



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

110TACD2026



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by the Appellant under section 109(2) of the Value Added Tax Consolidation Act 2010 (“the VATCA 2010”) and section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) against a decision by the Revenue Commissioners (“the Respondent”) to require the Appellant to provide a security bond for the payment of Value Added Tax (“VAT”) pursuant to section 109(1) of the VATCA 2010. The security bond amount is €20,904.
2. On 26 August 2025, the Appellant filed a Notice of Appeal with the Commission together with supporting documentation. On 22 October 2025, the Appellant submitted a Statement of Case (“SoC”), together with attached documentation, which built on its Notice of Appeal. On 23 October 2025, the Commission received the Respondent’s SoC and additional documentation. Prior to the hearing, the Respondent provided its Outline of Arguments, and both parties provided pre-hearing books of documentation and authorities. The Commission received the Appellant’s book of authorities on the morning of the appeal hearing. During the appeal hearing the Respondent submitted a supplemental book of documents and copies of additional documentation to the Commission, and provided copies of those submissions to the Appellant at the hearing. This supplemental book of documents and further additional documentation was referred to during the hearing. The Appellant made a number of post-hearing submissions to the Commission which included submissions relating to the summary caselaw references provided in its book of authorities. The Commissioner has considered all additional documentation from both parties in making this determination.
3. In its SoC, the Appellant notified the Commission that it wished to have the appeal heard in private. Therefore, the appeal hearing was held in private, and this determination will be redacted prior to its publication on the Commission’s website pursuant to section 949AO of the TCA 1997.
4. The appeal proceeded by way of hearing on 25 March 2026. The Appellant was represented by its tax agent (“the Appellant’s Agent”) at the hearing. No member of the Appellant’s management or staff attended the hearing. The Respondent was represented by junior counsel (“Counsel for the Respondent”), a member of staff from the Revenue Solicitor’s Office and three members of its own staff.
5. At the outset of the hearing, following enquiries from the Commissioner, the Appellant’s Agent stated that a director of the Appellant had planned to attend the hearing but due to international travel issues outside that director’s control, he was unable to return to Ireland in time to attend the hearing. The Appellant’s Agent confirmed the name of the director

of the Appellant who could not attend the appeal hearing as [REDACTED]. The Appellant's Agent confirmed to the Commissioner that he had full authority from the Appellant to represent it at the hearing and for all purposes of this tax appeal. The Commissioner excused the representative of the Appellant from attending the hearing, pursuant to section 949AA of the TCA 1997, entitled "*Parties' attendance at hearings*", and the hearing proceeded. Neither party to the appeal called witness(es) to give evidence at the appeal hearing. Hence, the Commissioner had no witness evidence to consider in making this determination.

6. The Commissioner has considered all submissions and all documentation from both parties in making this determination.

Caselaw cited by the Appellant in its book of authorities and post-hearing submissions

7. The Commission provided the parties with ample opportunity to submit books of documents and books of authorities prior to the hearing. The Commission received the Appellant's book of authorities approximately one hour prior to the commencement of the appeal hearing. The Appellant's Agent stated at the hearing that it had provided a hard copy of that submission to the Respondent. The Respondent stated at the hearing that it had not received the Appellant's book of authorities. At the hearing, the Commissioner directed the Appellant to provide a soft copy of its book of authorities to the Respondent after the hearing. On the same date, following the hearing, the Appellant complied with the Commissioner's direction, when it sent a soft copy of its book of authorities to the Respondent and copied the Commission on that correspondence.
8. The Appellant's book of authorities contained a one-page summary of caselaw citing three cases¹. This summary included a sentence for each of the three citations purporting to sum up the judgments in those cases. The Appellant did not submit copies of the cases or reference the key paragraphs within the cases on which the Appellant sought to rely. The summary stated:

"Appellant's Position

The [three cases cited] establish that discretionary powers, including the requirement to impose a security bond under Section 109 VATCA 2010, must be exercised reasonably and proportionately based on current facts.

¹ The Appellant's book of authorities cited three cases as follows:

(a) *O'Callaghan v Commissioners of Public Works* [1985] IR 551;
(b) *Meagher v Minister for Agriculture* [1994] 1 IR 329; and
(c) [REDACTED].

In this case, [the Appellant] has demonstrated over 12 months of VAT compliance, with all returns filed and liabilities addressed. There is no evidence of any current risk to the revenue.

Accordingly, the imposition of a security bond is excessive, disproportionate, and not justified in the circumstances.” (emphasis in original)

9. During the appeal hearing, the Appellant’s Agent referred to the Appellant’s book of authorities referencing the three cases cited therein. However, the Appellant’s Agent did not open the cases to the Commissioner during the hearing, did not provide copies of the cases and did not reference the paragraphs within the judgments in those cases on which the Appellant sought to rely. The Respondent submitted that it had previously requested the Appellant to provide copies of the caselaw cited in the Appellant’s SoC as the Respondent had been unable to identify and locate the caselaw, and the Appellant had not done so. The Respondent submitted at the hearing that the authorities cited by the Appellant in its book of authorities should be disregarded in their entirety. The Appellant’s Agent did not explain to the Commissioner at the hearing the rationale for including citations for cases in the Appellant’s book of authorities but failing to open those cases during the hearing. It is not for the Commissioner to make any inference from this. The Commissioner notes these matters for the sake of completeness.
10. As the hearing was drawing to a close, the Commissioner, to assist the Appellant’s Agent and to ensure that all opportunities were provided for the Appellant to put forward their appeal, gave an oral direction to the Appellant to provide a legal submission to the Commission following the hearing, to include full copies of the three cases listed in the Appellant’s book of authorities, and referencing the paragraphs within those cases on which the Appellant sought to rely. The Commissioner’s direction included that the Appellant simultaneously copy the Respondent on the legal submission and afforded the Appellant fourteen days to provide that submission. Furthermore, in that direction, the Commissioner afforded the Respondent fourteen days to respond to the Appellant’s legal submission once that was received from the Appellant, with that response to be provided to the Commission and simultaneously copied to the Appellant. The Commissioner stated at the hearing that, in the event that the Appellant did not comply with the direction, the caselaw cited in the Appellant’s book of authorities but not opened to her during the hearing would not be taken into account by the Commissioner in her determination. Both parties agreed, at the hearing, to the terms of the Commissioner’s direction. The Commissioner’s oral direction at the hearing was documented in writing in a post-hearing

direction issued by the Commissioner to both parties prior to close of business on the date of the appeal hearing.

11. Following the hearing, the Appellant made submissions to the Commission in relation to the three cases which had been cited in its book of authorities. The submissions made by the Appellant to the Commission were made after the deadline set down in the Commissioner's direction. In addition, the submissions did not contain copies of the caselaw or references to the paragraphs within the cases on which the Appellant sought to rely. The Appellant noted that copies of the cases were not readily available to the Appellant through publicly accessible databases and the Appellant was not in a financial position to incur the cost of engaging counsel or subscribing to proprietary legal reporting services to obtain copies of the cases within the timeframe provided. As the post-hearing submissions from the Appellant did not comply with the Commissioner's direction, the Commissioner issued correspondence to the parties stating that, as the post-hearing submissions were not in compliance with her direction, the Commissioner would proceed to determine the appeal without taking the Appellant's post-hearing submissions into account.
12. The burden of proof in this tax appeal rests on the Appellant. Despite the caselaw not being provided by the Appellant, the Commissioner has nonetheless considered the caselaw cited to ensure there is no opportunity for this determination to be erroneous in law. The Commissioner located two of the three cases cited by the Appellant. The remaining case could not be found by the Commissioner despite searches of the comprehensive legal research resources available within the Commission. This matter is dealt with in further detail below (see Analysis).

Background

13. The Appellant is a limited liability company incorporated in Ireland ("the State"). The Appellant was incorporated [REDACTED] under the Irish Companies Registration Office ("CRO") number [REDACTED], with its registered office at [REDACTED].
14. The Appellant registered for VAT, Employer's payroll tax ("PREM") and corporation tax with effect from [REDACTED], under the tax registration number [REDACTED], in respect of its business as [REDACTED].
15. According to the copy of the CRO filings for the Appellant, which were submitted by the Respondent to the Commission, [REDACTED] and [REDACTED] each hold 50% of the issued ordinary share capital of the Appellant. The directors of the Appellant are [REDACTED]. [REDACTED] is the company secretary of the Appellant. The CRO "Form B1 – First

Annual Return” for the Appellant, made up to [REDACTED], was signed on [REDACTED] by [REDACTED] in their respective capacities as director and company secretary of the Appellant. That return confirms [REDACTED] as a director of the Appellant and [REDACTED] as the company secretary of the Appellant. [REDACTED] is the son of [REDACTED]. Neither [REDACTED] nor [REDACTED] are employees of the Appellant. [REDACTED] are employees of third parties. Neither [REDACTED] nor [REDACTED] attended the tax appeal hearing as representatives of the Appellant. The decision to not attend the tax appeal rests with the Appellant. Considerable notice of the hearing date was provided to the Appellant.

16. On [REDACTED], the Appellant began operations as [REDACTED] at [REDACTED] (“the Retail Premises”) under the trading name [REDACTED] (“the Trading Name”).
17. Prior to the Appellant commencing [REDACTED] operations at the Retail Premises, another company, [REDACTED] (“Company A”) carried on a business at the Retail Premises as [REDACTED] under the Trading Name and with shop frontage displaying [REDACTED]. Therefore, the name on the shop front signage used by Company A was the same as the [REDACTED] words in Company A’s legal entity name. Company A carried on business operations at the Retail Premises until [REDACTED] when it closed permanently. Company A’s shop front signage on the Retail Premises continued to be used by the Appellant after it commenced operations at the Retail Premises on [REDACTED].
18. With effect from [REDACTED] Company A ceased to be registered for Employer’s payroll tax (“PREM”) and corporation tax purposes. The cessation of Company A’s PREM and corporation tax registrations was confirmed in correspondence from the Respondent to Company A dated [REDACTED].
19. On [REDACTED], four named individuals, including [REDACTED] ceased employment with Company A. On [REDACTED] three of these four individuals, including [REDACTED] commenced employment with the Appellant. [REDACTED] is employed by the Appellant since [REDACTED].
20. The CRO “Form B1C – Annual Return General” for Company A for the financial year to [REDACTED], states *inter alia* [REDACTED] is the company secretary of Company A, [REDACTED] is one of the two directors of Company A and [REDACTED] holds 50% of the issued ordinary share capital of Company A.

