NCN: [2021] UKFTT 233 (TC)

TC08182

VALUE ADDED TAX – Notice of requirement to provide security – whether the decision to require security of the specified amount was reasonable even though the director of the Appellant had no history of allowing companies of which he was a director to become insolvent whilst owing money to the Respondents and the Appellant had shown by its past actions that it took its tax obligations seriously and intended eventually to discharge its VAT arrears – yes – because persistent late payment by a taxpayer raises the risk that, despite its best intentions, the taxpayer will eventually be unable to pay its liabilities in full

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/09420

BETWEEN

FMC (FABRICS MAINTENANCE CONTRACTORS) LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE TONY BEARE

The hearing took place on 17 June 2021. The form of the hearing was V (video) on the Tribunal video platform. A face-to-face hearing was not held because of the pandemic. The documents to which I was referred were a documents bundle of 142 pages (the "DB") and an authorities bundle of 56 pages.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Mr Leslie Eriera, of Leslie Eriera & Co, for the Appellant

Mr Oladapo Sanusi, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This decision relates to an appeal by the Appellant against a decision by the Respondents made on 26 June 2019 (which was upheld by the Respondents on 14 August 2019, following a review) to issue a notice of requirement (an "NOR") to provide security in the amount of £100,779.39 for the Appellant's VAT liabilities.

2. The NOR was issued pursuant to Paragraph 4 of Schedule 11 to the Value Added Tax Act 1994 (the "VATA"), which provides as follows:

"Power to require security and production of evidence

4….

(2) 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—

(a) the taxable person, or

(b) any person by or to whom relevant goods or services are supplied.

(3) In sub-paragraph (2) above "relevant goods or services" means goods or services supplied by or to the taxable person.

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

(5) The powers conferred on the Commissioners by sub-paragraph (2) above are without prejudice to their powers under section 48(7)."

3. Section 83(1)(l) of the VATA provides that there is a right of appeal to the First-tier Tribunal with respect to the requirement of any security under, inter alia, paragraph 4(2) of Schedule 11 to the VATA.

PRELIMINARY POINT

4. Before setting out the facts and submissions which are relevant in this case, I should note that the Appellant did not submit the form containing its notice of appeal to the First-tier Tribunal until 4 December 2019. This was after the expiry of the period within which the Appellant was entitled by Section 83G(3) of the VATA to make its appeal – the period of 30 days from the date of the review decision of 14 August 2019. However, a notice of appeal may be given to the First-tier Tribunal outside that period with the permission of the First-tier Tribunal (see Section 83G(6) of the VATA). As:

> (1) the Appellant informed both the First-tier Tribunal and the Respondents by e-mail on 20 August 2019 that it intended to appeal against the decision to require security and merely failed to complete the relevant form prior to 4 December 2019; and
>
> (2) the Respondents have indicated that they do not object to the late notice of appeal in this case,

I am prepared to give that permission.

THE FACTS

5. The facts in relation to this appeal are not in dispute and are as follows:

(1) the Appellant registered for VAT on 6 April 2011. Its taxable activity is the delivery of high standard construction, renovations and building maintenance;

(2) the Appellant has in the past experienced difficulties in meeting its VAT obligations, both as regards filing its VAT returns and as regards discharging its VAT payments. At the hearing, the parties and I went through the relevant pages of the DB which demonstrated the extent of those difficulties;

(3) the critical pages in this respect were:

(a) pages 99 to 103 of the DB, which set out a ledger recording, inter alia, the amounts of VAT which had become due from the Appellant, and the amounts of VAT which had been paid by the Appellant, over the period between 13 September 2016 and 7 November 2019 and, hence, the aggregate amount of VAT outstanding from the Appellant to the Respondents from time to time over that period; and

(b) pages 139 to 142 of the DB, which set out a table recording, inter alia, the various occasions on which, and the extent to which, the Appellant had defaulted on its obligations to file returns and pay VAT over the period between 7 May 2014 and 12 May 2021;

(4) for reasons of brevity, and because there is no dispute between the parties as to the occurrence and extent of the prior defaults, I do not propose to elaborate in this decision on all of the defaults in question but I would just mention that, at the time when the Respondents made their decision to require security on 26 June 2019:

