



Value Added Tax Act 1994

1994 CHAPTER 23

PART V

APPEALS

82 Appeal tribunals.

- (1) Any reference in this Act to a tribunal is a reference to a tribunal constituted in accordance with Schedule 12, and that Schedule shall have effect generally with respect to appointments to and the procedure and administration of the tribunals.
- (2) The tribunals shall continue to have jurisdiction in relation to matters relating to VAT conferred upon them by this Part of this Act and jurisdiction in relation to matters relating to customs and excise conferred by Chapter II of Part I of the ^{M1}Finance Act 1994.
- (3) Officers and staff may be appointed under section 27 of the ^{M2}Courts Act 1971 (court staff) for carrying out the administrative work of the tribunals in England and Wales.
- (4) The Secretary of State may make available such officers and staff as he may consider necessary for carrying out the administrative work of the tribunals in Scotland.

Marginal Citations

M1 1994 c. 9.

M2 1971 c. 23.

83 Appeals.

Subject to section 84, an appeal shall lie to a tribunal with respect to any of the following matters—

- (a) the registration or cancellation of registration of any person under this Act;

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- (b) the VAT chargeable on the supply of any goods or services, on the acquisition of goods from another member State or, subject to section 84(9), on the importation of goods from a place outside the member States;
- (c) the amount of any input tax which may be credited to a person;
- (d) any claim for a refund under any regulations made by virtue of section 13(5);
- [^{F1}(da) a decision of the Commissioners under section 18A—
 - (i) as to whether or not a person is to be approved as a fiscal warehousekeeper or the conditions from time to time subject to which he is so approved;
 - (ii) for the withdrawal of any such approval; or
 - (iii) for the withdrawal of fiscal warehouse status from any premises;]
- (e) the proportion of input tax allowable under section 26;
- (f) a claim by a taxable person under section 27;
- [^{F2}(fa) a decision contained in a notification under paragraph (4) of article 12A of the Value Added Tax (Payments on Account) Order 1993 that an election under paragraph (1) of that article shall cease to have effect;]
- (g) the amount of any refunds under section 35;
- (h) a claim for a refund under section 36 or section 22 of the 1983 Act;
- (j) the amount of any refunds under section 40;
- [^{F3}(k) the refusal of an application such as is mentioned in section 43B(1) or (2);
- (ka) the giving of a notice under section 43C(1) or (3);]
- (l) the requirement of any security under section 48(7) or paragraph 4(2) of Schedule 11;
- (m) any refusal or cancellation of certification under section 54 or any refusal to cancel such certification;
- (n) any liability to a penalty or surcharge by virtue of any of sections 59 to 69;
- (o) a decision of the Commissioners under section 61 (in accordance with section 61(5));
- (p) an assessment—
 - (i) under section 73(1) or (2) in respect of a period for which the appellant has made a return under this Act; or
 - (ii) under [^{F4}subsections (7), (7A) or (7B)] of that section; or
 - (iii) under section 75;
 or the amount of such an assessment;
- (q) the amount of any penalty, interest or surcharge specified in an assessment under section 76;
- (r) the making of an assessment on the basis set out in section 77(4);
- (s) any liability of the Commissioners to pay interest under section 78 or the amount of interest so payable;
- [^{F5}(sa) an assessment under section 78A(1) or the amount of such an assessment]
- (t) a claim for the repayment of an amount under section 80 [^{F6}an assessment under subsection (4A) of that section or the amount of such an assessment];
- [^{F7}(ta) an assessment under section 80B(1) or the amount of such an assessment]
- (u) any direction or supplementary direction made under paragraph 2 of Schedule 1;
- (v) any direction under paragraph 1 or 2 of Schedule 6 or under paragraph 2 of Schedule 4 to the 1983 Act;

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- (w) any direction under paragraph 1 of Schedule 7;
- [^{F8}(wa) any direction or assessment under Schedule 9A;]
- (x) any refusal to permit the value of supplies to be determined by a method described in a notice published under paragraph 2(6) of Schedule 11;
- (y) any refusal of authorisation or termination of authorisation in connection with the scheme made under paragraph 2(7) of Schedule 11;
- (z) any requirements imposed by the Commissioners in a particular case under paragraph 3(2)(b) of Schedule 11.