21. The CRO “Form B10 – Change Director or Secretary Details” for Company A, signed on [REDACTED] by [REDACTED] in his capacity as director of Company A, states *inter alia* [REDACTED] resigned as company secretary of Company A on [REDACTED].
22. On 28 January 2026, PAYE Profiles for a number of individuals were extracted by the Respondent from its system. The PAYE Profile for [REDACTED] states that he was employed by Company A continuously [REDACTED], and he commenced employment with the Appellant on [REDACTED]. The PAYE Profile for [REDACTED] does not make reference to the Appellant and states [REDACTED] was employed by a number of third-party companies (not being Company A or the Appellant) during the period from [REDACTED] up to the date the PAYE profile was extracted by the Respondent from its system (28 January 2026). The PAYE Profile for [REDACTED] states that she was employed by Company A for two periods of time totalling approximately [REDACTED] during the period from [REDACTED] to [REDACTED]. [REDACTED] PAYE Profile, which starts at [REDACTED], shows that [REDACTED] was not employed by the Appellant up to the date when that PAYE Profile was extracted by the Respondent from its system (28 January 2026). PAYE Profiles for three other named individuals have been submitted which state that each of the three individuals were employed by Company A until those employments ceased on [REDACTED]. Two of the three named individuals commenced employment with the Appellant on [REDACTED]. The third of these three individuals commenced employment with the Appellant on [REDACTED].
23. When Company A ceased to be registered for PREM and corporation tax [REDACTED], it had outstanding VAT and PREM liabilities due to the Respondent of €296,179.07 and €7,806.11 respectively. On [REDACTED], a final demand letter issued by the Respondent to Company A stated that Company A had outstanding VAT and PREM liabilities totalling €239,317.91. The total consisted of VAT of €237,907.44, for the VAT periods from [REDACTED] to [REDACTED], and PREM of €1,410.47, for the payroll tax period from [REDACTED] to [REDACTED]. On [REDACTED], a report extracted by the Respondent from its debt management system stated that Company A had outstanding VAT and PREM liabilities totalling €264,490.99 as at that date, including VAT of €259,999.07 and PREM of €4,491.80.
24. The Appellant twice applied to the Respondent for a European Union (“EU”) VAT registration (“intra-EU VAT registration”) on the basis that its business model involved purchasing [REDACTED] from suppliers in the EU and selling [REDACTED] in Ireland. The first application by the Appellant to the Respondent was closed by the Respondent following a delay in the Appellant providing additional information to the

Respondent that had been requested by the Respondent. The second application for registration by the Appellant to the Respondent was granted by the Respondent. This was confirmed in correspondence from the Respondent to the Appellant via My Enquiries on 4 July 2025. As part of these applications, the Appellant provided a supplier invoice and two business account statements to the Respondent, with those documents addressed to the Appellant at the Retail Premises. The supplier invoice provided and one of the business account statements quoted the Trading Name and were stated to be for the attention of [REDACTED].

25. On 14 May 2025, two members of staff of the Respondent made an unannounced visit to [REDACTED] at the Retail Premises. The Respondent has submitted that the purpose of that visit was to review the Appellant's intra-EU VAT registration application and the business model of the Appellant. This visit occurred between the second intra-EU VAT registration application being made by the Appellant to the Respondent and the intra-EU VAT registration being processed by the Respondent. Neither the occurrence of the visit or the purpose of the visit are disputed by the Appellant.
26. On 30 July 2025, the Respondent issued correspondence to the Appellant stating its decision to require security from the Appellant in accordance with the provisions of section 109(1) of the VATCA 2010. The Respondent's decision letter, addressed to the Appellant, states the amount of security required as €20,904, and a copy of section 109 of the VATCA 2010 is attached to the decision letter. The decision letter states as follows:

"[...]"

Form of request for security under section 109 [of the VATCA 2010]

Dear [REDACTED]

Notice is hereby given that [the Respondent], as a condition of your supplying taxable goods or services under a taxable supply, require[s] you to give security in the amount of €20,904. This security is required in order to guarantee payment by you of any VAT liability which is due, or which may become due in relation to taxable supplies made by you in the State.

This notice is in accordance with section 109 [of the VATCA 2010] and has effect from the date of service. A copy of Section 109 (VATCA) is attached for your information, and attention is drawn to the possibility of an appeal against the security requirement provided for in that section.

Security should take the form of a guarantee provided by a credit institution authorised under Irish legislation to carry on banking business in the State or a credit institution authorised in another Member State of the European Economic Area (EEA) to carry on business in the State without receiving further authorisation from the Central bank of Ireland. The required form of guarantee is enclosed, and you should have the same completed and executed by the credit institution. As an alternative to a guarantee, security in the form of a bank draft or money order may be acceptable.

Security provided under this section will be held by [the Respondent] for a period of at least one year, at which time it will be subject to a review.

Attention is drawn to the fact that if following receipt of this notice, you supply goods or services in the State without first providing the required security, you will be liable for a penalty of €4,000 in respect of each such supply (Section 115(7) of [the VATCA 2010]).

This Security must be provided to [the Respondent] within a period of 30 days from the date of this correspondence.

[...]” (emphasis in the original)

27. On 30 July 2025, the status of the Appellant’s VAT return filings to the Respondent was as follows:

VAT period	VAT on Sales (T1)	VAT on purchases (T2)	Net VAT payable (T3)	Due date for return and payment²	Filing date
Sept/Oct24	€0	€0	€0	19/11/2024	15/01/2025
Nov/Dec24	€6,873	€1,069	€5,804	19/01/2025	06/03/2025
Jan/Feb25	€10,452	€2,818	€7,634	19/03/2025	01/04/2025
Mar/Apr25	€10,452	€2,818	€7,634	19/05/2025	29/05/2025 ³

² When a VAT return is filed online and the VAT liability is paid online, the due date is the 23rd of the relevant month.

³ The date of filing per the VAT return submitted by the Appellant is 29 May 2025. The date of filing per the Respondent’s Outline of Arguments is 30 May 2025.

May/Jun25	€6,087	€1,125	€4,962	19/07/2025	29/07/2025 ⁴
Total			€26,034		

28. On 30 July 2025, per Appendix 1 of the Respondent's Outline of Arguments submitted by the Respondent to the Commission prior to the appeal hearing, and which the Appellant's Agent stated during the hearing was not disputed by the Appellant, the Appellant had an outstanding liability in relation to VAT, for a number of different VAT return periods, totalling €18,230 as well as an outstanding liability in relation to PREM of €2,971.48. The total liability relating to VAT and PREM at that date was €21,201.48.
29. On 29 January 2026, the Appellant had outstanding liabilities in relation to VAT and PREM totalling €24,584.48. Copies of two reports extracted by the Respondent from its debt management system were submitted by the Respondent to the Commission in the Respondent's pre-hearing books. These were not disputed by the Appellant. The total consisted of a liability in relation to VAT of €20,708.17 and a liability in relation to PREM of €3,876.31.
30. On 4 February 2026, per Appendix I of the Respondent's Outline of Arguments submitted by the Respondent to the Commission prior to the appeal hearing, and which the Appellant has not disputed, the VAT compliance position of the Appellant was as follows:

VAT period	Net VAT payable (T3) per VAT return	VAT liability outstanding on 04/02/2026	Due date for returns and payment ⁵	Filing date
Sept/Oct24	€0	€0	19/11/2024	15/01/2025
Nov/Dec24	€5,804	€0	19/01/2025	06/03/2025
Jan/Feb25	€7,634	€1,239.51	19/03/2025	01/04/2025
Mar/Apr25	€7,634	€7,634	19/05/2025	29/05/2025 ⁶

⁴ The date of filing per the VAT return submitted by the Appellant is 29 July 2025. The date of filing per the Respondent's Outline of Arguments is 30 July 2025.

⁵ When a VAT return is filed online and the VAT liability is paid online, the due date is the 23rd of the relevant month.

⁶ The date of filing per the VAT return submitted by the Appellant is 29 May 2025. The date of filing per the Respondent's Outline of Arguments is 30 May 2025.

May/Jun25	€4,962	€0	19/07/2025	29/07/2025 ⁷
Jul/Aug25	€4,446	€2,084.66	19/09/2025	30/09/2025
Sept/Oct25	€3,313	€3,313	19/11/2025	01/12/2025
Nov/Dec25	€5,737	€5,737	19/01/2026	27/01/2026
Total	€35,084	€20,008.17		

31. The Appellant has entered into three Phased Payment Arrangements (“PPAs”) with the Respondent for payment of its tax liabilities by scheduled direct debit instalments. The first two PPAs were automatically cancelled by the Respondent following non-payment of scheduled instalments. The Appellant entered into a third Phased Payment Arrangement (“PPA”) with the Respondent approximately one week prior to the tax appeal hearing, for the payment of its tax liabilities by instalment. The payment schedule for the third PPA, extracted by the Appellant from the Revenue Online System (“ROS”) on 20 March 2026, and provided by the Appellant to the Commission in its pre-hearing book of documents, states the total amount payable under the third PPA is €24,147.88, including tax payable of €21,799.82 and interest payable of €2,348.06. The payment schedule for the third PPA, as submitted, stated the first instalment due under the third PPA, in the amount of €2,500, was scheduled for payment by the Appellant to the Respondent by direct debit on 21 March 2026. The Appellant’s Agent confirmed during the appeal hearing that this scheduled direct debit payment was not made on 21 March 2026.
32. A report extracted by the Respondent from its debt management system on 24 March 2026, was submitted by the Respondent to the Commission during the hearing, with a copy provided by the Respondent to the Appellant. This report stated that the Appellant had outstanding tax liabilities totalling €19,299.82 on 24 March 2026, consisting of a liability in relation to VAT of €17,923.51 and a liability in relation to PREM of €1,376.31. It was noted by the Appellant’s Agent during the hearing that this report did not reflect the non-payment of the first direct debit instalment due under the third PPA, scheduled for payment on 21 March 2026, in the amount of €2,500. Therefore, as agreed by both parties during the hearing, the Appellant’s outstanding liabilities in relation to VAT and PREM on the date of the hearing totalled €21,799.82.

⁷ The date of filing per the VAT return submitted by the Appellant is 29 July 2025. The date of filing per the Respondent’s Outline of Arguments is 30 July 2025.

33. On 23 March 2026, the Appellant obtained a Tax Clearance Application Result from ROS which stated the Appellant's tax affairs were in order and that the Appellant had been issued with a tax clearance certificate.

34. The Appellant's grounds of appeal, stated in the Notice of Appeal, are:

"[The Appellant], registered for VAT since [REDACTED] has complied fully with all VAT filing and payment obligations. There are no outstanding VAT liabilities.

The requirement to provide a €20,904 security bond under Section 109 VATCA 2010 is unnecessary and disproportionate, given the company's full compliance since registration.

The imposition of security places an undue financial burden on a newly established but fully compliant business and risks undermining its capacity to remain tax compliant.

The penalty provision under Section 115(7) VATCA is not applicable, as the company has never supplied taxable goods or services without discharging its VAT obligations.

We therefore respectfully request that the security requirement and any associated penalty be withdrawn in full."

Legislation and Guidelines

35. Section 2 of the VATCA 2010, entitled "Interpretation – general", provides:

"(1) [...]

