AN COIMISIUN UM ACHOMHAIRC CHANACH
TAX APPEALS COMMISSION

78TACD2026

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") against a decision of the Respondent to require the Appellant company to provide a security bond in the amount of €34,289 for the payment of value-added tax ("VAT"), pursuant to section 109 of the Value-Added Tax Consolidation Act 2010 as amended ("VATCA 2010").

Background

2. The Appellant was incorporated on [redacted] and has its registered office at [redacted] it carries on the business of [redacted] The Appellant's directors are [redacted]. On [redacted], the Appellant registered for corporation tax, PREM and domestic VAT.

3. On [redacted], the Appellant applied to be registered for intra-EU VAT on the basis that it intended to trade with businesses elsewhere in the EU. On foot of that application, the Respondent carried out an investigation of the Appellant to ascertain the nature of its business.

4. On 16 April 2025, the Respondent notified the Appellant of its decision under section 109 of the VATCA 2010 to require the Appellant to give security in the amount of €34,289. The notice stated that "*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.*"

5. Following the issuance of that notification, further engagement took place between the Appellant (via its agent) and the Respondent. On 4 June 2025, the Respondent notified the Appellant via MyEnquiries that "*If you wish to appeal this security bond, you must do so within a period of 30 days after the date of this notice…*"

6. On 4 July 2025, the Appellant appealed against the Respondent's decision to the Commission. While it seems to the Commissioner that the appeal was made late, as it is against the Respondent's decision of 16 April 2025, he notes that the Respondent did not object to the Commission accepting the appeal. In the circumstances, he considers it appropriate to accept the appeal.

7. The appeal proceeded by way of a hearing in private on 15 April 2026. The Appellant was represented by its agent and the Respondent was represented by counsel.

Legislation and Guidelines

8. Section 109 of the VATCA 2010 states that:

"*(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."

9. The Respondent's Tax and Duty Manual, "Procedures for requiring security from taxable persons" states *inter alia* that:

"*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 Revenue Commissioners feel that this is needed to protect its interest… 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 Revenue Commissioners. 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*."

Evidence

[redacted] – *Director of the Appellant*

10. [redacted] ("Witness 1") was called on behalf of the Appellant. She stated that [redacted] (hereinafter "the founder") opened the [redacted] in [redacted] joined the business in [redacted] as an employee. She stated that:

"*So, at the end of* [redacted] *[the founder] told me that she was in trouble, so she would have to close down the business and I just saw it as a good opportunity to, because I'd been there for so long working, the team we had were, and still an [sic] an incredible team of staff.* [redacted] *She's incredibly talented at what she does. So I had a chat with the landlord. I knew the building was going to be empty. The brand was fantastic. Our clientele was fantastic. The community we had built, [the founder] had built from the old business was really good. So I just took the opportunity to see could I create a new business and open there because it just seemed like a shame to let it all fall apart*."

11. The witness said that she (the witness) looked after the management and strategic side of the business. [redacted] The founder's current role was as [redacted]."

12. On cross examination, the witness confirmed that she was the founder's employee from [redacted] The founder had subsequently established a company, [redacted] ("the previous company"), which had employed the witness. She confirmed that she held 50% of the shares in the Appellant, with the other 50% being held by [redacted] ("the other director"). [redacted]. [redacted]

13. [redacted] She said that the founder had no role in the management of the Appellant. The other director had financial oversight of the company. [redacted] She stated that he was currently not paid by the Appellant. The witness agreed that the Appellant paid the founder ([redacted] more than her ([redacted]. She said that the founder was paid more because she worked longer hours.

14. [redacted] She stated that the founder knew about aspects of the Appellant's financial position, such as the percentage of income that it spent on paying wages, from "*day-to-day things*" and from her ownership of the previous company. She stated that the founder did not manage the staff but did train new employees.

15. The witness stated that she was aware that officers of the Respondent had attended the Appellant's premises on [redacted], but stated that she was not present. She was aware that when the officers asked to speak to the manager they were directed to the

founder, but believed that this was because they asked for her by name. [redacted].