Textual Amendments

- F1** S. 83(da) inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 12**; S.I. 1996/1249, **art. 2**
- F2** S. 83(fa) inserted (1.12.1997) by S.I. 1997/2542, **art 2**
- F3** S. 83(k)(ka) substituted (27.7.1999) for s. 83(k) by 1999 c. 16, s. 16, **Sch. 2 para. 3**
- F4** Words in s. 83(p)(ii) substituted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 12**; S.I. 1996/1249, **art. 2**
- F5** S. 83(sa) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. 45(2)(5)
- F6** Words in s. 83(t) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. 47(7)(9)
- F7** S. 83(ta) inserted (19.3.1997) by 1997 c. 16, s. 46(3)
- F8** S. 83(wa) inserted (29.4.1996) by 1996 c. 8, s. 31(3)

Modifications etc. (not altering text)

- C1** S. 83(c) modified (20.10.1995) by S.I. 1995/2518, **regs. 182, 195**

84 Further provisions relating to appeals.

- (1) References in this section to an appeal are references to an appeal under section 83.
 - (2) An appeal shall not be entertained unless the appellant has made all the returns which he was required to make under paragraph 2(1) of Schedule 11 and ^{F9} . . . has paid the amounts shown in those returns as payable by him.
 - (3) Where the appeal is against a decision with respect to any of the matters mentioned in section 83(b), (n), (p) or (q) it shall not be entertained unless—
 - (a) the amount which the Commissioners have determined to be payable as VAT has been paid or deposited with them; or
 - (b) on being satisfied that the appellant would otherwise suffer hardship the Commissioners agree or the tribunal decides that it should be entertained notwithstanding that that amount has not been so paid or deposited.
- [^{F10}(3A) An appeal against an assessment which is a recovery assessment for the purposes of this subsection, or against the amount of such an assessment, shall not be entertained unless—
- (a) the amount notified by the assessment has been paid or deposited with the Commissioners; or
 - (b) on being satisfied that the appellant would otherwise suffer hardship, the Commissioners agree, or the tribunal decides, that the appeal should be

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entertained notwithstanding that that amount has not been so paid or deposited.]

- (4) Subject to subsection (11) below, where—
- (a) there is an appeal against a decision of the Commissioners with respect to, or to so much of any assessment as concerns, the amount of input tax that may be credited to any person or the proportion of input tax allowable under section 26, and
 - (b) that appeal relates, in whole or in part, to any determination by the Commissioners—
 - (i) as to the purposes for which any goods or services were or were to be used by any person, or
 - (ii) as to whether or to what extent the matters to which any input tax was attributable were or included matters other than the making of supplies within section 26(2), and
 - (c) VAT for which, in pursuance of that determination, there is no entitlement to a credit is VAT on the supply, acquisition or importation of something in the nature of a luxury, amusement or entertainment,

the tribunal shall not allow the appeal or, as the case may be, so much of it as relates to that determination unless it considers that the determination is one which it was unreasonable to make or which it would have been unreasonable to make if information brought to the attention of the tribunal that could not have been brought to the attention of the Commissioners had been available to be taken into account when the determination was made.

[^{FII}(4A) Where an appeal is brought against the refusal of an application such as is mentioned in section 43B(1) or (2) on the grounds stated in section 43B(5)(c)—

- (a) the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for refusing the application,
- (b) the refusal shall have effect pending the determination of the appeal, and
- (c) if the appeal is allowed, the refusal shall be deemed not to have occurred.

(4B) Where an appeal is brought against the giving of a notice under section 43C(1) or (3)—

- (a) the notice shall have effect pending the determination of the appeal, and
- (b) if the appeal is allowed, the notice shall be deemed never to have had effect.

(4C) Where an appeal is brought against the giving of a notice under section 43C(1), the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for giving the notice.

