VALUE ADDED TAX — security — "phoenix" company — whether security reasonably required — yes — appeal dismissed

TC04725

Appeal number: TC/2015/00446

FIRST-TIER TRIBUNAL
TAX CHAMBER

BETWEEN

INTER HOTELS LIMITED **Appellant**

- and –

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

Tribunal: Judge Colin Bishopp
Ms Jacqui Dixon

Sitting in public in London on 12 November 2015

Mr Stephen Lesser FCA for the appellant

Ms Siobhán Brown, presenting officer, for the respondents

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DECISION

1. This is an appeal against a decision of the respondents, HMRC, communicated to the appellant by letter of 27 October 2014, by which HMRC required the appellant to provide security if it was to continue to make taxable supplies of goods or services. The security was to be provided in cash or by an acceptable form of guarantee in the sum of £33,350 if the appellant continued to make three-monthly VAT returns, or £22,200 if instead it made monthly returns.

2. The appellant, Inter Hotels Limited, which was incorporated in April 2014, owns and runs a single hotel. It acquired the hotel in about June 2014 from the administrators of another company, Primrose Hotels Limited ("Primrose"), and registered for VAT with effect from 25 June 2014. It began trading from the hotel at the same time.

3. The director of Primrose before it entered into administration was Mr Shaheen Iqbal whose wife, Mrs Sabina Iqbal, was its secretary. Mr and Mrs Iqbal were appointed directors of the appellant on formation, though Mrs Iqbal resigned on 27 June 2014; Mr Iqbal remains a director and, we understand, it is he who runs the company and the hotel on a day-to-day basis. Primrose entered into insolvent liquidation on 3 September 2014, with an outstanding VAT debt, including surcharges, of about £57,000; we were told there was also a PAYE debt of about £60,000.

4. HMRC took the view that the appellant was what is commonly known as a phoenix company, carrying on the same business, trading with the same assets from the same premises and with materially the same directors and officers as its predecessor, and that, in those circumstances, there was a risk that the appellant too would build up an irrecoverable VAT debt. It was for that reason that they imposed the security requirement. At the time of its imposition the appellant had not delivered its first VAT return, the due date for which was 31 October 2014. The return was delivered on time and the liability paid, in two instalments of which the second was a few days late. The return showed that the amount of security required was slightly in excess of the amount which would have been determined had the return been submitted before the requirement was imposed, and the sums now required are £32,319.98 if quarterly returns are submitted, and £21,546.65 if the appellant changes to monthly returns. The calculation of those amounts was not challenged.

5. The argument advanced by Mr Stephen Lesser, the chartered accountant who appeared for the appellant, was that it was unreasonable of HMRC to require any security at all. It was true that the appellant was, in substance, carrying on the same business as Primrose, but Primrose's financial difficulties amounted to an isolated incident. Before it encountered its problems it had paid far more in taxes of one kind or another to HMRC than the amount of the outstanding debt, and others, the bank whose foreclosure had forced on it the administration and subsequent liquidation, and Mr Iqbal himself, had suffered much greater losses. Mr Iqbal had restructured the business with new finance, and had refurbished the hotel; although Primrose had latterly traded at a loss the appellant was now trading profitably and meeting all its tax obligations on time. The security

demand, if upheld, would put its trade, and with it the jobs of several employees, in jeopardy.

6. It is para 4 of Sch 11 to the Value Added Tax Act 1994 which permits HMRC to demand security, in an amount which they determine, "[i]f they think it necessary for the protection of the revenue". It was established long ago—see *Customs and Excise Commissioners v Peachtree Enterprises Ltd* [1994] STC 747 and *John Dee Ltd v Customs and Excise Commissioners* [1995] STC 941—that the tribunal may interfere with the exercise of that power only if it is shown that the decision was unreasonable, that is HMRC have taken account of the irrelevant, have disregarded the relevant, have incorrectly applied the law or for some other reason have come to a decision which no reasonable panel of Commissioners could have reached. It is not possible for us to allow the appeal on any other basis. It is also not possible for us to take account of events which have occurred since the requirement of security was imposed; the reasonableness of the decision must be judged by reference to the circumstances which prevailed at the time it was made.

7. In this case it is in our view quite impossible to say that the decision was unreasonable. The appellant had succeeded to the business of a company which owed HMRC a significant debt, and it was controlled by the same director. There was no evidence available to HMRC from which they might conclude that the finances of the business had been transformed, and there was an obvious risk in October 2014, even if in the event it has not materialised, that the appellant too would encounter financial difficulties and become unable to pay its debts to HMRC as they fell due. For those reasons we must dismiss the appeal.

8. If the appellant has built up a good compliance record since it began trading it can, of course, ask HMRC to withdraw the requirement or reduce the amounts demanded, but for the reasons we have given we can take no account of events which have occurred after October 2014.

9. 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.

10.

COLIN BISHOPP
TRIBUNAL JUDGE

RELEASE DATE: 20 NOVEMBER 2015