



**TC01313**

**Appeal number TC/2011/00099**

*VAT; security for future payment; Schedule 11 para 4(2)(a) VATA; Notice of Requirement properly issued*

**FIRST-TIER TRIBUNAL**

**TAX (VAT)**

**WILSONS SOLICITORS (1991) LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE CHRISTOPHER HACKING  
MRS BEVERLEY TANNER**

**Sitting in public at Leeds on 1 June 2011**

**Mr John Wilson, solicitor, for the Appellant**

**Mr W Conroy a Senior Officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. This was an appeal against the issue of a Notice of Requirement served by the Respondents on the Appellant on 13 September 2010 seeking security for the due payment of Value Added Tax in an amount of £18,364.00.

2. The Appellant in its Notice of Appeal and in written submissions to the tribunal questions whether:

- there was a valid decision to require security;
- if the decision was valid whether there had been a proper review as requested and in any event whether the Respondents had made out grounds for seeking security;
- the decision was one which was so unreasonable “that no reasonable revenue could have reached it”
- in the discretion of the tribunal the security should be ordered in any event.

There is no dispute as to the amount of the security sought this being in accordance what is now generally accepted as a usual calculation of the security required in the case of a person accounting for VAT on a monthly basis.

3. The Notice of Requirement was served under the provisions of Schedule 11, paragraph 4 (2)(a) of the VAT Act 1994. That provision states:

..... where it appears to the Commissioners requisite to do so for the protection of the revenue they may require a taxable person, as a condition of his supplying goods or services under a taxable supply, to give security, or further security, of such amount and in such manner as they may determine, for the payment of any VAT which is or may become due from him.

4. The Appellant is a company which provided services to a firm of solicitors of which Mr. Wilson is a principal partner. He also effectively controls the Appellant. The services provided are those which might in other circumstances be undertaken by the solicitors firm itself. They include the hiring of the staff, payment of their wages; the provision of necessary office equipment, computers, copiers and so forth; the purchase of consumable stocks such as paper and other office ephemera. The cost of these services are borne by the Appellant and recharged on a periodic basis to the solicitors firm. The Appellant is registered for VAT and is therefore entitled to reclaim the VAT input tax on its purchases but must charge output VAT on its supplies to the solicitors firm.

5. The Appellant is a successor firm to another services company, Lawyours LLP controlled by Mr Wilson for precisely the same purposes as described above. This

company went into liquidation on 23 June 2010 on the petition of the Respondents. At the date of the liquidation order the sum of £308,891.36 was owed to the Respondents in respect of VAT as part of a total Crown debt of £427,109.91.

6. At the hearing of this appeal the Respondents produced the compliance records of both Lawyours LLP and of the Appellant company. The compliance record of Lawyours LLP was extremely poor. The company's returns for each of the quarters shown between December 2007 and March 2010 had been submitted on time but payment was sporadic. The position concerning the Appellant appeared to be rather better in that although on a number of occasions the returns were late the sums due in respect of VAT had been paid by direct debit and were accepted by Mr Conroy to be generally up-to-date. A feature of this compliance record however was that a number of Nil returns had been filed by the Appellant which was now accounting on a monthly basis. Mr Conroy agreed that these returns had not been investigated. Mr Wilson explained that the returns were correct as he had simply deferred billing his solicitors practice and therefore during these periods no VAT liability had arisen.

7. Mr Wilson had produced for the use of the tribunal a substantial bundle of documents including copies of e-mails and correspondence between October 2008 and July 2010 all of which charted the problems of Lawyours LLP from the point at which its bankers (NatWest) had sought recovery of monies outstanding from the company until the company's final liquidation in June 2010 and shortly thereafter. Mr Wilson had also very helpfully prepared a written statement detailing his approach to the financial problems faced by Lawyours LLP and the responses from his major creditors, the bank and the Revenue.

8. In the view of Mr Wilson expressed both in the above documents and at the hearing of this appeal it was the intransigence of the Revenue in failing to accept his assurances as to the way in which he would be able to arrange for the full repayment by Lawyours LLP of the debt due to the Revenue which ultimately led to the company's liquidation. The situation in which the company had found itself in October 2008 when its bankers effectively withdrew their support had been one which was, he contended, not of the company's own making but one driven by the events following on the banking crisis. His debt to the bank had been around £500,000. He had at all times the firm intention of repaying both the bank and the Revenue in full.

9. At the hearing Mr Wilson produced a bank statement relating to a personal reserve account maintained by him at NatWest showing a credit balance of £240,001.12 as at 9 September 2010. These were, said Mr Wilson, monies which he

had been able to accrue in accordance with a plan he had outlined to the Respondents in a letter dated 6 April 2009 which plan was aimed at clearing the balance due to the Revenue within a period of 2 years from that date. Had the Revenue not decided to put Lawyours into liquidation he would have used these monies towards the debt due.