"tax" means value-added tax chargeable by virtue of this Act;

[...]

[...]"

36. Section 106 of the VATCA 2010, entitled "Care and management of tax", provides:

"Tax is hereby placed under the care and management of [the Respondent]."

37. Section 109 of the VATCA 2010, entitled "Security to be given by certain taxable persons", provides:

"(1) The Revenue Commissioners may, where it appears requisite to them to do so for the protection of the revenue, require an accountable person, as a condition of the person supplying goods or services under a taxable supply, to give security, or further security, of such amount and in such manner and form as they may determine, for the payment of any tax which is, or may become, due

from him or her from the date of service on him or her of a notice in writing to that effect.

- (2) *Where a notice is served on a person in accordance with subsection (1), the person may appeal to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notice referred to in subsection (1), the requirement to give security under that subsection.”*

38. Section 115 of the VATCA 2010, entitled “Penalties generally”, provides:

“[...]

- (7) *A person who supplies taxable goods or services in contravention of the requirement of security specified in section 109 shall be liable to a penalty of €4,000 in respect of each such supply.*

[...]”

39. The Respondent’s Tax and Duty manual entitled “Procedures for requiring security from taxable persons” relevant to the timeframe in this appeal states:

“[...]

1. Introduction/Background

[...] Section 109 of VATCA 2010 allows the Revenue Commissioners to require a trader to submit security for any VAT that might become due, where [the Respondent] feel[s] that this is needed to protect its interest. [...] Security under section 109 VATCA 2010 – this can be required at point of registration or at any stage during the lifecycle of the business. VAT Bonds should be sought in cases where it is clear that such action is necessary for the protection of [the Respondent]. Obvious examples are (a) phoenix cases where liabilities were left unpaid previously or (b) new traders setting up businesses to trade in products known to be prominent in carousel fraud chains.

[...]

7. Non-payment of Security

- 7.3 *In accordance with Section 115(7) of [the VATCA 2010] if the trader continues to trade in the absence of the payment of the VAT Bond, s/he will be liable for a penalty of €4,000 in respect of each and every supply thereafter. Where there is no agreement with the taxpayer on the amount of the penalty or where an ‘agreed’ penalty is not paid, the Notice of Opinion and Court Application*

procedures apply. In such cases, it will be a matter for the Court to determine the amount of the penalty due.

- 7.4 *Where the Court has made a determination that a taxpayer is liable to a penalty, the Court may also make an order as to the recovery of that penalty and without prejudice to any other means of recovery, that penalty may be collected and recovered in like manner as an amount of tax. [...]*

[...]"

Submissions

Appellant's submissions

40. The Appellant's Agent made oral submissions on behalf of the Appellant during the appeal hearing, which included the following:
- 40.1. The Appellant had been tax compliant for twelve months when the Respondent issued its decision to require security (on 30 July 2025) and therefore that decision is not correct. All VAT returns had been filed. The Appellant is making bona fide efforts to settle its tax liabilities by instalments under a PPA. The Appellant holds a valid tax clearance certificate whereby the Respondent has confirmed the Appellant is tax compliant. During the hearing, the Appellant submitted a copy of the Tax Clearance Application Result which it had extracted from ROS on 23 March 2026 wherein the Respondent confirms the Appellant's tax affairs are in order and a tax clearance certificate has been issued to the Appellant. The Commissioner notes that the Appellant did not submit a copy of a Tax Clearance Application Result or a confirmation of a valid and current tax clearance certificate as of 30 July 2025.
- 40.2. The VAT and PREM history of Company A is not relevant to the decision to require security from the Appellant. Company A and the Appellant are separate legal entities. Company A's tax liabilities in the past should not have been considered when the Respondent made its decision to require security from the Appellant. Company A's tax position should be disregarded.
- 40.3. It is common commercial practice for social media accounts, [REDACTED] review pages and email addresses from a previous business to continue to be used by a new business, and this had occurred in this instance.

- 40.4. The amount of the security required (€20,904) is excessive. It is derived from the total of the VAT on Sales (T1) returned by the Appellant for the VAT periods January/February 2025 and March/April 2025. If security is required, then the amount of security should be based on the Net VAT Payable (T3) amount per the VAT returns and not the gross VAT on Sales (T1) amount in those returns.
- 40.5. The decision to require security is not reasonable based on the Appellant's facts. The Respondent's decision is unnecessary and disproportionate. The decision requiring security came out of the blue and was a shock to the Appellant. The Respondent's decision is therefore administratively unfair and places an undue financial burden on a newly established but fully compliant business and risks undermining its capacity to remain tax compliant.
- 40.6. The Appellant has commercial issues impacting its cash flow position as most of its sales are paid for by credit cards and sometimes there are cashflow difficulties arising from delays in obtaining payment for these credit card sales.
41. Towards the closing of the hearing, the Appellant's Agent stated he disputed the Respondent's summary of what occurred during the Respondent's visit to the Appellant at the Retail Premises [REDACTED]. A summary of what occurred during the site visit was not provided by the Appellant in its pre-hearing submissions or the oral submissions made by the Appellant's Agent during the hearing. The Appellant chose not to call any witnesses to provide oral evidence during the hearing.
42. In its SoC, the Appellant stated "[t]he security bond was imposed solely because the director previously held an interest in another company that defaulted on VAT". The Appellant did not call any witnesses to provide oral evidence in relation to this matter.

Respondent's submissions

43. Counsel for the Respondent made submissions on behalf of the Respondent during the appeal hearing, which included the following:
- 43.1. Based on the facts as of 30 July 2025, there is a requirement for security in this case in the requested amount of €20,904. Section 106 of the VATCA 2010 places VAT under the care and management of the Respondent. Section 109(1) of the VATCA 2010 confers statutory discretion on the Respondent to require security in circumstances where it appears requisite for it to do so for "*the protection of the revenue*". In all the circumstances of this case, the Respondent was correct to require the security on 30 July 2025, as it appeared to the Respondent requisite

to obtain that security for *“the protection of the revenue”* based on all the facts and circumstances of this Appellant at the date of the Respondent’s decision (30 July 2025).

- 43.2. It is clear from the Appellant’s outstanding VAT liabilities that the Appellant has consistently and continually made taxable supplies without discharging its VAT obligations. The Appellant is not compliant with its VAT return and payment obligations since registration. The Appellant also has outstanding PREM liabilities.
- 43.3. Two staff members from the Respondent made an unannounced visit to the Appellant at the Retail Premises [REDACTED]. During that visit, the staff members met with [REDACTED] who introduced himself to them as the owner of the business and subsequently stated to them that [REDACTED] is the owner of the business.
- 43.4. The Appellant essentially took over Company A’s business when, on [REDACTED], two days after the closure of Company A’s [REDACTED] at the Retail Premises, the Appellant commenced using the same premises and it commenced employing three of the four employees that had worked for Company A up to [REDACTED]. The customers and suppliers regard the businesses of Company A and the Appellant as being one and the same because the Appellant’s business uses the Trading Name, which had been used by Company A prior to the closure of its business at the Retail Premises. The signage on the shop front remained the same, and the name on the shop front consists of [REDACTED] words which are the same as the [REDACTED] words in the legal entity name of Company A. The Appellant continued to use the same email address and social media account [REDACTED] as Company A had used. There is one [REDACTED] review page for the [REDACTED] at the Retail Premises covering both the period from when Company A ran its [REDACTED] business at the Retail Premises (up to [REDACTED]) and the period since the Appellant began running its [REDACTED] business at the Retail Premises (on [REDACTED]). Copies of PAYE Profiles for the three employees employed by Company A on [REDACTED], a sample of a supplier invoice and business account statements addressed to the Appellant including the Trading Name and showing some of those documents are stated to be for the attention of [REDACTED], and [REDACTED] [REDACTED] were among the documents submitted by the Respondent to the Commission in support of the Respondent’s contention that the Appellant essentially took over the business or undertaking of

Company A when it commenced trading at the Retail Premises on 1 [REDACTED]
[REDACTED] under the Trading Name and continuing to use the same shop frontage.

43.5. There are other common links between Company A and the Appellant including the following:

43.5.1. [REDACTED] is a director, employee, former company secretary and 50% shareholder of Company A. [REDACTED] was an employee of Company A until [REDACTED]. [REDACTED] commenced employment with the Appellant on [REDACTED].

43.5.2. [REDACTED] introduced himself as the owner of the business when the Respondent's two staff members made their site visit to the Appellant on 14 May 2025, before stating later in the visit that [REDACTED] was the owner.

43.5.3. At the outset of the appeal hearing, the Appellant's Agent stated that [REDACTED] was the director of the Appellant who was unable to attend the appeal hearing due to travel issues.

43.5.4. [REDACTED], the son of [REDACTED], is a director and a 50% shareholder of the Appellant. [REDACTED] is not an employee of the Appellant.

43.5.5. [REDACTED] is a director, company secretary and a 50% shareholder of the Appellant. [REDACTED] is not employed by the Appellant. [REDACTED] was previously employed by Company A for two periods [REDACTED], and these periods coincide with the period during which [REDACTED] was employed by Company A.

43.5.6. In all the circumstances, it is reasonable for the Respondent to conclude that [REDACTED] is a shadow director of the Appellant, and that the Appellant is a "*phoenix company*", following the cessation of the business of Company A where that company ceased trading at a time when it owed a substantial VAT and PREM liability to the Respondent, and it continues to owe a substantial liability to the Respondent up to the date of the appeal hearing.

43.5.7. Three employees of Company A ceased employment with that company on [REDACTED] and commenced employment with the Appellant on [REDACTED]. One of these three employees is [REDACTED]. A fourth employee of Company A ceased that employment on [REDACTED] and commenced employment with the Appellant on [REDACTED].

