the Appellant's second ground demonstrated that, despite its assertions in its first ground, the Appellant was not such a taxpayer.

17. I noted that the onus was upon the Appellant to prove its case, and also that it had produced no evidence in support of its grounds. I was satisfied from the documents in the bundle before me, and from the admissions in the Appellant's grounds of appeal, that there had been a considerable sum owed to the Respondents, that there had been a long history of late and insufficient payment and that there was a considerable sum outstanding when the decision was taken to require security. In the circumstances I informed Ms Brown that I did not require the Respondents to call the decision-maker (who was present and available to give evidence). I invited the Respondents to make any additional points that were not already set out in the Respondents' Statement of Case, served on 3 August 2017. Ms Brown confirmed that there were no further points which the Respondents wished to rely upon that were not already laid down in their Statement of Case.

18. For the avoidance of doubt the Respondents' position, as set out in that Statement, is that it was reasonable for the Respondents to require security in the light of the information available at the time of the decision. This was supported by the citation of relevant case-law

19. Therefore, I set out in more depth the Appellant's three grounds in its Notice of Appeal, and I explain why I do not consider those grounds constitute a successful challenge to the reasonableness of the Respondents' decision to require security.

The Appellant's first and second grounds

20. As noted above, the Appellant's first ground of appeal was that it is a growing business with a good track record of making payments, and so it did not present a risk in respect of its PAYE and NICs obligations. The second ground was that the Appellant was working hard to clear its debts to HMRC. The Appellant stated:

1) UBI t/a Jayley Collection presents no risk to HMRC on PAYE/NIC obligation.

UBI t/s Jayley collection is being built up from ground zero since 2008 and we have now established as sustainable business of brand clothing wholesale/retails, instore/online with established brand of Jayley collection in the UK and overseas. [the Appellant then provided two website addresses.]

We are running a sustainable business with steady double digit growth every year for the past 10 years. We have got £3.8m revenue in FY 2016 and we are on the good track to achieve £5.6m revenue planned for FY 2017. Please find attached Company AC for FY 2015 and draft AC for 2016 for your reference.

5 We have got good track records on business growth and fulfil the payment obligation, we can assure you that we will be fulfilling all our obligation of HMRC PAYE/NIC from the business. Hence there is no risk from UBI to HMRC to fulfil PAYE/NIC from our business.

2) the business is working on to clear the correct balance on PAYE/NIC.

10 While the business was being established, UBI started to bring in employees to the business since 2014. We now have got about 18 full time employees in company payrolls with monthly PAYE/NIC payment obligations.

15 Looking into the records, there were confusion of the PAYE/NIC payments on UBI accounts in FY2014/FY2015/FY2016, payments have been made into different accounts with no reconciliation etc. We have instructed our accountants DJH working with your colleagues in HMRC PAYE/NIC to reconcile the accounts and started to clear the backlogs since September 2016, and we are on the good track to clear the backlogs.

20 We have been keeping up the monthly PAYE/NIC payments since September 2016 and we are in contact with your colleagues in HMRC PAYE/NIC to clarify on correct balance of the Backlogs. We understand that we may have some shortfall of £20-30k on backlogs up to April 2017, but demand of security of over £111k is not fair to clear the backlogs of £20-30k balance.

25 21. Although the Appellant referred in its first ground to providing company accounts, these were not attached to the Notice of Appeal and were not subsequently provided to the Tribunal (the Appellant did not comply with the Tribunal's requirement that it provide a list of documents it relied upon). The Appellant has not provided any evidence of its growth or track record in business.

30 22. If the Appellant was able to establish that it did, in fact, have a record of paying all the PAYE and NICs due from it on time (as implied in its first ground), then that could form the basis of a challenge to the reasonableness of the Respondents' decision to require security. However, it is clear (both from the facts I have found and from the Appellant's own Notice of Appeal) that the Appellant does not have a good track record of paying its PAYE and NICs. This is because the Appellant's second ground
35 is that it had been working hard to clear the balance of arrears owed to the Respondents. Clearly a business which owes the Respondents a large amount of overdue PAYE or NICs, accrued over a long period, cannot be a business with a good record of meeting its tax obligations.

