



**TC02940**

**Appeal number: TC/2013/01505**

*VAT – Requirement of security for VAT – Failure to submit VAT returns –  
VAT payments in arrears – Whether decision to require security reasonable  
– Yes – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHRISTOPHER PARSONAGE**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JOHN BROOKS  
ELIZABETH BRIDGE**

**Sitting in public at 45 Bedford Square, London WC1 on 1 October 2013**

**The Appellant did not appear and was not represented**

**Peter Massey of HM Revenue and Customs, for the Respondents**

## DECISION

1. Mr Christopher Parsonage appeals against a decision by HM Revenue and  
5 Customs (“HMRC”), contained in a letter dated 19 October 2012, to issue a Notice of  
Requirement to give Security (the “Notice”) under paragraph 4(2)(a) of schedule 11 to  
the Value Added Tax Act 1994 (“VATA”).

2. The amount of security required by the Notice was £46,387.13. Alternatively, if  
Mr Parsonage made his VAT returns on a monthly the basis the security required was  
10 £42,387.13. Following a review, by HMRC, this was reduced to £44,937.15 if  
quarterly returns are submitted or £41,437.15 for monthly returns. HMRC notified Mr  
Parsonage of the outcome of the review by a letter dated 1 February 2013 and on that  
date issued a further Notice, replacing that issued on 19 October 2012, requiring a the  
reduced amount of security and it is the latter Notice with which this appeal is  
15 concerned.

### *Absence of Appellant*

3. Although Mr Parsonage did not attend the hearing notice of its date, time and  
place had been sent to him at the address stated on his Notice of Appeal on 24 July  
2013. We were therefore satisfied that he had been notified of the hearing. As the  
20 representative and two witnesses from HMRC were present, and having had regard to  
the overriding objective of Rule 2 of the Tribunal Procedure (First-tier Tribunal)(Tax  
Chamber) Rules 2009 to deal with a the case “fairly and justly”, we considered that it  
was in the interests of justice to proceed with the hearing in Mr Parsonage’s absence  
under with Rule 33 of those rules.

### *Evidence*

4. In addition to a bundle of documents, provided by HMRC, we heard oral  
evidence from HMRC officers, Mr Nigel Bishop who had issued the original Notice  
and Mrs Debbie Fogarty who had carried out the review and issued the 1 February  
2013 Notice in the reduced amounts. On the basis of this evidence we make the  
30 following findings of fact.

### *Facts*

5. Mr Parsonage is a property developer who operates a property rental business as  
a sole proprietor.

6. Although he was registered for VAT from 1 May 1989 he has not submitted  
35 VAT returns for the VAT accounting periods ended 30 June (06/10) and 31 December  
2010 (12/10); 31 March (03/11), 30 June (06/11), 30 September (09/11) and 31  
December 2011 (12/11); and 31 March (03/12), 30 June (06/12) and 30 September  
2012 (09/12). As at 19 October 2012, the date on which the notice for the requirement  
to provide security was issued, Mr Parsonage was £41,111.38 in arrears with his  
40 payments of VAT which, in the absence of returns, had been assessed by HMRC.

7. Mr Nigel Bishop, the officer who had issued the 19 October 2012 Notice, explained that the security required had been calculated on the basis of the last two VAT returns that had been received from Mr Parsonage which were for 03/10 and 09/10 to which was added the outstanding VAT debt.

5 8. Having submitted his 09/12 VAT return to HMRC Mr Parsonage wrote to HMRC on 15 November 2012. In that letter he explained that the outstanding VAT:

10 ... has in part arisen due to a protracted dispute following a control visit by a VAT Officer. This has involved the issue and subsequent withdrawal of substantial assessments going back to late 2009 and caused me great difficulty in reconciling the VAT account. I believe that the dispute is now resolved and am happy that the debt advised to me of £41,111.38 (per the VAT helpline 23/10/12) is broadly correct.

The letter continues:

15 I am now working hard with my accountant to bring matters up to date and have also made a proposal to reduce the debt by instalments.

In addition to the above, I am the owner of a Public House and a Hotel. These businesses will cease to trade as of 1 January 2013 as I intend to develop the sites to include residential dwellings. This will have the effect of reducing output tax and increasing input tax, which will make a substantial difference to the VAT returns and is likely to result in me becoming a repayment trader.

20 Can you consider the above in the context of your decision to issue the notice and advise accordingly.

9. Having considered this letter, Mr Bishop in his response to Mr Parsonage, dated 11 December 2012, noted the proposed residential development but confirmed the requirement to give security as:

... HMRC cannot rely on potential VAT repayments that may or not materialise at some unknown point in the future to clear historic debt.

30 The letter also noted that Mr Parsonage's VAT returns for 06/12, 03/12, 12/11, 09/11, 06/11, 03/11, 12/10 and 06/10 remained outstanding and advised that these "should be submitted immediately."

10. By a letter dated 8 January 2013 Mr Parsonage requested a review by an "officer not previously involved with the case".

35 11. The reviewing officer appointed was Mrs Debbie Fogarty who, having considered the information provided by Parsonage, including that contained in his letter of 15 November 2012, upheld the decision to require security, although (as we have already noted) the amount required was reduced to take account of the 09/12 VAT return which had been submitted by Mr Parsonage.

*Law*

40 12. Paragraph 4(2) of schedule 11 to VATA provides:

If they think it necessary for the protection of the revenue [HMRC] 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].

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13. The jurisdiction of the Tribunal in an appeal against a requirement to provide security was described by Dyson J (as he then was) in *Customs and Excise Commissioners v Peachtree Enterprises Ltd* [1994] STC 747 where he said, at 751:

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“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:

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‘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.’

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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.”

14. This approach was confirmed by the Court of Appeal in *John Dee Ltd v Customs and Excise Commissioners* [1995] STC 041.

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#### *Discussion and Conclusion*

15. It is clear that Mr Parsonage’s appeal can only succeed if we consider that HMRC did not act reasonably in reaching the decision to issue the Notice requiring him to give security for VAT. It is not sufficient that we might ourselves have reached a different conclusion.

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16. In *Lindsay v Commissioners of Customs and Excise* [2002] STC 508 Lord Phillips of Worth Maltravers MR (as he then was) said, at [40]:

5                   “... 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”

17. Having carefully considered the evidence, in particular the arrears of VAT and outstanding VAT returns, we find that HMRC did not take irrelevant matters into account or fail take into account all relevant matters at the time the decision to issue the Notice requiring security was made.

10 18. As such we consider that HMRC did arrive reasonably at the decision to issue the Notice and therefore dismiss the appeal

15 19. 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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**JOHN BROOKS  
TRIBUNAL JUDGE**

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**RELEASE DATE: 8 October 2013**