- 43.6. On [REDACTED], when Company A ceased trading operations at the Retail Premises, it had outstanding liabilities relating to VAT and PREM of €296,179.07 and €7,806.11 respectively. On 30 July 2025, the date when the request for security issued to the Appellant, Company A had outstanding liabilities relating to VAT and PREM of €237,907.44 and €1,410.77 respectively. On 30 July 2025, Company A's outstanding liabilities relating to VAT and PREM were the subject of enforcement proceedings and the liabilities had been referred by the Respondent to the sheriff and were the subject of an attachment order. On [REDACTED] [REDACTED] Company A had outstanding liabilities in relation to VAT and PREM of €259,999.07 and €4,491.80 respectively.
- 43.7. It is reasonable and appropriate for the Respondent to consider the tax position of Company A in deciding on the requirement for security from the Appellant, given the common links between the two entities.
- 43.8. The Respondent calculated the security amount requested (€20,904) by taking the total of the VAT on Sales (T1) amounts in the Appellant's VAT returns for January/February 2025 (€10,452) and March/April 2025 (€10,452). The Respondent referred to the VAT on Sales (T1) amount in those two particular VAT periods to make its calculation of the security amount required as these were the two most recent VAT periods for which VAT returns had been processed in the Respondent's system when the Respondent issued its letter to the Appellant requesting the security be provided (30 July 2025).
- 43.9. The Appellant places weight on it having a PPA in place with the Respondent as at the date of the appeal hearing. The PPA in operation at the date of the appeal hearing is the third of three PPAs between the Appellant and the Respondent, where each of the first two PPAs had been previously terminated by the Respondent prior to the third PPA being put in place. A PPA is an extra-statutory instalment-payment arrangement available, in certain circumstances, to taxpayers who wish to pay their tax liabilities by instalment. The Respondent argues that the Commissioner does not have any remit to consider such payment arrangements. In addition, the Respondent argues that there is nothing to be inferred from the fact that a PPA is in place between a taxpayer and the Respondent other than that the taxpayer has an outstanding tax liability due to the Respondent which has not been paid on time. The Appellant has had two previous PPAs in place with the Respondent prior to the date of the appeal hearing. Each of those two previous PPAs were terminated automatically, prior to the appeal hearing, in accordance

with the Respondent's published guidelines on the operation of PPAs⁸, as the Appellant did not pay the scheduled instalments as agreed under those two PPAs.

- 43.10. The Respondent's published guidelines on PPAs set out the circumstances where PPAs are automatically terminated in the event of non-payment of agreed scheduled instalments. The Respondent submitted at the appeal hearing that the Appellant did not have a PPA in place on 30 July 2025 when the requirement for security was issued to the Appellant. While a third PPA was put in place by the Appellant prior to the appeal hearing this is not relevant as this appeal concerns the decision of the Respondent, on 30 July 2025, to require security from the Appellant. A number of items of correspondence from the Respondent to the Appellant were submitted by the Respondent as evidence supporting the cancellation of the two previous PPAs following non-payment of instalments due from the Appellant under those PPAs. The Respondent submitted copies of final demand letters for VAT and PREM liabilities which it had issued to the Appellant in July 2025 and January 2026, which it stated were issued following the termination of each of the previous two PPAs, seeking payment of all outstanding VAT and PREM liabilities due from the Appellant at those dates.
- 43.11. While the Appellant has submitted a copy of the Tax Clearance Application Result dated 23 March 2026, there is no document before the Commissioner to support that a tax clearance certificate was in place for the Appellant on 30 July 2025. The Respondent has issued guidelines on electronic tax clearance⁹. In accordance with those guidelines, a tax clearance certificate may be granted by the Respondent to a taxpayer with outstanding tax liabilities where those outstanding liabilities are the subject of a PPA (which has not been terminated) at the time when the clearance application is processed.
- 43.12. As this appeal is concerned with the exercise of the Respondent's statutory discretion to require security where it appears requisite to do so for "*the protection of the revenue*" (pursuant to section 109(1) of the VATCA 2010), the scope of the Commissioner's review in this appeal must be limited to considering the reasonableness of the Respondent's decision itself and should not be a full *de novo* or fresh review to assess if security is requisite or the quantum of that security. The Respondent cited, *inter alia*, the United Kingdom ("UK") VAT

⁸ Tax and Duty Manual "Collection Manual Guidelines for Phased Payment Arrangements" (document updated June 2025).

⁹ Tax and Duty manual "Collector-General Electronic Tax Clearance (eTC) Guidelines & Procedures" (document updated November 2025).

caselaw of *Customs and Excise Commissioners v J H Corbitt (Numismatists) Ltd* [1980] STC 231, [1981] AC 22 HL ("*J H Corbitt*"), *Mr Wishmore Ltd v Customs and Excise Commissioners* [1988] STC 723 ("*Mr Wishmore*") and *John Dee Ltd v Customs and Excise Commissioners* [1995] STC 941 ("*John Dee*") in support of its argument that the role of the Commissioner in this tax appeal is limited to the review of the reasonableness of the decision taken by the Respondent.

- 43.13. The scope of the review by the Commissioner is to consider whether the Respondent "*had acted in a way in which no reasonable panel of commissioners [in the Respondent] could have acted or whether they took into account some irrelevant matter or had disregarded something to which they should have given weight [...] or whether the commissioners [in the Respondent] have erred on a point of law.*"¹⁰. In *John Dee*, the English Court of Appeal considered the nature of the right of appeal under UK VAT legislation which sets out when the UK tax authorities can require the provision of security. The wording in that UK VAT legislation is similar to the Irish legislation at issue in this appeal. The court found in that case that an appeal to a VAT tribunal was not to be heard *de novo* or afresh by the tribunal. Instead it was necessary for the VAT tribunal, to which the matter had been appealed by the taxpayer, to examine the nature of the decision against which the appeal is brought and to take account of the fact that, under the legislation, VAT is under the care and management of the tax authorities and not the VAT tribunal.
- 43.14. In the case of *John Dee*, the facts concerned the UK tax authorities requiring security from a newly established company in circumstances where the authorities considered, as part of making that decision, the risk to the revenue where there was an outstanding tax liability position in a group of companies that had entered into receivership, where the group in receivership and the new company had two common directors and the new company had taken over approximately 20% of the undertaking of the group and traded in the same business sector as the group had been trading in prior to it entering receivership.
- 43.15. The Respondent distinguished the determination in a previous tax appeal before the Commission (163TACD2024) concerning the statutory discretion of the Respondent to require security under a different provision in the Irish tax code (section 960S of the TCA 1997). The Appeal Commissioner in that previous appeal concluded that a full *de novo* review was necessary. However, the

¹⁰ *John Dee*, judgment of Neill L.J., page 952, paragraph (g).

determination in the previous appeal does not make reference to the UK caselaw referred to above. It appeared to the Respondent that the UK caselaw may not have been presented for consideration to the Appeal Commissioner in that previous appeal.

44. The Respondent did not adduce any witness evidence during the hearing regarding the Respondent's site visit to the Appellant at the Retail Premises on 14 May 2025.
45. Copies of the judgments in all cases cited by the Respondent during the hearing were provided to the Commission in the Respondent's Book of Authorities prior to the hearing. Counsel for the Respondent opened the relevant cases during the hearing bringing the Commissioner to the relevant paragraphs of the judgments in those cases.

Material Facts

46. The material facts are not in dispute between the parties. Events occurring after 30 July 2025 are not relevant to making findings of material fact upon which this determination is reached. Such matters occurring after 30 July 2025 are included in this determination as background information. Having considered the submissions and documentation from both parties in this appeal, the Commissioner makes the following findings of material fact as at 30 July 2025:

- 46.1. The Appellant is limited liability company incorporated in Ireland and registered with the CRO under CRO registration number [REDACTED].
- 46.2. The date of incorporation of the Appellant is [REDACTED].
- 46.3. The Appellant registered for VAT, PREM and corporation tax with effect from [REDACTED] under the tax registration number [REDACTED], in respect of its business as [REDACTED].
- 46.4. [REDACTED] and [REDACTED] each hold 50% of the issued ordinary share capital of the Appellant.
- 46.5. [REDACTED] and [REDACTED] are the directors of the Appellant.
- 46.6. [REDACTED] is the company secretary of the Appellant.
- 46.7. [REDACTED] was employed by Company A for two periods of time totalling approximately [REDACTED] months during the period [REDACTED].
- 46.8. [REDACTED] and [REDACTED] are not employees of the Appellant.
- 46.9. [REDACTED] and [REDACTED] are employees of third parties.

- 46.10. On [REDACTED], the Appellant began operations as [REDACTED] at the Retail Premises under the Trading Name, and the name displayed on the Appellant's shop front signage is the same as that which had been displayed by Company A when it operated from the Retail Premises, and consists of the [REDACTED] words of Company A's legal entity name.
- 46.11. Up to [REDACTED], a separate company, Company A, carried on a business at the Retail Premises as [REDACTED] under the Trading Name and the name displayed on its shop front signage prior to closure was the same as the [REDACTED] words in its legal entity name.
- 46.12. When the Appellant commenced trading operations at the Retail premises on [REDACTED], it commenced using the Trading Name that had been used by Company A, and it retained the shop front signage that had been displayed by Company A until it ceased [REDACTED] operations on [REDACTED]. That shop front signage, which the Appellant continues to use, displays the same name as that used by Company A, which consists of the first two words of the legal entity name of Company A.
- 46.13. [REDACTED] holds 50% of the issued ordinary share capital in Company A.
- 46.14. [REDACTED] is a director of Company A.
- 46.15. [REDACTED] was the company secretary of Company A until he resigned from this role on [REDACTED].
- 46.16. [REDACTED] was employed by Company A continuously from [REDACTED] up to [REDACTED], when his employment with that company ceased.
- 46.17. [REDACTED] was employed by Company A during the time when [REDACTED] was employed by Company A for two separate periods occurring during the period from [REDACTED].
- 46.18. On [REDACTED], four named individuals, including [REDACTED], ceased employment with Company A.
- 46.19. On [REDACTED], Company A ceased to be registered for PREM and corporation tax purposes.
- 46.20. On [REDACTED], Company A had outstanding liabilities in relation to VAT and PREM of €296,179.07 and €7,806.11 respectively, totalling €303,985.18.

- 46.21. On [REDACTED], Company A had outstanding liabilities in relation to VAT and PREM due to the Respondent totalling €239,317.91. The outstanding liability in relation to VAT was €237,907.44 for the VAT periods from 1 January 2020 to 30 June 2024. The outstanding liability in relation to PREM was €1,410.47 for the PREM period from 1 July 2024 to 31 July 2024.
- 46.22. As of 30 July 2025, Company A continued to be in an outstanding liability position in relation to VAT and PREM.
- 46.23. On [REDACTED], three individuals, including [REDACTED], commenced employment with the Appellant.
- 46.24. The three individuals who commenced employment with the Appellant on [REDACTED] had previously been employed by Company A up to [REDACTED], when those three employments with Company A ceased.
- 46.25. The fourth employee who ceased employment with Company A on [REDACTED] commenced employment with the Appellant on [REDACTED].
- 46.26. [REDACTED] is one of the three individuals who ceased employment with Company A on [REDACTED] and commenced employment with the Appellant on [REDACTED].
- 46.27. [REDACTED] has been employed by the Appellant since [REDACTED].
- 46.28. [REDACTED] is the son of [REDACTED].
- 46.29. Following its VAT registration with effect from [REDACTED], the Appellant made two applications to the Respondent for intra-EU VAT registration. The first application was refused by the Respondent following a delay by the Appellant in submitting requested information to the Respondent relating to that application. The second application was successful, and this was confirmed by the Respondent to the Appellant via MyEnquiries on 3 July 2025.
- 46.30. A number of the invoices and business statement documents submitted by the Appellant to the Respondent, in support of its applications for intra-EU VAT registration, refer *inter alia* to the Appellant's company name and the Trading Name and are stated to be for the attention of [REDACTED].
- 46.31. On 14 May 2025, two members of staff of the Respondent made an unannounced visit to the Appellant [REDACTED] at the Retail Premises. The purpose of the

Respondent's visit was to review the Appellant's second intra-EU VAT registration application and the business model of the Appellant.