(a) the Appellant had failed timeously either to file its VAT return or to discharge its VAT liability (or both) in respect of no less than 10 of its VAT periods from and including its VAT period 03/14. In fact, over the period after the Appellant entered the default surcharge regime – which was following its VAT period 09/16 - the Appellant had timeously filed its VAT return and paid its VAT liability in respect of only one of its VAT periods - its VAT period 12/17. In respect of every other VAT period, the Appellant had either been late in filing its VAT return or late in paying its VAT liability or both. Moreover, some of those defaults were extensive. For example, the Appellant was 429 days late in discharging its VAT liability in respect of its VAT period 06/17 and 156 days late in discharging its VAT liability in respect of its VAT period 03/18;

(b) the aggregate VAT debt outstanding to the Respondents was £70,055.12;

(c) the aggregate VAT debt outstanding to the Respondents had been considerably higher than the above amount very shortly beforehand. For example, the relevant figure had been £103,079.62 as recently as 18 May 2019;

(d) the Appellant had sought to reduce the aggregate VAT debt outstanding to the Respondents from time to time by:

(i) making regular payments, such as a payment of £34,801.82 on 11 December 2017, a payment of £17,000.00 on 22 January 2018, a payment of £14,600.56 on 8 February 2018 and then monthly payments of £16,512.25 in each of the six months between February 2018 and July 2018; and

(ii) setting off, on 16 October 2018, an amount of £53,671.23 which was owed to it by the Respondents under the Construction Industry Scheme (the "CIS"); and

(e) in very broad terms, the aggregate VAT debt outstanding to the Respondents had increased over the period between October 2016 and July 2017 before being reduced to nil at that point. It had then started growing again to reach a high of £201,302.87 in November 2017 before being reduced to £4,649.28 in October 2018. It had then started growing again to reach £70,055.12 in June 2019;

(5) on 10 May 2019, the Respondents contacted the Appellant to discuss the size of the aggregate VAT debt outstanding to the Respondents;

(6) on 13 May 2019, the Respondents wrote to the Appellant to outline the action which the Appellant needed to take to reduce the aggregate VAT debt outstanding to the Respondents and to warn the Appellant that, if that action was not taken, the Respondents would issue the Appellant with an NOR;

(7) there was then an exchange of correspondence between the parties which ended on 28 May 2019;

(8) on 26 June 2019, the Respondents made the decision to require security and issued the NOR;

(9) on 9 July 2019, the Appellant wrote to the Respondents to ask the Respondents to reconsider the decision and to request a review of the decision;

(10) on 18 July 2019, the Respondents wrote to the Appellant to say that they were not going to revoke the NOR and that the matter had been referred internally for a review; and

(11) on 14 August 2019, the Respondents notified the Appellant of the conclusion of their review, which was to uphold the initial decision.

6. The overall impression given by the material summarised above is that, in the three-year period prior to the issue of the NOR, the Appellant was trying to meet its VAT obligations but repeatedly failing to do so.

7. I should mention three other relevant facts which are not in dispute and have some relevance to this decision.

8. The first is that the individual who runs the Appellant, a Mr Robert Austin, has not previously been a director of a company which has become insolvent owing taxes to the Respondents. This case is therefore not on all fours with those relating to so-called "phoenix" companies, where the directors of a company allow the company to go into insolvent liquidation owing taxes to the Respondents and then set up a new company to carry on precisely the same business.

9. The second is that the Appellant has recently received, as a result of the Respondents' error, the sum of £364,738.60 and, at the time of the hearing, it was in discussions with the Respondents in relation to how to return that amount.

10. Finally, although, at the time when the decision was made, Mr Eriera was alleging on behalf of the Appellant that the Respondents owed amounts by way of CIS repayments to the Appellant, Mr Eriera conceded at the hearing that this was not the case and that, at the time when the decision was made, the Respondents did not owe any such CIS repayments (or any other tax repayments) to the Appellant.

THE NATURE OF MY JURISDICTION

11. It is apparent from the Court of Appeal decision in *John Dee Ltd v The Customs and Excise Commissioners* [1995] STC 941 ("*John Dee*") that, although I am carrying out an appellate function in considering this appeal, my jurisdiction in relation to this appeal is supervisory in nature. For example, I am not permitted to exercise my own discretion and thus to consider whether the security required by the Respondents as set out in the NOR was in fact necessary for the protection of the revenue. Instead, subject to the point made in paragraph 13 below, my role is confined to considering whether the decision which was made by the Respondents as set out in the NOR – to the effect that the security in question was necessary for the protection of the revenue – and which was upheld on review either:

(1) involved an error of law; or

(2) was one which no reasonable panel of Commissioners could have reached; or

(3) was reached after taking into account a matter which was irrelevant or after failing to take into account a matter which was relevant.