16. The witness was asked about the Appellant's outline of arguments, which it had submitted as part of its appeal. She stated that she had not seen the document prior to the hearing. She stated that she presumed that the founder had instructed the Appellant's agent to include details of the founder's personal tax affairs. She stated that she was aware that the founder personally owed [redacted] in taxes to the Respondent, arising out of the original sole trading business. She stated that she was aware that the previous company owed [redacted]. She stated that she did not know why the previous company had paid some of the founder's personal tax liabilities.

17. [redacted] She confirmed that she had no management responsibilities in respect of the previous company. [redacted].

[redacted] – *Officer of the Respondent*

18. [redacted] ("Witness 2") was called by the Respondent. He stated that he was an Assistant Principal officer in [redacted] Business Division. One of his functions was assessing whether a taxpayer was required to provide security. He stated that, in order to assess this, his division would "*look at the Directors, the people involved in the company, their prior compliance, prior history. We'd also look at the address of the business and the business activity. Is it the same business model and who is connected and any liabilities outstanding.*"

19. He stated that the concerns about the Appellant particularly related the liabilities arising from the founder's self-employment and then from the previous company. The Respondent was concerned about a possible shadow directorship or a "*phoenix case*". [redacted]. The other director, Witness 1, had been an employee of the founder and the previous company.

20. He stated that the founder had total outstanding tax liabilities of [redacted]. The previous company had total outstanding tax liabilities of [redacted] There was also an outstanding liability in respect of the Employment Wage Subsidy Scheme ("EWSS") but he was not aware of the amount.

21. He stated that the bond was calculated on the T1 sales of two bi-monthly VAT periods for the Appellant, based on its [redacted] and [redacted] VAT returns. On cross examination, he stated that the methodology for calculation of the bond was based on the Respondent's manual. In response to a question from the Commissioner, the witness stated that he was aware that the founder claimed that her liabilities arose due to her former tax agent, but that the onus rested on the taxpayer to ensure that all tax liabilities were met.

[redacted] – *Officer of the Respondent*

22. [redacted] ("Witness 3") was also called by the Respondent. He stated that he was a clerical officer working in the Compliance Unit. He called out to the Appellant's premises on [redacted] He asked to speak to the other director but he was unavailable. He stated that he then asked to speak to the manager, and was introduced to the founder. He stated that he did not ask for the founder by name.

23. He stated that the founder told him that she was not "*au fait*" with the intra-EU VAT application, [redacted] He stated that he was at the Appellant's premises for 20 to 25 minutes.

24. [redacted]. He stated that he did not ask to speak to Witness 1. He stated that he asked to speak to the manager and he was introduced to the founder. [redacted]. He stated that the premises was very busy, and the founder seemed somewhat stressed. He did not speak to any other staff members.

Submissions

Appellant

25. In written submissions, the Appellant (via its agent) stated that the requirement for security was based on incorrect assumptions regarding its ownership and management.

It stated that the founder held no shareholding, directorship or managerial responsibilities within the Appellant. It stated that the Appellant was fully tax compliant.

26. The Appellant submitted that the founder had made significant and ongoing efforts to resolve her tax debts and had acted in good faith. This appeal concerned fairness and proportionality rather than legal interpretation. The Appellant also submitted a letter from its agent on behalf of the founder which was originally sent to the Respondent and which sought to explain how her tax liabilities arose.

27. In oral submissions, the Appellant's agent stated that the liabilities arose due to negligence and poor performance by the founder's former accountant. The liabilities did not constitute straightforward instances of non-compliance. The Appellant had a [redacted] record of tax compliance.

28. It was submitted that the method of calculation of the bond by the Respondent did not accord with the method employed by HMRC in the UK and was unduly penal. Using the net VAT liability (T3 figures) over the two VAT periods, it was submitted that a more appropriate bond was €19,109.