46.32. The Appellant filed bi-monthly VAT returns for the VAT periods from September/October 2024 to May/June 2025.

46.33. The VAT return position of the Appellant on 30 July 2025 is as follows:

VAT period	VAT on Sales (T1)	VAT on purchases (T2)	Net VAT payable (T3)	Due date for return and payment ¹¹	Filing date
Sept/Oct24	€0	€0	€0	19/11/2024	15/01/2025
Nov/Dec24	€6,873	€1,069	€5,804	19/01/2025	06/03/2025
Jan/Feb25	€10,452	€2,818	€7,634	19/03/2025	01/04/2025
Mar/Apr25	€10,452	€2,818	€7,634	19/05/2025	29/05/2025 ¹²
May/Jun25	€6,087	€1,125	€4,962	19/07/2025	29/07/2025 ¹³
Total			€26,034		

46.34. The Appellant filed each of its VAT returns from September/October 2024 to May/June 2025 after the due dates for those filings.

46.35. On 30 July 2025, the Appellant had an outstanding liability in relation to VAT of €18,230 and an outstanding liability in relation to PREM of €2,971.48, totalling €21,201.48.

46.36. On 30 July 2025, the Appellant did not have a PPA in place with the Respondent for the payment of its VAT and PREM liabilities.

¹¹ When a VAT return is filed online and the VAT liability is paid online, the due date is the 23rd of the relevant month.

¹² The date of filing per the VAT return submitted by the Appellant is 29 May 2025. The date of filing per the Respondent's Outline of Arguments is 30 May 2025.

¹³ The date of filing per the VAT return submitted by the Appellant is 29 July 2025. The date of filing per the Respondent's Outline of Arguments is 30 July 2025.

- 46.37. Prior to July 2025, the Appellant entered into a PPA with the Respondent. During July 2025, the PPA was automatically terminated by the Respondent following non-payment of scheduled instalments.
- 46.38. The Appellant has not submitted to the Commission a copy of a tax clearance certificate or Tax Clearance Application Result dated on any date up to and including 30 July 2025.
- 46.39. On 30 July 2025, the Respondent issued correspondence to the Appellant stating it required the Appellant to provide security to the Respondent, in accordance with section 109 VATCA 2010, in the amount of €20,904 within thirty days of the date of the correspondence, for a period of one year, at which point the requirement for security would be subject to review.
- 46.40. The Appellant has not provided the requested security to the Respondent.
- 46.41. The Appellant has appealed the Respondent's decision of 30 July 2025 to require security from the Appellant.

Analysis

The burden of proof

47. The appropriate starting point for this analysis is to confirm that in a tax appeal before the Commission, the burden of proof rests on the Appellant. The Appellant must prove, on the balance of probabilities, that the assessment to tax or the decision of the Respondent which is under appeal is not correct. This is well-established by case law. In the High Court case of *Menolly Homes Ltd v the Appeal Commissioners and the Revenue Commissioners* [2010] IEHC 49 ("*Menolly Homes*"), at paragraph 22, Charleton J. stated:

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".

48. In paragraph 12 of his judgment in *Menolly Homes*, Charleton J. stated:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute [...]."

49. More recently, the Court of Appeal affirmed this position in *JSS & Others v A Tax Appeals Commissioner* [2025] IECA 96. In that case, at paragraph 34, McDonald J. stated:

“[...] the taxpayer bears the burden of demonstrating that a tax assessment is wrong.”

Statutory interpretation

50. In this appeal the Commissioner is required to consider the application of the statutory provision in the VAT legislation that sets out when the Respondent may require security from a taxpayer and apply that analysis to the facts in this appeal. In this context the Commissioner considers it appropriate at this stage to summarise the well-established principles of statutory interpretation in the context of taxation statutes.
51. The principles to be applied to statutory interpretation have been set out by McDonald J. in the High Court case of *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“*Perrigo*”). In that case, McDonald J. stated at paragraph 74:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in *Bookfinders Ltd v. The Revenue Commissioners* [2020] IESC 60.*

Based on the judgment of McKechnie J. the relevant principles can be summarised as follows:

- (a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*
- (b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that:*

“... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;

[...]”

52. The Commissioner considers the approach to statutory interpretation, as set down by McDonald J. in *Perrigo*, to be authoritative. The judgment provides a framework to the Commissioner for interpreting the tax legislation at issue in this appeal.

53. In addition, the Commissioner considers the recent case of *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 (“*Heather Hill*”) to be relevant to the principles to be applied to statutory interpretation.

54. In *Heather Hill*, Murray J. stated at paragraph 108:

“It is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose – it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions – and in particular Dunnes Stores and Bookfinders – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed.”

55. In interpreting the tax legislation that is relevant to this appeal, the Commissioner is satisfied that the words in the relevant statutory provisions must be given their ordinary, plain and natural meaning as per McDonald J. at paragraph 74, subparagraph (a), in *Perrigo*. In addition, in accordance with the principles enunciated in paragraph 74, subparagraph (b) in *Perrigo*, context is critical.

Scope of the review

56. Prior to considering the facts relevant to this appeal, it is necessary for the Commissioner to first consider the scope of the review by the Commissioner in this appeal. This is an appeal against the decision of the Respondent to require security from the Appellant under section 109(1) of the VATCA 2010, where that appeal has been brought by the Appellant pursuant to section 109(2) of VATCA 2010.

57. In summary, the Appellant contends that the decision of the Respondent is not reasonable, and that it is unnecessary, disproportionate and administratively unfair, as, *inter alia*, the Appellant is tax compliant, and the tax position of Company A should not be considered as it is a separate legal entity from the Appellant.

58. The Respondent contends that the scope of the review by the Commissioner in an appeal under section 109(2) of the VATCA 2010 is restricted to the Commissioner considering if the Respondent acted reasonably when it made the decision to require security in accordance with the statutory discretion conferred on it under section 109(1) of the TCA 1997. Section 106 of the VATCA 2010 provides that VAT is under the care and management of the Respondent. The legislation (section 109 of the VATCA 2010) does

not confer on the Commissioner the same statutory discretion as that conferred on the Respondent, as the Commissioner is not charged with responsibility for the care and management of tax (section 106 of the VATCA 2010). Therefore, the Respondent's argument is that it is not appropriate for the Commissioner to undertake a *de novo* review (a fresh review) to decide if security is required, and, if so, the quantum of such security, as such decisions are the exclusive responsibility of the Respondent in accordance with the terms of sections 106 and 109 of the VATCA 2010. The Respondent distinguished a previous determination by the Commission (163TACD2024) which was concerned with the requirement for security under a different statutory provision (section 960S of the TCA 1997) to the provision at issue here (section 109 of the VATCA 2010). In support of its position, the Respondent relies on UK caselaw including the House of Lords case *J H Corbitt* and the Court of Appeal case *John Dee*.

59. The parties did not present caselaw from the superior courts in Ireland, in relation to the issue of the scope of the Commissioner's review. The Commissioner is satisfied that the UK caselaw precedents cited in this appeal, while not binding precedent in an Irish context, are persuasive authority. In this context, the Commissioner notes Costello J. in *MMcC v JMcC* [1994] 1 IR 293, at page 303, stated that the decisions of the English courts "*should not lightly be ignored*".
60. The Commissioner notes the UK caselaw cited by the Respondent is in support of the Respondent's arguments regarding the scope of review by the Commissioner applicable in an appeal against a decision of the Respondent to require security under section 109(1) of the VATCA 1997.
61. In *J H Corbitt* the dictum of Lord Lane noted the following, in relation to the scope of an appeal to a VAT tribunal, in the context of a decision of the UK tax authorities exercising statutory discretion conferred on that authority regarding the operation of a particular VAT margin scheme:

*"Assume for the moment that the tribunal has the power to review the commissioners' discretion. It could only properly do so if it were shown the commissioners had acted in a way which no reasonable panel of commissioners could have acted; if they had taken into account some irrelevant matter or had disregarded something to which they should have given weight. If it had been intended to give a supervisory jurisdiction of that nature to the tribunal one would have expected clear words to that effect in the 1972 Act. But there are no such words to be found."*¹⁴

¹⁴ *J H Corbitt*, judgment of Lord Lane, page 239, paragraph (i)

62. In *John Dee* the UK Court of Appeal followed the dictum of Lord Lane in *J H Corbitt*. The court considered the role of the VAT tribunal in an appeal against the requirement for security issued by the UK tax authorities under UK legislation (paragraph 5(2) of Schedule 7 to the Value Added Tax Act 1983¹⁵). The wording of the UK legislation is effectively identical to the wording of section 109(1) of the VATCA 2010. The court held that, in examining whether that statutory condition was satisfied, the VAT tribunal had to consider whether the “commissioners” (i.e. the UK tax authorities) had acted in a way in which no reasonable panel of commissioners could have acted or whether they had taken into account some irrelevant matter or had disregarded something to which they should have given weight. Furthermore, it was held by Neill L.J. in *John Dee* that the tribunal may have to consider whether the commissioners had erred on a point of law. Neill L.J. concluded that the tribunal could not exercise a fresh discretion as “*the protection of the revenue*” was not the responsibility of the VAT tribunal but rather the exclusive responsibility of the UK tax authorities. In concluding his judgment, Neill L.J. stated:

“It is clear from s 40 itself that the decisions from which an appeal may lie cover a wide field. It is also clear that, though the construction of the 1983 Act cannot be determined by the subordinate legislation, the 1986 rules show that the tribunal can, inter alia, hear evidence and make orders relating to discovery.

It is true that there is no express provision in Sch 8 to the 1983 Act or elsewhere in the 1983 Act governing the powers of a value added tax tribunal on an appeal under s 40. I am, however, unable to accept Mr Engelhart's general proposition that, in the absence of any express limitation, the powers of a tribunal are akin to those of the Court of Appeal. In my judgment it is necessary in each case to examine the nature of the decision against which the appeal is brought. It is also necessary to take account of the fact that, by virtue of para 1(1) of Sch 7 to the 1983 Act, VAT is under the care and management of the commissioners.