5 Mr Wilson had been particularly upset that the Revenue would not provide a letter of comfort to his bank which would have enabled Lawyours LLP to make use of an overdraft facility of up to £100,000. The bank was in principle prepared to offer this facility but needed to be reassured that the Revenue was prepared to accept the proposals for repayment put forward by Mr Wilson on his company's behalf in the  
10 April 2009 letter. The Revenue had not responded to the letter said Mr Wilson and it was this failure which had meant that the plan, although still viable, required a little more time to fully implement.

10. In a "last ditch" attempt to settle the matter Mr Wilson attended the hearing of the petition against Lawyours LLP. It was his hope that even at this stage it might be  
15 possible to secure agreement to his repayment plan. In his testimony to the tribunal he said that he believed that he had made it clear to the Respondents that he was prepared to deploy his personal financial resources in the settlement of the debt due. There was no-one apparently able or willing to make a decision on behalf of the Respondents and the petition was in consequence granted.

20 10. The tribunal read Mr Wilson's statement on the day of the hearing and had pre-read the large bundle of documents referred to above. It is clear to the tribunal that Lawyours LLP had been trading for some time whilst it was insolvent. It is true that that insolvency had been in large measure brought about by the banking crisis and the very changed approach of banks such as NatWest to the granting or continuation of  
25 credit. It is equally clear however that the Appellant regarded the Revenue as just another creditor and in this respect gave no priority to it in the settlement of the substantial sums which were due and increasing. Mr Wilson contends in his witness statement that it was perfectly reasonable to prefer the bank in this situation as the Revenue appeared to him to be lax in its collection of debts whereas the bank was  
30 urgently pressing for repayment. It also appears clear from the correspondence and e-mails passing between the Appellant and the Respondents that the Appellant was not prepared to identify its plans for repayment of the VAT due with the specificity the Respondents required. It is far from clear that the Respondents were aware at the time of the liquidation that a substantial sum of money had been saved towards the debt  
35 and that Mr Wilson was personally willing and able to hand this over in part settlement. We strongly suspect that had he done so and produced a plan with fixed

and agreed dates and sums for repayment the Respondents would have been prepared to give such proposals very serious consideration. At no time did he do so and that is why the liquidation proceeded.

11. The tribunal was concerned that the way in which Mr Wilson on behalf of the Appellant company sought to control his liability to the Respondents in respect of VAT was one which held real dangers for a future recurrence of the sort of problems encountered with Lawyours LLP. The delay in billing the solicitors practice was artificial in that the underlying services continued to be provided on a regular and continuing basis but the solicitors practice was only billed when, apparently, Mr Wilson judged it convenient to do so. This was in the view of the tribunal an unsatisfactory practice which could be expected to give rise to problems in a business downturn.

12. In the Notice of Appeal and submissions to the tribunal Mr Wilson on his company's behalf raises a number of essentially legal issues which it is right that the tribunal address.

13. First Mr Wilson argues in his submissions that the issue of the Notice of Requirement was not pursuant to a "legally valid decision". In the Notice of Appeal he explains that this is so because no reasons for the decision are given. This is not an argument which the tribunal can accept. The decision to Issue the Notice of Requirement is one which is made at the discretion of the Respondents but pursuant to statutory authority (see Schedule 11 para 4(2)(a) VATAct 1994) There is no requirement to set out the reason for the exercise of the discretion although this is provided for in general terms within the legislation itself ( "for the protection of the Revenue").

14. The fact that reasons for the exercise of the discretion are not required to be stated at the time of issue of the Notice of Requirement does not mean that the power to issue such a notice can be exercised capriciously or arbitrarily. The person affected by a decision to issue such a notice has a right to have the decision reviewed by another officer of the Respondents than the one who made the decision and is entitled to an explanation of the decision made. The Respondents did in fact review the decision to issue the notice and wrote with their reasons on 23 November 2010. The tribunal is satisfied that this was a proper review of the decision to Issue the Notice of Requirement. The reasons for the decision are clearly stated and are in the view of the tribunal good and sufficient reasons for the issue of the Notice of Requirement.

Contrary to the suggestion advanced by the Appellant the decision made to issue the Notice of Requirement was one which the Respondents were entitled to make.

15. The Appellant apparently invites the tribunal to engage a discretion to consider whether security should be ordered in any event. The tribunal does not have such a  
5 discretion. Provided it is satisfied that the Respondents have acted in accordance with the power conferred on it under the legislation referred to above and have so acted reasonably in issuing the Notice of Requirement the tribunal has no further or wider power to interfere with the Respondent's decision. This tribunal is so satisfied.

16. The Respondents lost substantial sums of money as a result of the commercial  
10 decisions made by Mr Wilson in relation to the management of Lawyours LLP and in the view of the tribunal (although it is not suggested that this formed part of the Revenue's consideration in its decision to issue the Notice of Requirement) continue to put at risk future payments of VAT by the Appellant by reason of the practice of deferring VAT in the way described at paragraph 11 above. It was in the tribunal's  
15 view reasonable for the protection of future revenues to issue the Notice of Requirement and the decision to do so is one which the tribunal confirms.

17. For the above reasons this appeal is dismissed.

18. 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  
20 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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**CHRISTOPHER HACKING**

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 11 July 2011**

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