29. Section 109 of the VATCA 2010 used the word "*requisite*" which meant that it had to be essential to impose security in order to protect the exchequer. It was not requisite in this instance because the Appellant was meeting its liabilities. It was not accepted that the burden of proof rested on the Appellant in circumstances where there was no assessment; 01TACD2022.

30. The Respondent had not properly considered all of the relevant factors, including how the historic liabilities arose and the Appellant's ongoing compliance. It was clear from the previous Commission determination that the appeal was *de novo*, and an appeal that did not allow for an independent assessment on the merits of the case would not be an effective remedy.

31. [redacted]

Respondent

32. In written submissions, the Respondent stated that an appeal under section 109 of the VATCA 2010 was different from most appeals before the Commission, as it was directed towards a discretionary decision made by the Respondent with a view to protecting the

State's revenues. While the Commission decision in 163TACD2024 had proceeded on the basis that an appeal under section 960S of the Taxes Consolidation Act 1997 as amended ("TCA 1997"), which also concerns security bonds, was *de novo*, it did not appear that the issue had been fully considered.

33. In *John Dee Ltd v Customs and Excise Commissioners* [1995] STC 941 ("*John Dee*"), the English Court of Appeal considered the nature of the right of appeal under the equivalent UK VAT legislation concerning the requirement to provide security. The court found that an appeal was not *de novo* and that instead it was necessary to "*examine the nature of the decision against which the appeal is brought*" and to take account of the fact that VAT was "*under the care and management of the commissioners*". A similar approach was taken by the UK VAT and Duties Tribunal in *Flame Cheater International Ltd v HMRC* [2007] UKVAT V20415, as well as by the predecessor to the Commission in Appeal Case 151/2009.

34. In this case, the Respondent had determined that the Appellant was required to provide security on the basis that:

    34.1. The Appellant operated the same type of business which was previously operated by the previous company from the same address. Prior to the incorporation of the previous company, its former director, the founder, had also traded as [redacted] from the same address.

    34.2. The previous company, and its former director, the founder, had substantial unpaid tax liabilities to the Respondent. The previous company was now in liquidation.

    34.3. The founder remained involved in the business of the Appellant.

    34.4. [redacted]. The other director, Witness 1, was formerly an employee of the previous company.

    34.5. In the circumstances, the Respondent formed the view that the founder was likely acting as a shadow director of the Appellant.

35. In oral submissions, counsel for the Respondent stated that the decision to require the Appellant to provide security was a discretionary matter of judgment for the Respondent. The Appellant was the third iteration of [redacted] and each of those

businesses was connected to the founder who continued to owe substantial debts to the Respondent.

36. It was important to bear in mind that the matter under appeal was the Respondent's decision of April 2025, and what was at issue was whether that decision was justified. Regarding the standard of the review on an appeal, the previous Commission determination that such an appeal was *de novo* did not accord with the statutory language or other precedents such as *John Dee.* The question for consideration herein was whether the Respondent's decision to require the Appellant to provide security was reasonable.

37. There were a number of connections between the Appellant and the founder, including: [redacted] the founder continued to be engaged in the Appellant's business; [redacted] Witness 1 owned the other 50% of the Appellant and had previously been an employee of the founder and the previous company; and a number of employees had transferred from the previous company to the Appellant.

38. Both the founder and the previous company had substantial outstanding tax liabilities. In the circumstances, it was perfectly reasonable for the Respondent to form the view that the Appellant was a phoenix company and that as a result there was a risk to the revenue. The amount of security required was calculated by reference to the amount of VAT on sales charged by the Appellant. The Appellant's agent was incorrect to state that HMRC's method of calculation only considered net liabilities, as it also took into account any outstanding tax liabilities over six months.

39. When the Respondent first notified the Appellant of the requirement to provide security, its agent stated that the requirement was accepted. This suggested that the Appellant was not surprised by the requirement or by the Respondent's decision to link it to the previous company and the founder. The Appellant subsequently informed the Respondent that it had been unable to obtain an insurance policy in order to pay the bond and this had precipitated the appeal.