40 23. The actual size of the arrears was in dispute – the Appellant described the amount overdue as being “£20-30k”, and referred to some payments of PAYE and NICs having been misallocated by the Respondents, whereas the Notice of

Requirement specifies the arrears as at 19 January 2017 as being £69,046.58 in total (£25,575.90 PAYE and £43,470.68 NICs), and the review decision refers to the total arrears of PAYE and NICs having increased to £114,654 by 31 May 2017.

24. The onus of proof is upon the Appellant and it has not produced any evidence which suggests that the Respondents have made an error in their calculations or their allocation of sums paid to them. Although there are some very minor differences between the RTI records and the amounts of PAYE and NICs declared as due by the Appellant, I am satisfied from the documents before me that the Respondents' figures are correct. Although the Appellant has paid the PAYE and NICs it owes in bursts, most recently from September to December 2016, from October 2016 it had stopped making regular payment, and the payments which were made were late and/or insufficient. The Appellant's indebtedness had been steadily increasing since January 2017, so the Appellant owed the Respondents even more in unpaid PAYE and NICs in May 2017 than it had in January 2017.

25. Even looking at the Appellant's own figures of approximately of £20-30k being outstanding, that is still a considerable amount of money owed to the Respondents. I am satisfied, even on the Appellant's figures for the amount of outstanding PAYE and NIC, given the Appellant's history of non-payment and the time over which the arrears had accrued, that the Appellant presented a threat to the revenue.

26. Therefore, despite asserting that it has a good payment record in its first ground of appeal, the Appellant makes it clear in its second ground of appeal that, in fact, it does not have a good record of paying PAYE and NICs. The Appellant's second ground also makes it clear that, on the Appellant's own account, the considerable arrears of PAYE will take months to clear. Rather than challenging the reasonableness of the Respondents' decision, the Appellant's second ground of appeal supports the Respondents' decision that the Appellant poses a risk to the revenue.

27. The Appellant also suggested, in correspondence to the Tribunal in December 2017, that it had cleared its PAYE and NICs debt in December 2017. This is disputed by the Respondents and I am not satisfied that the Appellant is correct. But, even if all the arrears had been paid off in December 2017, that would be irrelevant when the Tribunal considers the reasonableness of a decision taken by the Respondents in January 2017 and re-considered by them in June 2017. The relevant facts are those at the time the decision was taken to require security, and it is common ground that a large amount was due from the Appellant in January 2017, and still due in June 2017.

The Appellant's third ground

28. The Appellant's third ground is as follows:

3) Demand security of over £110k will put significant financial distress to a small growing business like us

We are in seasonal fashion business, business is quiet in the first half year from Jan-June and we require capital to maintain the business and get stock in for the booming season from July-December.

You may also be aware that the devalue of Sterling due to the Brexit and uncertainty of UK economy has put additional financial burden in the small business like us that rely on suppliers – we need to pay our overseas suppliers for the stock with 20-30% more of Sterling equivalent since July 2016.

5 We are confident that we will be keeping the healthy and steady growth of the business with growing workforce to contribute fair share of PAYE/NIC, but we need some help from HMRC to give us more time to clear the backlog balance in the next couple of months.

10 We need the help from HMRC to maintain a healthy cashflow to support the business so that we are able to maintain our valued workforce to grow the business and generate more revenue for HMRC.

29. This ground was not supported with any evidence, such as accounts or bank statements, which would demonstrate the Appellant’s financial position. The only evidence I have which tells me anything about the Appellant’s financial position is the records provided by the Respondents. The company information provided only goes up to 30 April 2015, and I cannot guess what the Appellant’s position might be three years on. The more recent records are payments records, and these show the Appellant consistently in arrears and failing to pay the PAYE and NICs due on time, or at all. As the Appellant has not provided any evidence, I do not know if the arrears of PAYE and NICs has built up because the Appellant cannot pay or because it chooses not to pay.