In furtherance of his argument that, once the tribunal had decided that the decision of the commissioners was flawed, it could substitute its own discretion, counsel for the company was constrained to submit that it was for the tribunal to decide whether it appeared to it 'requisite for the protection of the revenue' to require a taxable person to give security. I am quite unable to accept this submission. It seems to me that the 'statutory condition' (as Mr Richards termed it) which the tribunal has to examine in an

¹⁵ “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 tax which is or may become due from him.”

appeal under s 40(1)(n) is whether it appeared to the commissioners requisite to require security. In examining whether that statutory condition is satisfied the tribunal will, to adopt the language of Lord Lane, consider whether the commissioners had acted in a way in which no reasonable panel of commissioners could have acted or whether they had taken into account some irrelevant matter or had disregarded something to which they should have given weight. The tribunal may also have to consider whether the commissioners have erred on a point of law. I am quite satisfied, however, that the tribunal cannot exercise a fresh discretion on the lines indicated by Lord Diplock in Hadmor. The protection of the revenue is not a responsibility of the tribunal or of a court.¹⁶(emphasis added)

63. The Commissioner is satisfied that the principles enunciated by Neill L.J. in *John Dee* are instructive in this appeal. The Commissioner concludes that the test to be applied by the Commissioner is to consider whether, at the time the Respondent made its decision requiring security from the Appellant, the Respondent acted in a way which was unreasonable, the Respondent took into account some irrelevant matter, the Respondent disregarded something that was relevant or the Respondent erred in law. The Commissioner is satisfied that “*the protection of the revenue*” is not a responsibility of the Commission. The Commissioner cannot consider *de novo*, or afresh, if security is requisite for “*the protection of the revenue*” or the quantum of such security.
64. The Commissioner notes the previous determination of the Commission in an unrelated tax appeal (163TACD2024) concerning security required under section 960S of the TCA 1997. The Commissioner is satisfied that previous determinations of the Commission do not constitute binding precedent for later tax appeals. Each tax appeal is determined by the Appeal Commissioner interpreting and applying the statutory provisions relevant to the appeal before them to the facts of that appeal. For the sake of completeness, the Commissioner has reviewed the published determination in 163TACD2024. She is satisfied that there is no reference in the Appeal Commissioner’s determination in 163TACD2024 to the UK caselaw cited by the Respondent in the current appeal, and which the Commissioner has already found (above) to be persuasive in the determination of this appeal. On that basis, the Commissioner is satisfied that the previous determination (163TACD2024) is distinguishable from the current appeal, and she is not bound by it.
65. The Commissioner is satisfied that the scope of her review is limited to reviewing the Respondent’s decision of 30 July 2025. Therefore, the Commissioner must confine her

¹⁶ *John Dee*, judgment of Neill L.J., page 952, paragraphs (c) to (h)

review to the facts to 30 July 2025. Events occurring after the Respondent made its decision to require security could not have been taken into account by the Respondent when it was making that decision, as the decision was made prior to those events occurring. It follows that events occurring after 30 July 2025 cannot be considered by the Commissioner when reviewing the Respondent's decision.

Respondent's decision to require security

66. Neither party adduced oral evidence at the hearing. As no oral evidence was adduced by either party to this appeal, the Commissioner is required to determine this appeal based on the submissions received from both parties. The Commissioner notes that the parties are not in dispute on the material facts listed above.

67. During the appeal hearing, the parties did not agree on a number of matters. Each of these disputed matters are considered below.

(i) Tax compliance status of the Appellant

68. The parties are in dispute on the tax compliance status of the Appellant. On the one hand, the Appellant contends that it was tax compliant for twelve months prior to the issue of the Respondent's decision to require security (30 July 2025), and that the Respondent should only take into account the current risk of non-payment of tax by the Appellant. The Appellant submits that it has filed its VAT returns up to date. The Appellant contends there is no current risk of non-payment of tax by the Appellant, as the Appellant is tax compliant, and therefore the requirement for security is unreasonable. On the other hand, the Respondent submits that it made the decision to require security from the Appellant because, at the time the decision was made (30 July 2025), the Appellant was in an ongoing tax liability position in relation to VAT and that position had been ongoing for some time.

69. The Commissioner notes the following agreed facts:

69.1. The Appellant filed bi-monthly VAT returns for the VAT periods from September/October 2024 to May/June 2025.

69.2. The VAT return position of the Appellant on 30 July 2025 is as follows:

VAT period	VAT on Sales (T1)	VAT on purchases (T2)	Net VAT payable (T3)	Due date for return	Filing date

				and payment¹⁷	
Sept/Oct24	€0	€0	€0	19/11/2024	15/01/2025
Nov/Dec24	€6,873	€1,069	€5,804	19/01/2025	06/03/2025
Jan/Feb25	€10,452	€2,818	€7,634	19/03/2025	01/04/2025
Mar/Apr25	€10,452	€2,818	€7,634	19/05/2025	29/05/2025 ¹⁸
May/Jun25	€6,087	€1,125	€4,962	19/07/2025	29/07/2025 ¹⁹
Total			€26,034		

- 69.3. The Appellant filed each of its VAT returns from September/October 2024 to May/June 2025 after the due dates for those filings.
- 69.4. On 30 July 2025, the Appellant had an outstanding liability in relation to VAT of €18,230 and an outstanding liability in relation to PREM of €2,971.48, totalling €21,201.48.
- 69.5. On 30 July 2025, the Appellant did not have a PPA in place with the Respondent for the payment of its VAT and PREM liabilities.
- 69.6. Prior to July 2025, the Appellant entered into a PPA with the Respondent. During July 2025, the PPA was automatically terminated by the Respondent following non-payment of scheduled instalments.
- 69.7. The Appellant has not submitted to the Commission a copy of a tax clearance certificate or Tax Clearance Application Result dated on any date up to and including 30 July 2025.
70. By 30 July 2025, the Appellant had filed all five bi-monthly VAT returns that were due during the time period from the Appellant's commencement of trading to 30 July 2025 (i.e. the VAT periods from September/October 2024 to May/June 2025 inclusive). However,

¹⁷ When a VAT return is filed online and the VAT liability is paid online, the due date is the 23rd of the relevant month.

¹⁸ The date of filing per the VAT return submitted by the Appellant is 29 May 2025. The date of filing per the Respondent's Outline of Arguments is 30 May 2025.

¹⁹ The date of filing per the VAT return submitted by the Appellant is 29 July 2025. The date of filing per the Respondent's Outline of Arguments is 30 July 2025.

each of the five bi-monthly VAT returns had been filed by the Appellant after the due dates for filing those returns. The total Net VAT Payable across these five VAT returns amounted to €26,034. On 30 July 2025, the Appellant had an outstanding liability in relation to VAT, in respect of a number of these VAT periods, totalling €18,230.

71. Following on from the undisputed material facts listed above, the Commissioner is satisfied that the Appellant was not compliant with the tax return filing and tax payment deadlines for VAT purposes up to 30 July 2025. The Appellant had outstanding liabilities in relation to VAT and PREM on 30 July 2025 totalling €21,201.48 (VAT of €18,230, PREM of €2,971.48). The outstanding liabilities in relation to VAT and PREM were not covered by a PPA on that date. There is no documentary evidence before the Commissioner that the Appellant had a valid tax clearance certificate in place on 30 July 2025.
72. The Commissioner acknowledges the Appellant's submissions that it made bona fide efforts to settle its outstanding liabilities relating to VAT and PREM prior to 30 July 2025, including putting a PPA in place prior to that date. Nevertheless, it is an agreed fact that there was no PPA in place on 30 July 2025. Furthermore, the Commissioner notes that there is no documentary evidence before her demonstrating that the Appellant held a valid and current tax clearance certificate on 30 July 2025. The Commissioner is satisfied that the efforts made by the Appellant to 30 July 2025 to settle its outstanding liabilities do not equate to tax compliance by the Appellant at that date.
73. The Appellant submitted that it was tax compliant at the time of the appeal hearing and that this was confirmed by the existence of the third PPA which was in place at the date of the hearing, and a copy of the Tax Clearance Application Result submitted by the Appellant's Agent during the hearing confirms the Appellant held a valid and current tax clearance certificate on 23 March 2026. However, the Commissioner is satisfied that this determination is concerned with reviewing the decision of the Respondent on 30 July 2025. Therefore, the Commissioner's consideration of the Respondent's decision must be based on the facts at 30 July 2025. At that date, as has already been concluded above by the Commissioner, the Appellant was not tax compliant in relation to VAT. Events occurring after the Respondent made its decision to require security could not have been taken into account by the Respondent when it was making that decision, as the decision was made prior to those events occurring. It follows that events occurring after 30 July 2025 cannot be considered by the Commissioner when reviewing the Respondent's decision.

(ii) *Relevance of Company A's tax status*

74. The parties are in dispute on the relevance of the VAT and PREM history of Company A to the decision to require security from the Appellant.
75. On the one hand, the Appellant contended that the VAT and PREM history of Company A is not relevant as Company A and the Appellant are separate legal entities, and Company A's tax liabilities are historic liabilities of Company A and therefore should not be included in a decision to require security from the Appellant.
76. On the other hand, the Respondent contends that the VAT and PREM liability history of Company A is relevant to the Respondent's decision to require security. The Respondent submitted there are common links between the two companies, Company A had a significant outstanding liability relating to VAT and PREM on 30 July 2025 and is in a position of continuing default. Furthermore, there are a number of common links between the two companies, the Appellant is a "phoenix company" and ■■■ is both a director of Company A and a shadow director of the Appellant. The Respondent further contends that Company A ceased its ■■■ operations at the Retail Premises owing a significant liability to fiduciary taxes, including VAT, and that entity had remained in a position of continuing default on its fiduciary tax liabilities throughout the period from the date it ceased its ■■■ operations at the Retail Premises ■■■ to 30 July 2025. The Respondent submits that the Appellant essentially took over the undertaking of Company A when it commenced trading in the same ■■■ sector and at the Retail Premises two days after the cessation of the ■■■ operations of Company A at the same premises, and continuing to use the Trading Name that had been used by Company A and the same shop frontage with the name displayed being the ■■■ words in Company A's legal entity name. The Respondent further submitted that it considers the Appellant to be a "phoenix company" due to the common links between the Appellant and Company A, an entity which ceased operations at the Retail Premises on ■■■ with a significant VAT liability owing and which remains unpaid. The Respondent stated that the main common link between the companies is ■■■. ■■■ is a director, former company secretary and former employee of Company A. ■■■ is an employee of the Appellant. The Respondent considers that ■■■ is a shadow director of the Appellant. The Respondent also referred to the Appellant's SoC wherein the Appellant stated "*the director previously held an interest in another company that defaulted on VAT*". The Respondent pointed out that the Appellant's Agent stated at the outset of the appeal hearing that ■■■ is the director of the Appellant that was unable to attend the hearing due to international travel issues.