40. It would have been helpful if the other director and the founder had given evidence. The founder had sought to blame her former accountant for her tax liabilities. But there was no suggestion that the former accountant had in some way diverted the tax monies to himself. The height of the allegation was that he had not properly advised the founder of her obligations, but the obligation to pay taxes primarily rested with her. The founder had

not explained why the previous company assumed liability for her outstanding personal taxes. She had not made any payment towards her liabilities since [redacted].

Material Facts

41. Having read the documentation submitted, and having listened to the evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:

 41.1. The Appellant is a company that was incorporated on [redacted] It has its registered office at [redacted]

 41.2. The Appellant's directors are [redacted] ("Witness 1") and [redacted] ("the other director"), each of whom hold a 50% shareholding in the Appellant.

 41.3. On [redacted], the Appellant registered for corporation tax, PREM and domestic VAT. On [redacted], the Appellant applied to be registered for intra-EU VAT on the basis that it intended to trade with businesses elsewhere in the EU.

 41.4. A [redacted] has operated from the Appellant's location since [redacted] The [redacted] was established in [redacted] by [redacted] ("the founder"). From [redacted] the founder ran the [redacted] as a sole trader.

 41.5. In [redacted] the founder established a company called [redacted] ("the previous company"). The founder was the sole shareholder of the previous company. [redacted] It appears that the [redacted] business transferred from the sole tradership to the previous company in [redacted]

 41.6. Witness 1 has known the founder [redacted] and joined [redacted] as an employee in [redacted] She continued as an employee of the previous company. She stated that she knew that the founder was in financial difficulty and suggested continuing the [redacted] business under a different operating company.

 41.7. There was no gap in trading between the previous company closing and the Appellant commencing business in [redacted] The [redacted] operates from the same business location. Staff members transferred from the previous company to the Appellant.

41.8. The founder is employed by the Appellant and has the title of [redacted]. The founder is paid more by the Appellant (approximately [redacted] *per annum*) than Witness 1 is (approximately [redacted] *per annum*). The founder is not (formally) a director of the Appellant [redacted] [redacted]

41.9. [redacted]

41.10. The founder has total outstanding tax liabilities of [redacted] for income tax, [redacted] for VAT and [redacted] for PREM. The previous company has total outstanding tax liabilities of [redacted] for PREM and [redacted] for VAT. The previous company assumed liability for some of the founder's personal debts.

41.11. Some repayments were made by the founder and the previous company in respect of the founder's tax liabilities, but no repayments have been made since [redacted] The founder instructed the Appellant's agent to provide details of her tax affairs in the Appellant's outline of arguments submitted to the Commission.

41.12. The founder claimed that her tax debts arose due to negligence/malpractice on the part of her previous accountant. However, she did not allege that her previous accountant misappropriated the unpaid taxes.

41.13. Following the Appellant's application in [redacted] for an intra-EU VAT registration, the Respondent commenced an investigation into the Appellant to ascertain whether it was a "phoenix" company linked to the previous company and the founder's sole tradership.

41.14. On [redacted], officers of the Respondent attended the Appellant's premises. One of the officers asked to speak to the manager and was directed to the founder.

41.15. On 16 April 2025, the Respondent notified the Appellant of its decision to require the Appellant to give security in the amount of €34,289. This amount was calculated based on the T1 sales recorded by the Appellant in [redacted] and [redacted]

41.16. On 4 July 2025, the Appellant appealed against the Respondent's decision to the Commission.

Analysis

42. The first point to make is that the burden of proof in this appeal rests on the Appellant, which must show that the Respondent was incorrect to require it to provide security. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49 ("*Menolly Homes*"), Charleton J stated at paragraph 22 that "*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.*".