30. The Respondents’ explanation of the amount of security sought was that it had been calculated on the basis of the likely amount of PAYE and NICs to be due from the Appellant over the next four months, plus the current arrears of PAYE and NICs. As the legislation enables the Respondents to seek security for the payment of any PAYE or NICs that is, or may be, due, and given the Appellant’s history of non-payment and late payment, I consider it reasonable for the decision-maker to have regard to the likely amount of PAYE and NICs which would be lost if the Appellant continued to fail to pay the PAYE and NICs due. The fact that, by January 2017, the security required from the Appellant had grown to be a very large amount of money, due to the size of the arrears, tends to reinforce the Respondents’ conclusion that there was a risk to the revenue. Given that the purpose of seeking security is the protection of the revenue, I am satisfied that the Respondents’ method of calculation is reasonable. As I have no evidence supporting the Appellant’s assertion that it cannot provide security in the amount sought, I consider the amount sought to be reasonable in all the circumstances of this case. So, although the decision in *D-media* suggests that I have jurisdiction to vary the requirements of the notice, I do not consider it appropriate to do so in this case. The Notice is confirmed as issued.

Conclusion

40 31. The Appellant has failed to satisfy me that the Respondents’ decision to require security contained an error of law or was so unreasonable that no commissioners,

properly directed, could have reached those decisions. I do not consider it appropriate to vary the Notice of requirement. Therefore, the Appellant's appeal is dismissed.

32. My decision was communicated verbally to the Respondents (the Appellant being absent) at the conclusion of the hearing on 17 April 2018. I informed the Respondents that my written decision would be issued shortly thereafter. On 23 April 2018, a summary decision was released to the parties. At the conclusion of that summary decision was a paragraph informing both parties that a party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons.

10 The Appellant's request for a full decision

33. By a letter dated 16 May 2018, but emailed to the Tribunal at 23:30 on 22 May 2018, the Appellant requested a full decision. As this request was received after 5 p.m. on 22 May 2018, it was deemed to be received on 23 May 2018, and so was two days out of time. On 6 June 2018, the Tribunal asked the Appellant to provide reasons for the delay. The Appellant responded on 18 June 2018, by stating that a letter was sent on 16 May 2018 (this was the letter which was emailed on 22 May), and the Appellant's director did not consider it fair that the appeal had been dismissed when the Appellant had cleared its debt at the end of December 2017. This correspondence was copied to the Respondents for their comments. On 27 June 2018, the Respondents objected to the Tribunal extending time, and noted that the Appellant still (in June 2018) owed in excess of £60k in unpaid PAYE and NICs.

34. Unfortunately, it appears that the Tribunal file was mislaid at that stage and not discovered again until shortly before 12 October 2018 when it was referred to me.

35. In considering whether to extend the time for requesting a full decision, I have concluded that, even though the Appellant had not previously sent any correspondence to the Tribunal by post, it may be that Dr Li's email of 18 June 2018 was trying to convey that his letter of 16 May 2018 had been posted to the Tribunal on 16 May 2018, and emailed as well on 22 May 2018. That would give the Appellant some explanation, albeit weak, for the delay. Asking for a full decision is a very simple task, and the Appellant was clearly informed, and aware, of the deadline. However, the delay is only two days. I have borne in mind that the Respondents' object, and that they may be put to the trouble of resisting an appeal (if permission to appeal is granted) but I do not consider that the delay is such that the Respondents would have put away their papers on the assumption that matters were concluded. Weighing all the factors, I have decided that it would be appropriate for an extension of time to be granted for the Appellant to request a full decision.

36. However, the Appellant should be aware that there is also a time limit for seeking permission to appeal. If the Appellant wishes to seek permission to appeal then Dr Li should ensure that this matter is given priority, and that the Appellant does not miss any further deadlines without good reason.

37. 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.

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**JANE BAILEY
TRIBUNAL JUDGE**

RELEASE DATE: 17 October 2018