



TC04588

Appeal number: TC/2014/06568

VAT – notice of requirement to provide security - whether the decision of HMRC to require security in respect of the VAT obligations of the company was reasonable - yes

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

UPSTAGE SCENERY LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE TONY BEARE
MRS CLAIRE HOWELL**

Sitting in public at Reading on 6 August 2015

The Appellant did not appear and was not represented

Ms H Jones and Mrs J Uzzell, Officers of HMRC, for the Respondents

DECISION

1. The Appellant did not attend and was not represented at the hearing.
5 Nevertheless, we were satisfied that the Appellant had been notified of the hearing and that it was in the interests of justice to proceed with the hearing because the Appellant had been given ample opportunity to state its case and attend the hearing.

2. This is an appeal made by Upstage Scenery Ltd (the “Company”) against a notice of requirement by HMRC to give security in respect of VAT of 5 June 2014, as
10 confirmed following an internal review by HMRC on 6 November 2014.

3. The background to HMRC’s decision is that the director of the Company, Andrew Bedford Gordon, was also the director of two other companies – Upstage Set Builders Ltd and USB Realisations Ltd – both of which went into liquidation owing significant amounts of tax to HMRC. Consequently, HMRC considered it reasonable
15 to require the company to provide security for its VAT obligations.

4. After considering the information provided to us, we are of the view that HMRC’s decision in this regard was entirely reasonable, did not fail to take into account any irrelevant matter and did not disregard any relevant matter.

5. We agree with HMRC that the defaults by the predecessor companies mentioned above mean that there is a significant risk that the Company will default on its VAT obligations.
20

6. In its notice of appeal and in its correspondence preceding that notice, the Company made the following arguments as to why it should not be required to provide security for its VAT obligations:-

25 (a) Upstage Set Builders Ltd had tried to arrange a time to pay agreement and, had HMRC accepted such arrangement, it would not have had to close;

(b) the Company does not have available funds to provide security;

(c) the previous default by Upstage Set Builders Ltd had been caused by an employee without the knowledge of management and that stringent management
30 checks have now been put in place;

(d) all accounts, including payroll, have now been outsourced;

(e) the Company is working with a factoring company to make funds available on time; and

(f) the Company is making monthly VAT returns.

35 7. It seems to us that the points set out in paragraphs (a) and (b) above tend to support the proposition that HMRC is right to be concerned that the Company will default on its VAT obligations in future. As for the point set out in paragraph (c)

above, we agree with HMRC that the employee in question should have been properly supervised by the directors of Upstage Set Builders Ltd and that this is not a reason to dispense with security in this case. We would add that, in any event, this point relates only to Upstage Set Builders Ltd and does not apply in relation to USB Realisations Ltd, which also went into liquidation owing HMRC a significant amount of money.

8. As for the points made in paragraphs (d) to (f) above, we consider that they are not sufficient in themselves to outweigh the concerns raised by the past defaults and the matters referred to in paragraphs (a) and (b) above.

9. Accordingly, we dismiss the appeal.

10. 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

RELEASE DATE: 10 AUGUST 2015