43. In his oral submissions at the hearing, the agent for the Appellant contended that the burden did not rest on the Appellant as the appeal was not concerned with an assessment to tax. In making this argument, the Appellant's agent stated that he relied upon the Commission determination 01TACD2022, although he did not open that determination or specify how it supported his argument. The Commissioner has reviewed that determination and does not consider that it provides support to the Appellant's argument. In any event, the Commissioner is obliged to apply the law as interpreted by the superior courts, and he is satisfied that the settled law on tax appeals is as set out in the quotation above from *Menolly Homes*, and reiterated in a number of other judgments, including recently by the Court of Appeal in *JSS v Tax Appeal Commissioner* [2025] IECA 96.

The scope of the review

44. Before considering the facts pertinent to this appeal, it is necessary to consider the extent of the scope of the review that is open to the Commissioner. The Appellant contends that this is a full *de novo* appeal, and that the Commissioner is effectively "at large" to substitute his view on whether security is required, and if so the amount, for the decision of the Respondent. In support of this contention, the Appellant relies on the Commission determination in 163TACD2024, which was also concerned with the requirement to provide security, albeit under a different statutory provision to what is at issue here.

45. Against this, the Respondent argues that the test is whether it acted reasonably, and that the imposition of the requirement to provide security is within its discretion and not within the discretion of the Commissioner. In support of this argument, it seeks to rely on the English Court of Appeal judgment in *John Dee*, as well as a UK VAT Tribunal decision and a decision of the predecessor to the Commission, the Office of the Appeal Commissioners.

46. No judgment of the Irish superior courts has been put before the Commissioner that would create a binding precedent regarding the correct scope of the review to be applied. All of

the cited precedents, whether of the Commission itself or the English decisions, are of persuasive authority only. However, as stated by Costello J in *MMcC v JMcC* [1994] 1 IR 293 at page 303, the decisions of English courts "*should not lightly be ignored*".

47. The Commissioner notes that the preponderance of authorities put before him supports the Respondent's position that a more limited scope of review is applicable in appeals such as this. Furthermore, it is clear that the English Court of Appeal is the most senior of the relevant authorities. The Commissioner considers that it is of particular relevance that the wording of the provision considered in *John Dee* (paragraph 5(2) of Schedule 7 to the Value Added Tax Act 1983[1]) is effectively identical to that of section 109(1) of the VATCA 2010. In all the circumstances, the Commissioner is satisfied that the judgment in *John Dee* should be applied by him in determining the scope of the review to be considered.

48. At page 952 of *John Dee*, Neill LJ concluded his judgment as follows:

> "*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. <u>It seems to me that the 'statutory condition' (as Mr Richards termed it) which the tribunal has to examine in an</u>*

[1] "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."

<u>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</u>." (emphasis added)

49. Therefore, the Commissioner is satisfied that the test to be applied is whether the Respondent acted in a way that was unreasonable, or took into account some irrelevant matter or disregarded something that was relevant, or erred in law. The Commissioner does not have a "*fresh discretion*" to consider the matter *de novo*. Furthermore, the Commissioner finds helpful, and agrees with, the decision of Commissioner Kelly in Appeal Case 151/2009 that:

> "*The issue for determination on appeal was whether, in light of those events and facts, at that time, the inspector had been plainly wrong to have made the decision he in fact made. The Appeal Commissioner held he was not. He said that whilst it may not have been a decision all inspectors would have made in the circumstances, that was not the test. It was a decision which was reasonable in the circumstances… The Appeal Commissioner did indicate, however, that it was still open to the taxpayer to present fresh information to the Revenue Commissioners and to request that the decision to require provision of security be reviewed in the light of such fresh facts. However, he said that it was not open to the Appeal Commissioner, in the appeal, to take those new facts and issues into account and to apply them to the facts pertaining at the time the original decision was made*."

Whether the Respondent's decision was reasonable

50. The Respondent required the Appellant to provide security because it suspected that the Appellant was a 'phoenix' company that had significant links to the previous company established by the founder, as well as her earlier sole tradership. It was also concerned that the founder might be a shadow director of the Appellant. Both the founder personally and the previous company have significant outstanding tax liabilities owed to the Respondent. The Appellant contends that it is a new company, that the founder has no managerial responsibilities within it, and that it has a fully compliant tax record.