(4D) Where—

- (a) an appeal is brought against the giving of a notice under section 43C(3), and
 - (b) the grounds of appeal relate wholly or partly to the date specified in the notice,
- the tribunal shall not allow the appeal in respect of the date unless it considers that the Commissioners could not reasonably have been satisfied that it was appropriate.]

(5) Where, on an appeal against a decision with respect to any of the matters mentioned in section 83(p)—

- (a) it is found that the amount specified in the assessment is less than it ought to have been, and
- (b) the tribunal gives a direction specifying the correct amount,

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the assessment shall have effect as an assessment of the amount specified in the direction, and that amount shall be deemed to have been notified to the appellant.

(6) Without prejudice to section 70, nothing in section 83(q) shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty, interest or surcharge except in so far as it is necessary to reduce it to the amount which is appropriate under sections 59 to 70; and in this subsection “penalty” includes an amount assessed by virtue of section 61(3) or (4)(a).

(7) Where there is an appeal against a decision to make such a direction as is mentioned in section 83(u), the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied as to the matters in subparagraph (2)(a) to (d) of paragraph 2 of Schedule 1 or, as the case may be, [^{F12}that there were grounds for making the direction.]

[^{F13}(7A) Where there is an appeal against a decision to make such a direction as is mentioned in section 83(wa), the cases in which the tribunal shall allow the appeal shall include (in addition to the case where the conditions for the making of the direction were not fulfilled) the case where the tribunal are satisfied, in relation to the relevant event by reference to which the direction was given, that—

- (a) the change in the treatment of the body corporate, or
- (b) the transaction in question,

had as its main purpose or, as the case may be, as each of its main purposes a genuine commercial purpose unconnected with the fulfilment of the condition specified in paragraph 1(3) of Schedule 9A.]

(8) Where on an appeal it is found—

- (a) that the whole or part of any amount paid or deposited in pursuance of subsection (3) above is not due; or
- (b) that the whole or part of any VAT credit due to the appellant has not been paid, so much of that amount as is found not to be due or not to have been paid shall be repaid (or, as the case may be, paid) with interest at such rate as the tribunal may determine; and where the appeal has been entertained notwithstanding that an amount determined by the Commissioners to be payable as VAT has not been paid or deposited and it is found on the appeal that that amount is due, the tribunal may, if it thinks fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.

(9) No appeal shall lie under this section with respect to the subject-matter of any decision which by virtue of section 16 is a decision to which section 14 of the ^{M3}Finance Act 1994 (decisions subject to review) applies unless the decision—

- (a) relates exclusively to one or both of the following matters, namely whether or not section 30(3) applies in relation to the importation of the goods in question and (if it does not) the rate of tax charged on those goods; and
- (b) is not one in respect of which notice has been given to the Commissioners under section 14 of that Act requiring them to review it.

(10) Where an appeal is against a decision of the Commissioners which depended upon a prior decision taken by them in relation to the appellant, the fact that the prior decision is not within section 83 shall not prevent the tribunal from allowing the appeal on the ground that it would have allowed an appeal against the prior decision.

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- (11) Subsection (4) above shall not apply in relation to any appeal relating to the input tax that may be credited to any person at the end of a prescribed accounting period beginning before 27th July 1993.

Textual Amendments

- F9** Words in s. 84(2) repealed (1.5.1995 with effect as mentioned in s. 31 of the amending Act) by 1995 c. 4, ss. 31, 162, Sch. 29 Pt. VI(4) Note
- F10** S. 84(3A) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. 45(3)(5)
- F11** S. 84(4A)-(4D) inserted (27.7.1999) by 1999 c. 16, s. 16, Sch. 2 para. 4
- F12** Words in s. 84(7) substituted (19.3.1997 with effect as mentioned in s. 31(4) of the amending Act) by 1997 c. 16, s. 31(3)(4)
- F13** S. 84(7A) inserted (29.4.1996) by 1996 c. 8, s. 31(4)

Marginal Citations

- M3** 1994 c. 9.