12. For the sake of brevity, in the rest of this decision, I refer to any decision by the Respondents which suffers from one or more of the flaws set out in paragraph 11 above as being an "unreasonable" decision by the Respondents.

13. The only caveat to the formulation set out in paragraph 11 above is that, even if I conclude that the decision made by Respondents was unreasonable because it was reached after taking into account a matter which was irrelevant or failing to take into account a matter which was relevant, the Appellant's appeal must nevertheless fail if the decision would inevitably have been the same had the irrelevant matter not been taken into account or had the relevant matter been taken into account.

14. In addressing the matters set out in paragraphs 11 to 13 above, I am required to limit myself to the facts and matters which were known to the Respondents at the time when the decision to require security was made – see the decision of Dyson J in *Customs and Excise Commissioners v Peachtree Enterprises* [1994] STC 747, as applied in the decision of the VAT Tribunal in *Lewis Ball & Company Ltd v The Commissioners for Her Majesty's Revenue and Customs* [2006] Lexis Citation 673 ("*Lewis Ball*") and the decision of the First-tier Tribunal in The *Southend United Football Club Limited v The Commissioners for Her Majesty's Revenue and Customs* [2013] UKFTT 715 (TC) ("*Southend United*"). Indeed, in *Lewis Ball*, the fact that, at the time of the hearing, the taxpayer was more up to date in relation to its VAT obligations than it had been at the time when the decision which it was seeking to impugn had been made was held to be irrelevant because the relevant time for considering the reasonableness of the decision was the time when it was made.

15. There is a further jurisdictional point which I need to make and that relates to the quantum of the security. In each of their review letter, their statement of case and their skeleton argument, the Respondents baldly asserted that, in cases such as this "there is no right of appeal against quantum". No authority for this proposition was provided in any of those documents or by Mr Sanusi at the hearing. I regard the relevant statement to be profoundly misleading and, if, as it appears to be, the relevant statement is standard wording which the Respondents adopt in all such cases, I would urge them to change that practice. The reason for this is as follows.

16. It is true that the language used in paragraph 4(2) of Schedule 11 to the VATA does not expressly refer to the quantum of the security and that that issue is in fact dealt with two provisions below in paragraph 4(4) of Schedule 11 to the VATA. However, in my view, the two provisions need to be read together – as indeed the cross reference to the earlier provision

in the later provision suggests – with the result that the reasonableness of the quantum of security required to be paid by the taxpayer is just as much part of the consideration which the First-tier Tribunal in such cases must give to the reasonableness of the subject decision as is the reasonableness of the decision to require security in the first place. In other words, it is not the case that, as long as a decision to require at least some level of security would be reasonable, the Respondents can then require, with impunity, a grossly disproportionate level of security to be provided. For instance, while it may be entirely reasonable in a particular case for the Respondents to require security of, say, X, a security requirement of 10X might well be totally excessive, with the result that the decision as a whole is unreasonable and thus susceptible to a successful challenge. I therefore consider that the appeal right set out in Section 83(1)(l) of the VATA is a right to challenge the reasonableness of the decision as a whole and that it encompasses both the decision to require security and the amount of the security so required.

17. It is implicit in paragraph [14] of the decision of the First-tier Tribunal in *Southend United* that the view expressed in paragraph 16 above was shared by the panel sitting on that case. Moreover, in Section SG32200 of their securities guidance, the Respondents acknowledge that the quantum of the security required is something which they will have to justify internally on review and before the First-tier Tribunal in an appeal against an NOR. Thus, in my view it is misleading for the Respondents to say in any particular appeal against an NOR that the quantum of the security is not subject to appeal.

18. It follows from paragraphs 11 to 17 above that my task in this decision is to consider whether the Respondents' decision to require the Appellant to provide security in the amount of £100,779.39 was a reasonable one to have reached based on the available facts as at 26 June 2019. The onus is on the Appellant to show that that decision by the Respondents was an unreasonable one.