51. Oral evidence was heard from three witnesses; Witness 1 was a director of the Appellant and Witnesses 2 and 3 were officers of the Respondent. While no agreed statement of facts was submitted, it seemed to the Commissioner that most of the salient facts were not in dispute, albeit there was little agreement on the conclusions to be drawn from them.

52. In all the circumstances, the Commissioner is satisfied that there were ample grounds for the Respondent's decision to require the Appellant to provide security. He considers the following facts to be of particular relevance in so concluding:

- The Appellant operates from the same premises, and under the same trading name, as the sole tradership established by the founder in [redacted] and as the previous company that had the founder as its sole shareholder.
- The Appellant's two directors are Witness 1 and the other director. [redacted]
- The founder continues to work for the Appellant. While she is not formally a director of the Appellant, [redacted] The founder earns a larger salary from the Appellant than Witness 1.
- [redacted]
- There was no gap in trading between the closure of the previous company and the opening of the Appellant.
- The founder has total outstanding tax liabilities of €[redacted] for income tax, [redacted] for VAT and [redacted] for PREM. The previous company has total outstanding tax liabilities of [redacted] for PREM and [redacted] for VAT. The previous company assumed liability for some of the founder's personal debts. The founder had made no repayments towards her liabilities since [redacted]

53. The Commissioner understands that the above listed facts are not in dispute. Furthermore, he notes and accepts the evidence of Witness 3 that when he called to the Appellant's premises and asked to speak to the manager, he was directed to the founder. While Witness 1 disputed that this was correct, she was not present at the time and therefore her evidence in this respect was hearsay.

54. The Commissioner considers that the facts set out at paragraphs 52 and 53 are more than sufficient to justify the Respondent's decision to require the Appellant to provide security. He is satisfied that the decision was reasonable and was not based on any error of law, and he is further satisfied that the Respondent did not take any irrelevant matters into consideration in reaching its decision.

55. The Appellant, via its agent, had sought to blame the accountant previously retained by the founder for the accrual of the unpaid tax liabilities. While noting the criticism of the former accountant, the Commissioner does not accept that this explains the failure, or mitigates the responsibility, of the founder, and the previous company, to discharge its own tax liabilities. No proper explanation was provided as to why the former accountant, and not the founder or previous company, should be held responsible for the failure to discharge the liabilities. No allegation was made that the former accountant misappropriated the funds of the founder (or the previous company). Rather, the height of the argument appeared to be that the former accountant had failed to adequately notify the founder of her responsibilities. However, the principal responsibility to discharge owed taxes rests with the relevant taxpayer, not his or her agent or representative.

56. The Appellant contended that it had a fully compliant tax record and that this had been disregarded by the Respondent. However, it is important to reiterate that this determination is concerned with the decision of the Respondent as of April 2025. [redacted]

57. The Appellant also criticised the methodology employed by the Respondent in calculating the amount of security due. However, the Commissioner considers that there was nothing unreasonable in the methodology applied by the Respondent. Simply because HMRC in the UK might use a different method of calculation (and it appeared to the Commissioner that the Appellant's agent had not fully set out HMRC's methodology in his submissions in any event) would not be sufficient to demonstrate that the Respondent's methodology was unreasonable.

58. [redacted].

59. In conclusion, the Commissioner determines that the Respondent's decision of April 2025 was reasonable. It is open to the Appellant to continue to engage with the Respondent for the purposes of a review of the position going forward. However, as this appeal is concerned only with the circumstances surrounding the decision as of April 2025, any subsequent developments are not relevant, and the appeal is unsuccessful.

Determination

60. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent's decision of 16 April 2025, requiring the Appellant to provide security in the amount of €34,289, was reasonable and stands.

61. 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

62. 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

63. 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.

Simon Noone
Appeal Commissioner
27 May 2026