77. The Respondent did not provide a definition to the Commissioner of the term “*phoenix company*” in its submissions. From a review of opensource material, the Commissioner is satisfied that the term “*phoenix company*” may be used to refer to a new company, carrying on the same or similar trading activities to that which had been carried on by a previous company, where the previous company has ceased trading operations due to financial difficulties.
78. The Commissioner notes the following findings of material fact, which are not in dispute:
- 78.1. ■■■ and ■■■ each hold 50% of the issued ordinary share capital of the Appellant.
 - 78.2. ■■■ and ■■■ are the directors of the Appellant.
 - 78.3. ■■■ is the company secretary of the Appellant.
 - 78.4. ■■■ was employed by Company A for two periods of time totalling ■■■ during the period from ■■■ to ■■■.
 - 78.5. ■■■ and ■■■ are not employees of the Appellant.
 - 78.6. ■■■ and ■■■ are employees of third parties.
 - 78.7. On ■■■, the Appellant began operations as ■■■ at the Retail Premises under the Trading Name, and the name displayed on the Appellant’s shop front signage is the same as that which had been displayed by Company A when it operated from the Retail Premises, and consists of the ■■■ words of Company A’s legal entity name.
 - 78.8. Up to ■■■, a separate company, Company A, carried on a business at the Retail Premises as ■■■ under the Trading Name and the name displayed on its shop front signage prior to closure was the same as the ■■■ words in its legal entity name.
 - 78.9. When the Appellant commenced trading operations at the Retail premises on ■■■, it commenced using the Trading Name that had been used by Company A, and it retained the shop front signage that had been displayed by Company A until it ceased retail operations on ■■■. That shop front signage, which the Appellant continues to use, displays the same name as that used by Company A, which consists of the ■■■ words of the legal entity name of Company A.
 - 78.10. ■■■ holds 50% of the issued ordinary share capital in Company A.

- 78.11. ■ is a director of Company A.
- 78.12. ■ was the company secretary of Company A until he resigned from this role on ■.
- 78.13. ■ was employed by Company A continuously from ■ up to ■, when his employment with that company ceased.
- 78.14. ■ was employed by Company A during the time when ■ was employed by Company A for two separate periods occurring during the period from ■ to ■.
- 78.15. On ■, four named individuals, including ■, ceased employment with Company A.
- 78.16. On ■, Company A ceased to be registered for PREM and corporation tax purposes.
- 78.17. On ■, Company A had outstanding liabilities in relation to VAT and PREM of €296,179.07 and €7,806.11 respectively, totalling €303,985.18.
- 78.18. On ■, Company A had outstanding liabilities in relation to VAT and PREM due to the Respondent totalling €239,317.91. The outstanding liability in relation to VAT was €237,907.44 for the VAT periods from 1 January 2020 to 30 June 2024. The outstanding liability in relation to PREM was €1,410.47 for the PREM period from 1 July 2024 to 31 July 2024.
- 78.19. On 30 July 2025, Company A continued to be in an outstanding liability position in relation to VAT and PREM.
- 78.20. On ■, three individuals commenced employment with the Appellant.
- 78.21. The three individuals who commenced employment with the Appellant on ■ had previously been employed by Company A up to ■, when those three employments with Company A ceased.
- 78.22. The fourth employee who ceased employment with Company A on ■ commenced employment with the Appellant on ■.
- 78.23. ■ is one of the three individuals who ceased employment with Company A on ■ and commenced employment with the Appellant on ■.

78.24. ■■■ has been employed by the Appellant since ■■■■.

78.25. ■■■ is the son of ■■■.

79. The Commissioner notes the Appellant's submission in its SoC, wherein the Appellant referred to a director of the Appellant stating "[t]he security bond was imposed solely because the director previously held an interest in another company that defaulted on VAT". Furthermore, the Commissioner notes that, at the outset of the appeal hearing, the Appellant's Agent stated that ■■■ was the director of the Appellant who was unable to attend the hearing, as a representative for the Appellant, due to international travel issues.
80. Following on from the material facts which are not in dispute, as set out above, the reference in the Appellant's SoC above and the Appellant's Agent's statement at the appeal hearing that ■■■ was the director of the Appellant who was unable to attend the hearing, the Commissioner is satisfied that these matters demonstrate there are common links between Company A and the Appellant.
81. The Commissioner is satisfied that there are ample grounds in support of the position taken by the Respondent that there are sufficient common links between the two companies, in particular the role of ■■■ in both companies, such that the outstanding tax liability position of Company A was relevant for consideration by the Respondent when it made its decision to require security from the Appellant. Therefore, the Commissioner concludes that it was reasonable for the Respondent to consider the tax status of Company A in the period up to and including 30 July 2025, when it was making its decision to require security from the Appellant.
82. In the event that the Commissioner is wrong to consider the common links between the two companies in this case, the Commissioner is nonetheless satisfied that the decision of the Respondent to require security from the Appellant was reasonable in the context of the Appellant's tax compliance status on 30 July 2025 (see above).

(iii) Site visit by the Respondent

83. The parties are in dispute regarding what occurred during the unannounced site visit by the Respondent's two staff members to the Appellant ■■■■ at the Retail Premises on 14 May 2025.
84. The Respondent submitted, both prior to and during the hearing, that two of its staff members made the unannounced site visit to the Appellant's business at the Retail Premises on 14 May 2025 during which the two staff members of the Respondent met with ■■■, who initially introduced himself to them as the owner of the business and subsequently stated to them that ■■■ is the owner of the business. The Respondent did

not adduce oral evidence regarding what occurred during the site visit. The Respondent confirmed during the hearing that one of the staff members who conducted the site visit was in attendance at the hearing. The Respondent chose not to call this officer to provide the Commissioner with evidence of what occurred during the site visit.

85. At the hearing, the Appellant's Agent did not dispute that the Respondent's two staff members visited the Appellant's business at the Retail Premises on 14 May 2025. However, the Appellant's Agent stated towards the end of the hearing that the Appellant did not agree with the Respondent's account of what occurred during the site visit. The Appellant's Agent did not call any witnesses who could provide the Commissioner with evidence as to what occurred during the site visit. In addition, the Appellant did not provide any submission to the Commissioner regarding what occurred during the site visit. The Commissioner notes that there was no representative of the Appellant in attendance at the hearing to instruct the Appellant's Agent on this matter. The Appellant's Agent did not confirm during the hearing that he had been instructed by the Appellant in relation to this specific matter.
86. Therefore, the Commissioner is not assisted as neither party provided any oral evidence as to what occurred during the site visit.
87. The parties are not in dispute that the Appellant provided the Respondent with copies of supplier documentation during and after the site visit. Copies of those documents were submitted to the Commission by the Respondent, and the contents of these copies were not disputed by the Appellant's Agent at the hearing. The Commissioner notes, from the copies of the documents that were submitted by the Respondent to the Commission, the documents were addressed to the Appellant at the address of the Retail Premises, and some of the documents quoted the Trading Name and were stated to be for the attention of [REDACTED].
88. In all the circumstances, having weighed up the submissions from both parties prior to and during the appeal hearing, and in the absence of any oral evidence from the individuals who were in attendance during the site visit on 14 May 2025, the Commissioner concludes that she cannot take into account the Respondent's submissions regarding what occurred during that site visit. Legal submissions are not evidence. The Commissioner notes that there were no contemporaneous notes of the Respondent's staff members provided in the book of documents. The Commissioner is at liberty under section 949AC of TCA 1997 to allow evidence to be given orally or in writing and admit evidence whether or not the evidence would be admissible in proceedings in a court. Hence, the Commissioner could have taken into account contemporaneous notes

of the site visit by either party, if they had been provided, in the absence of oral evidence. The Commissioner again notes that a staff member of the Respondent present at the hearing had attended the site visit in question and oral evidence was not adduced from that individual. Therefore, the Commissioner has not placed any weight on legal submissions made by Counsel for the Respondent in relation to what occurred during the site visit.

(iv) Amount of security required

89. The Respondent submitted that the quantum of the security required was derived by summing the VAT of Sales (T1) amounts in the Jan/Feb25 and Mar/Apr25 VAT returns. The Respondent submitted that this calculation method focussed on the VAT on Sales (T1) amount in the two most recent VAT returns submitted by the Appellant and processed by the Respondent prior to the Respondent making its decision to require security. VAT is under the care and management of the Respondent (pursuant to section 106 of the VATCA 2010). The Commissioner has found above that the Respondent's decision of 30 July 2025 to require security, on the basis that it appeared to the Respondent "*requisite [...] for the protection of the revenue*" (pursuant to section 109(1) of the VATCA 2010), is reasonable in the circumstances of this case. Following on from the Commissioner's conclusions in relation to the scope of her review of the Respondent's decision, the Commissioner is satisfied that her review does not extend to considering the quantum of the security amount or the method used to compute the amount.
90. However, if the Commissioner is incorrect in this regard, the Commissioner notes that the Appellant's outstanding liability in relation to VAT on 30 July 2025 was €18,230. The Commissioner further notes the total Net VAT Payable per the Appellant's VAT returns for all five bi-monthly VAT periods ending during the period from the Appellant's commencement of operations at the Retail Premises [REDACTED] to when the Respondent issued its decision to require security (30 July 2025) was €26,034. That total Net VAT Payable amount is the sum of the Net VAT Payable (T3) in each of the five bi-monthly VAT periods in question. The Commissioner notes that the total Net VAT Payable per the Appellant's VAT return filings for the VAT periods from September/October 2024 to May/June 2025 (€26,034) refers to a time period of [REDACTED] months from the date of the Appellant's VAT registration [REDACTED] to 30 June 2025 and a time period of [REDACTED] months from the date of commencement of the Appellant's operations at the Retail Premises [REDACTED] to 30 June 2025. Each of those time periods are less than twelve months in length. The requirement for security issued by the Respondent to the Appellant is stated to be for a period of twelve months, when it will then be subject to review.

91. The Commissioner is satisfied that there are no submissions from the Appellant which demonstrate to the Commissioner that the Respondent's calculation of the security amount is unreasonable by reference to the Net VAT Payable amount per the Appellant's VAT returns filed up to 30 July 2025, being the date of the Respondent's decision to require security. The Commissioner notes the quantum of the outstanding liability in relation to VAT as at 30 July 2025 is €18,230. The Commissioner further notes the total Net VAT Payable returned by the Appellant for the time period of [REDACTED] months from its commencement of operations at the Retail Premises [REDACTED] to 30 June 2025 is €26,034. Therefore, the Commissioner concludes that the Respondent's calculation of the security amount of €20,904 (which is stated to be the security required for a twelve month period) and the method used by the Respondent to calculate that amount are reasonable in the circumstances of this case.

Conclusions on the Respondent's decision to require security

92. Following on from the above analysis of the material facts in this appeal and adopting the test as laid out by Neill L.J. in *John Dee*, the Commissioner concludes that the decision made by the Respondent on 30 July 2025, to require security in accordance with section 109(1) of the VATCA 2010, is reasonable in the circumstances. The Commissioner is satisfied that the Respondent did not act in a way in which no reasonable panel of commissioners (of the Respondent) could have acted. Furthermore, the Commissioner is satisfied that the Respondent did not take into account some irrelevant matter and the Respondent did not disregard something to which it should have given weight. The Commissioner also concludes that the Respondent did not err on a point of law in making the decision to require security from the Appellant. On this basis, the Commissioner finds that the decision of the Respondent to require security in this case is reasonable and hence that decision stands. The Commissioner is satisfied that the Appellant did not put forward evidence to demonstrate the contrary.