THE ARGUMENTS FOR THE APPELLANT

19. Mr Eriera, on behalf of the Appellant, submitted that the Respondents' decision to require the Appellant to provide security in the amount of £100,779.39 was unreasonable on the date when it was made. He said that this was the case for the following reasons:

(1) first, this was not a case where the director of the Appellant was an individual who had previously been a director of a company which had become insolvent owing tax to the Respondents – such as so-called "phoenix" companies. On the contrary, Mr Austin had not previously been a director of any such company;

(2) secondly, and consistent with the first point, the facts showed that Mr Austin was an honest and well-meaning individual who was, at all times, very conscious of the tax obligations of the Appellant and strove to meet those obligations as best he could despite difficult circumstances. The Appellant may have been persistently late in discharging its VAT filing and payment obligations but the record showed that it always tried to do so eventually. For example, the ledger on pages 99 to 103 of the DB showed that, although the outstanding balance owed by the Appellant had been as high as £201,302.87 (in November 2017) and then £103,079.62 (in May 2018), the balance had also been as low as nil (in July 2017) and £4,649.28 (in October 2018), as the Appellant strove to discharge the amount owing. These fluctuations were not consistent with a picture of a taxpayer which was careless about its tax obligations to the Respondents. Instead, they showed that the Appellant was doing all that it possibly could do to meet those obligations;

(3) taking into account the offset of the CIS repayment, the Appellant had already made payments to the Respondents of £184,345.29 in aggregate between 22 January 2018 and 16 October 2018, including an offset of a CIS repayment of £53,671.23 and a payment in relation to its VAT period 12/17 of £14,600.56;

(4) the same approach to compliance could be seen in the Appellant's willingness to engage with the Respondents in relation to the repayment of the sum of £364,738.60 which had been paid erroneously to the Appellant by the Respondents. Again, these were not the actions of a taxpayer which adopted a cavalier approach to its tax liabilities;

(5) accordingly, there was absolutely no reason to think that the Appellant would ultimately default on its VAT payment obligations;

(6) thirdly, the precarious economic situation of the Appellant had not been helped by the delay on the part of the Respondents in dealing with the Appellant's CIS repayment in 2018; and

(7) fourthly, the quantum of the security was excessive given that many businesses, including the Appellant's, were undergoing straitened times as a result of the pandemic. Ironically, by requiring the Appellant to provide security, the Respondents were making the likelihood of a future default by the Appellant more likely than if they simply allowed the Appellant to work its way toward discharging its obligations in full over time.

DISCUSSION

Introduction

20. I must confess that I have a considerable amount of sympathy for the Appellant's predicament. The facts in this case do suggest that the Appellant has been doing all that it can to discharge its VAT liabilities despite the fact that it has repeatedly fallen short. It is not clear to me why the Appellant did not seek to negotiate a time to pay arrangement with the Respondents as that might well have alleviated the position sufficiently to the satisfaction of both parties.

21. However, despite that sympathy, the only question which I am required to address in this decision is whether or not the decision by the Respondents to require the Appellant to provide the level of security which they have was unreasonable. In that respect, for the reasons set out in the paragraphs which follow, I am afraid that there is only one answer.

Was it reasonable to require security?

22. Turning first to the question of whether it was reasonable for the Respondents to decide that security of at least some amount was necessary, the language used in paragraph 4(2) of Schedule 11 to the VATA does not suggest that the exercise by the Respondents of their power under that section is confined to those circumstances where:

(1) the director of the taxpayer in question has previously been a director of another taxpayer which has become insolvent owing VAT to the Respondents; or

(2) the taxpayer is careless about its obligations to discharge its VAT liabilities.

Instead, it is merely necessary that the Respondents reasonably consider that security is necessary for the protection of the revenue. It is therefore apparent that the power can reasonably be exercised in a wider range of circumstances than Mr Eriera suggested at the hearing.

23. In my view, in this case, at the time when the decision to require security was made, there were good reasons why the Respondents might reasonably have considered that security was necessary for the protection of the revenue. In the first place, there were substantial arrears of VAT owing by the Appellant at that time. That alone was indicative of the fact that requiring the Appellant to provide security of some sort might not be unreasonable. However, when that was coupled with the extensive defaults by the Appellant in the previous few years, the decision to require security was, in my opinion, eminently reasonable. Some support for the conclusion that past defaults are a highly relevant matter to consider in this context may be found in the

earlier first instance decisions in *Lewis Ball* and *Southend United.* Those decisions suggest that the Respondents' power to require security for the protection of the revenue may reasonably be exercised in any case where there has been habitual and persistent late payment in the past. For example, the VAT Tribunal in *Lewis Ball* noted the following at paragraph [19]:

"Finally, and importantly having regard to Mr Lewis Ball's primary argument, we think that a person who habitually pays late can properly be regarded as a risk to the Revenue from whom the Customs need protection. Late payment deprives the Customs of the tax due to them, just as non-payment does"

and the First-tier Tribunal in *Southend United* said the following at paragraph [13]:

"We share the view of the VAT and Duties Tribunal in *Lewis Ball* that habitual late payment presents as much of a risk as non-payment, and we also take the view that persistent late payment inevitably justifies the fear that the trader will eventually find itself unable to pay at all."

24. Whilst those first instance decisions are not binding on me, I agree with the views which they express. The Respondents are entrusted with the task of collecting taxes from the whole taxpaying community. If they allow one taxpayer more leeway than they generally allow to others, then they are not acting fairly to the general body of taxpayers as a whole. Even if a taxpayer genuinely intends to meet its VAT obligations in full in due course, that does not mean that it will inevitably succeed in doing so. It is perfectly possible that, despite those intentions, it will be forced into insolvent liquidation at a time when it owes a considerable amount of VAT to the Respondents. In that event, the Respondents might reasonably be criticised by other taxpayers, on whom a greater burden of taxation would indirectly result as a result of the taxes left unpaid by the insolvent taxpayer. I therefore do not agree with the first and second submissions of Mr Eriera in paragraph 19 above.

25. As for the third and fourth submissions of Mr Eriera in that paragraph:

(1) if, at the time when the decision to require security was made, the arrears of VAT owed by Appellant had largely been matched by an outstanding amount owed by the Respondents to the Appellant in respect of taxes other than VAT, or if the prior defaults by the Appellant were attributable in large part to delays on the part of the Respondents in repaying taxes other than VAT, then I agree with Mr Eriera that those facts would be highly material in considering whether the decision to require security was reasonable. However, those are not the facts of this case. In the first place, the VAT arrears which have existed from time to time cannot largely be attributed to outstanding CIS repayments which were due to the Appellant – the Appellant's difficulties were more wide-ranging than that - and, in the second place, as Mr Eriera admitted at the hearing, there were no such outstanding CIS repayments at the time when the decision to require security was made; and

(2) I accept that, by requiring the Appellant to provide security, the Respondents may have made it more likely that the Appellant would ultimately default on its VAT liabilities. However, in my view, that is not a reason for declining to exercise the relevant power. On the contrary, the fact that a taxpayer's economic position is parlous enough to be threatened by the requirement to provide security is surely a reason for exercising the power to require security in the first place.

Was it reasonable to require security of the relevant amount?

26. As I have noted in paragraphs 15 to 17 above, the fact that it was reasonable for the Respondents to require security of some amount is not sufficient, in and of itself, for the Respondents to prevail in relation to this appeal. Instead, it is necessary for me to determine

whether it was reasonable for the Respondents to have required the Appellant to provide the amount of the security which was actually set out in the NOR.

27. In relation to that question, the DB did not include any detailed calculations in relation to how the amount of the security was calculated. The only reference to those calculations was in the review conclusion letter of 14 August 2019, which stated that the relevant amount had been correctly calculated in accordance with the Respondents' own guidance, set out in SG32100.

28. According to that guidance, the amount of the security should have been calculated in accordance with a three-stage process. The first stage would have involved estimating the net VAT liability which was at risk should the Appellant fail to discharge its quarterly VAT liability. The second stage would have involved estimating the net VAT liability which was at risk over the three months that it was anticipated would have been required in order to wind up the Appellant. These two estimated amounts were required to be calculated by reference to the net VAT liability shown on the last two VAT returns which were on file at the time when the decision was made (see SG32200). The third stage would have involved adding to the relevant amount calculated in accordance with the first two stages the aggregate VAT debt outstanding to the Respondents at the time when the decision was made.

29. In my view, an amount of security calculated in accordance with the principles described in paragraph 28 above would have been a reasonable amount. However, the information with which I was provided at the hearing does not make it easy to determine whether the amount of the security in this case was calculated in accordance with those principles. The relevant calculation was not given to the Appellant at the time of the NOR or in the review letter and was also not included in the statement of case or the DB. In addition, at the hearing, in response to my questions, Mr Sanusi was unable to explain to me how the amount of the security had been calculated. What is even more perplexing is that, in their letter to the Appellant of 13 May 2019, shortly before the NOR was issued, the Respondents described a slightly different basis for calculating the amount of the security from the basis set out in SG32200. (In that letter, they referred to an average six monthly VAT liability instead of the actual liability over the last two VAT periods on file and no mention at all was made of the VAT arrears.) Thus, this is not a case where the Respondents emerge with much credit.

30. Be that as it may, I have examined the raw data set out in the DB to see if the amount of the security actually required was consistent with the principles set out in SG32100 and the following sections of the guidance.

31. Looking at the raw data set out in the DB, it may be seen that the last two VAT returns on file as at 26 June 2019 were the VAT return in respect of the Appellant's VAT period 03/19 – which showed a net VAT liability of £8,584.71 – and the VAT return in respect of the Appellant's VAT period 12/18 – which showed a net VAT liability of £21,493.49 – see page 139 of the DB. The DB also showed that the outstanding VAT debt as at 26 June 2019 was £70,055.12 – see pages 99 to 103 of the DB. Those figures suggest that, based on the principles described in SG32200, the amount of the security required by the NOR should have been £100,133.32.

32. Although that is just slightly below (by £646.07) the £100,779.39 that was actually required by way of security, the raw data set out in the DB also shows that there were default surcharges in respect of each of those two most recent VAT periods - £1,287.70 in respect of the Appellant's VAT period 03/19 and £3,224.02 in respect of the Appellant's VAT period 12/18. In my view, it would have been reasonable to take those amounts into account at the first two stages of calculating the amount of the security in the same way as the underlying net VAT liability by reference to which they were calculated. On that basis, I have concluded that

the amount of the security which the Respondents actually required was in fact slightly less than the amount of the security which the Respondents might reasonably have required in accordance with the principles set out in SG32200.

33. I should add that, without my being able to see the actual calculation which the Respondents made, it is conceivable that the two VAT returns which were taken into account in respect of the first two stages of the calculation were in fact the VAT returns in respect of the Appellant's VAT periods 09/18 and 12/18 instead of the VAT returns in respect of the Appellant's VAT periods 12/18 and 03/19. This is because the VAT return in respect of the Appellant's VAT period 03/19 (which is shown on page 139 of the DB as having been filed on 25 June 2019) may not have made its way through the Respondents' system to the relevant officer of the Respondents by the time that the amount of the security was being calculated. The VAT return in respect of the Appellant's VAT period 09/18 showed a VAT liability of £17,079.87 and a default surcharge of £988.30. Thus, in that case, the amount of the security which the Respondents actually required would again be slightly less than the amount of the security which the Respondents might reasonably have required in accordance with the principles set out in SG32200.

34. In the circumstances, for the reasons set out in paragraphs 30 to 33 above, although it is highly unsatisfactory that:

(1) the relevant calculation was not given to the Appellant at the time of the NOR or in the review letter and was also not included in the statement of case or the DB;

(2) the principles for calculating the amount of the security set out in the Respondents' letter of 13 May 2013 are not consistent with the principles for calculating amounts of security set out SG32200; and

(3) at the hearing, Mr Sanusi was unable to explain to me how the amount of the security had in fact been calculated,

I do not think that the amount of the security which was required by the Respondents in the NOR can be said to have rendered the decision unreasonable.

35. Be that as it may, and for future reference in cases of this kind, if the Respondents have purported to calculate the amount of the security required by reference to the principles set out in a publicly-available document, then it is desirable for them to demonstrate in a straightforward manner (from the information available to both the taxpayer and the First-tier Tribunal which is called upon to decide any appeal in relation to the reasonableness of the decision to require the security) that the relevant calculation has been made in accordance with those principles. It should not be necessary for either the taxpayer or the relevant First-tier Tribunal to try to piece together from the raw information set out in the DB whether the amount required by way of security has actually been calculated in accordance with those principles.

CONCLUSION

36. For the reasons set out above, I consider that the Appellant has not satisfied me that the decision by the Respondents to require security of £100,779.39 as set out in the NOR was unreasonable and therefore the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

TONY BEARE
TRIBUNAL JUDGE

Amended and re-issued on 24 June 2021 pursuant to Rule 37 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 to correct the date of the hearing from 17 June 2020 on page 1 of the original decision of 20 June 2021 to 17 June 2021 in this decision