93. As outlined above, in a tax appeal before the Commission, the burden of proof rests on the Appellant. It is for the Appellant to prove that, on the balance of probabilities, the decision of the Respondent to require security from the Appellant was not reasonable. For all the reasons set out above, the Commissioner is satisfied that, based on the submissions and documentary evidence before her, the Appellant has not discharged the burden of proof in this appeal.

Penalties

94. The Commissioner notes that section 115(7) of the VATCA 2010 provides for penalties in situations where there is a requirement for security under section 109 of the VATCA 2010. Section 115(7) of the VATCA 2010 provides as follows:

“A person who supplies taxable goods or services in contravention of the requirement of security specified in section 109 shall be liable to a penalty of €4,000 in respect of each such supply.”

95. In the Notice of Appeal, the Appellant’s grounds of appeal stated the following in relation to penalties:

“[...]”

The penalty provision under Section 115(7) VATCA is not applicable, as the company has never supplied taxable goods or services without discharging its VAT obligations.

We therefore respectfully request that [...] any associated penalty be withdrawn in full.”

96. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997. Part 40A of the TCA 1997, entitled “Appeals to Appeals Commissioners”, comprises sections 949A to 949AX of the TCA 1997. The Tax Acts do not confer power on the Commissioner to hear appeals into matters pertaining to the statutory charge to penalties arising under section 115(7) of the VATCA 2010.

97. The Commissioner’s jurisdiction has been considered by the courts in a number of cases. In the Court of Appeal case of *Lee v Revenue Commissioners* [2021] IECA 18 (“*Lee*”), Murray J. stated at paragraph 20:

“The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation.”

98. The Commissioner does not have jurisdiction within her statutory remit to make a determination on penalties arising under section 115(7) of the VATCA 2010. Therefore, the Commissioner cannot make a determination on the Appellant’s grounds of appeal

seeking the withdrawal of any penalty associated with the requirement for security, arising under section 115(7) of the VATCA 2010.

Consideration of caselaw cited by the Appellant in its book of authorities and post-hearing submission

99. As referred to above, in the Introduction, at the close of the appeal hearing, the Commissioner orally directed the Appellant to provide a post-hearing legal submission including names of legal cases on which the Appellant sought to rely, copies of those cases and references to the paragraphs within the cases that the Appellant considered relevant. The Commissioner directed the Appellant to provide this legal submission to the Commission within fourteen days of the hearing date and simultaneously copy the Respondent. The Commissioner further directed that the Respondent would have an opportunity to reply to the submission within fourteen days of receiving it. The Commissioner notes that both parties were provided with ample opportunity to submit copies of relevant caselaw in their books of authorities to be provided to the Commission prior to the hearing, in accordance with the Commission's standard procedures, and to open relevant caselaw to the Commissioner during the hearing.
100. The Commission received the Appellant's submission of its book of authorities approximately one hour prior to the appeal hearing. That book contained a one-page summary of caselaw citing three cases. This summary included a sentence for each of the three citations purporting to sum up the judgments in those cases. The Appellant did not submit copies of the cases or reference the key paragraphs within the cases on which the Appellant sought to rely. During the hearing, the Appellant's Agent referred to the summary of the cases contained in the book of authorities. However, during the hearing, the Appellant's Agent did not open those cases to the Commissioner, provide copies of the cases to the Commissioner or reference the paragraphs within the judgments in those cases on which the Appellant sought to rely
101. As set out in the Introduction above, in her oral direction at the close of the hearing, the Commissioner made it clear to both parties that submissions received after the deadline set out by the Commissioner, or not containing the information directed to be provided, would not be taken into account by the Commissioner in making her determination. At the hearing, both parties agreed to the terms of the Commissioner's direction. The Appellant's Agent provided submissions to the Commission after the fourteen-day deadline set down in the direction. Those submissions did not contain the information directed to be provided. The Appellant noted in its submissions that copies of the cases were not readily available to the Appellant through publicly accessible databases and the Appellant was

not in a financial position to incur the cost of engaging counsel or subscribing to proprietary legal reporting services to obtain copies of the cases within the timeframe provided. As the post-hearing submissions from the Appellant did not comply with the Commissioner's direction, the Commissioner issued correspondence to the parties stating that, as the post-hearing submissions were not in compliance with her direction, the Commissioner would proceed to determine the appeal without taking the Appellant's post-hearing submissions into account.

102. However if the Commissioner was wrong in this approach, for the sake of completeness, the Commissioner has considered the post-hearing submissions made by the Appellant in relation to the three cases cited in its book of authorities, as submitted by the Appellant approximately one hour prior to the hearing, and cited again in the post-hearing submission provided by the Appellant to the Commission after the deadline for that post-hearing submission had elapsed. The Commissioner has located the cases cited, where possible, and considered the relevance of the located caselaw to the appeal at hand.

103. The first case cited by the Appellant²⁰ dealt with certain regulations made by the Minister for Agriculture under 1972 legislation giving effect to Ireland becoming a member of the European Community, in the context of operation of search warrants and summonses on matters concerning certain veterinary medication. The second case²¹ cited by the Appellant refers to legislation dealing with preservation of national monuments and measures taken by the Office of Public Works to protect a monument on privately-owned land. The Commissioner is satisfied that neither of these cases refers to tax legislation and, in particular, to section 109 of the VATCA 2010 in the context of the statutory discretion conferred on the Respondent to require security in certain circumstances. The Appellant has submitted in summary that these cases refer to the need for decisions by statutory bodies to be reasonable, fair, proportionate and not excessive. The Commissioner is satisfied that she has reviewed the Respondent's decision to require security in detail in this determination (see above) and has concluded the Respondent's decision to require security is reasonable in the circumstances of this case. The issue raised by the Appellant that the Respondent's decisions should be fair, proportionate and not excessive are considered further below.

104. The Commissioner cannot locate the third case²² cited by the Appellant, despite review of the Commission's extensive legal research resources. The Commissioner must conclude that either the case does not exist or the case name or reference provided are

²⁰ *Meagher v Minister for Agriculture* [1994] 1 IR 329

²¹ *O'Callaghan v Commissioners of Public Works* [1985] IR 551

²² [REDACTED]

incorrect. Therefore, the Commissioner cannot consider it or the references made to it in the Appellant's book of authorities or post-hearing submission of caselaw, in circumstances where the Commissioner provided the Appellant with ample opportunity to submit a copy of the case to the Commissioner and the Appellant did not do so.

Jurisdiction of the Appeal Commissioner

105. In the Court of Appeal judgment in *Lee*, Murray J. made it clear that the function of the Appeal Commissioner is to determine, by reference to applicable legislation, the correct amount of tax owed. At paragraph 76 of his judgment, Murray J. stated:

"The jurisdiction of the Appeal Commissioners [...] is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. [...]"

106. In accordance with *Lee*, and the statutory framework that applies to tax appeals to the Commission, under Part 40A of the TCA 1997, the Commissioner must consider if the relevant tax legislation at issue has been correctly applied to the facts. The Commissioner has found that the Respondent's decision to require security in this case is reasonable, based on the findings of material fact here and taking into account the test set out by Neill L.J. in *John Dee*. Therefore, the Commissioner is satisfied that the Respondent's decision to require security in this case is correct in law.

107. The Commissioner notes the Appellant's additional grounds of appeal per the Notice of Appeal that the decision of the Respondent to require security in the amount of €20,904 is unnecessary, unfair, disproportionate and excessive. Furthermore, in the grounds of appeal, the Appellant states the decision "*places an undue financial burden on a newly established but fully compliant business and risks undermining its capacity to remain tax compliant*". In the Appellant's post-hearing submissions, the Appellant referred to two Irish cases (see above) which it stated were supportive of the position that decisions by state bodies should be fair, proportionate and not excessive.

108. However, the Commissioner is satisfied that she does not have jurisdiction to set aside a decision of the Respondent based on allegations that the decision is unnecessary, unfair, disproportionate or excessive. Furthermore, the Commissioner does not have jurisdiction to set aside the decision of the Respondent on the basis that it allegedly places an undue

financial burden on the Appellant or risks undermining the Appellant's capacity to be tax compliant. The Commissioner does not have jurisdiction to consider commercial issues impacting the Appellant's financial position or cashflow difficulties it has or may have in funding its business activities (including the settlement of its tax liabilities) or the security required by the Respondent. All such grounds of appeal fall outside the jurisdiction of an Appeal Commissioner. Such matters may come within the jurisdiction and remit of the Courts, but do not fall within the jurisdiction and remit of an Appeal Commissioner in a tax appeal.

Conclusions

109. In an appeal before the Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that an assessment to tax or a decision of the Respondent is incorrect. The Commissioner has considered the material facts on 30 July 2025 and the submissions of both parties in this appeal in the analysis (see above). Following on from that analysis, the Commissioner is satisfied that the Appellant has not discharged the burden of proof in this appeal to show, on the balance of probabilities, that the Respondent's decision is not correct. Therefore, the Commissioner is satisfied this appeal must be denied.
110. This appeal concerns the circumstances surrounding the Respondent's decision to require security, as issued by the Respondent to the Appellant on 30 July 2025. Therefore, the circumstances at that date are relevant. The Commissioner is satisfied that events which have occurred since that date are not relevant in this determination.
111. It is open to the Appellant to engage with the Respondent going forward to review the requirement for security. The Respondent refers in its decision letter to the security requirement being subject to review after one year. The Commissioner encourages the Appellant to engage with the Respondent on this matter.
112. The Commissioner does not have any statutory remit or jurisdiction to set aside the penalty provision in section 115(7) of the VATCA 2010.
113. The Commissioner does not have jurisdiction to consider the Appellant's grounds of appeal that the Respondent's decision is unnecessary, unfair, disproportionate or excessive. Furthermore, the Commissioner does not have jurisdiction to consider if the requirement for security creates undue financial burden on the Appellant or risks undermining the capacity of the Appellant to be tax compliant. The Commissioner does not have jurisdiction to consider commercial issues impacting the Appellant's financial

position or cashflow difficulties it has or may have in funding its business activities (including the settlement of its tax liabilities) or the security required by the Respondent.

Determination

114. As such and for the reasons set out above, the Commissioner determines that this appeal must be denied. Therefore, the decision of the Respondent dated 30 July 2025, requiring the Appellant to provide security, shall stand.

115. The Commissioner appreciates this decision will be disappointing for the Appellant. The Appellant was entitled to check whether the Respondent's decision was correct, and it was prudent to do so in all the circumstances.

116. This Appeal is determined in accordance with Part 40A of the TCA 1997 and, in particular, section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

117. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

118. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Suzanne Carter
Appeal Commissioner
12 August 2026