85 Settling appeals by agreement.

- (1) Subject to the provisions of this section, where a person gives notice of appeal under section 83 and, before the appeal is determined by a tribunal, the Commissioners and the appellant come to an agreement (whether in writing or otherwise) under the terms of which the decision under appeal is to be treated—
- as upheld without variation, or
 - as varied in a particular manner, or
 - as discharged or cancelled,
- the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, a tribunal had determined the appeal in accordance with the terms of the agreement (including any terms as to costs).
- (2) Subsection (1) above shall not apply where, within 30 days from the date when the agreement was come to, the appellant gives notice in writing to the Commissioners that he desires to repudiate or resile for the agreement.
- (3) Where an agreement is not in writing—
- the preceding provisions of this section shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the Commissioners to the appellant or by the appellant to the Commissioners, and
 - references in those provisions to the time when the agreement was come to shall be construed as references to the time of the giving of that notice of confirmation.
- (4) Where—
- a person who has given a notice of appeal notifies the Commissioners, whether orally or in writing, that he desires not to proceed with the appeal; and
 - 30 days have elapsed since the giving of the notification without the Commissioners giving to the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn,

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the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and the Commissioners had come to an agreement, orally or in writing, as the case may be, that the decision under appeal should be upheld without variation.

- (5) References in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal.

Modifications etc. (not altering text)

- C2** S. 85 amended (28.7.2000) by 2000 c. 17, s. 30, Sch. 6 para. 123(7)
S. 85 amended (11.5.2001) by 2001 c. 9, s. 42(7)
C3 S. 85 extended (29.4.1996) by 1996 c. 8, s. 57(a)

86 Appeals to Court of Appeal.

- (1) The Lord Chancellor may by order provide that—
- (a) in such classes of appeal as may be prescribed by the order, and
 - (b) subject to the consent of the parties and to such other conditions as may be so prescribed,
- an appeal from a tribunal shall lie to the Court of Appeal.
- (2) An order under this section may provide that section 11 of the ^{M4}Tribunals and Inquiries Act 1992 (which provides for appeals to the High Court from a tribunal) shall have effect, in relation to any appeal to which the order applies, with such modifications as may be specified in the order.
- (3) This section does not extend to Scotland.

Marginal Citations

- M4** 1992 c. 53.

^{F14}87 Enforcement of registered or recorded tribunal decisions etc.

- (1) If the decision of a tribunal in England and Wales on an appeal under section 83 is registered by the Commissioners in accordance with rules of court, payment of—
- (a) any amount which, as a result of the decision, is, or is recoverable as, VAT due from any person, and
 - (b) any costs awarded to the Commissioners by the decision,
- may be enforced by the High Court as if that amount or, as the case may be, the amount of those costs were an amount due to the Commissioners in pursuance of a judgment or order of the High Court.
- (2) If the decision of a tribunal in Scotland on an appeal under section 83—
- (a) confirms or varies an amount which is, or is recoverable as, VAT due from any person, or
 - (b) awards costs to the Commissioners,

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the decision may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.

- (3) Subsection (4) below shall apply in relation to the decision of a tribunal in Northern Ireland on an appeal under section 83 where—
- (a) any amount is, or is recoverable as, VAT due from any person, as a result of the decision, whether with or without an award of costs to the Commissioners; or
 - (b) any costs are awarded to the Commissioners by the decision.
- (4) Where this subsection applies—
- (a) payment of the amount mentioned in paragraph (a) of subsection (3) above or, as the case may be, the amount of the costs mentioned in paragraph (b) of that subsection may be enforced by the Enforcement of Judgments Office; and
 - (b) a sum equal to any such amount shall be deemed to be payable under a money judgment within the meaning of Article 2(2) of the ^{M5}Judgments Enforcement (Northern Ireland) Order 1981, and the provisions of that Order shall apply accordingly.
- (5) Any reference in this section to a decision of a tribunal includes a reference to an order (however described) made by a tribunal for giving effect to a decision.

Textual Amendments

F14 S. 87 extended (29.4.1996) by 1996 c. 8, s. 57(b)

Modifications etc. (not altering text)

C4 S. 87 amended (28.7.2000) by 2000 c. 17, s. 30, Sch. 6 para. 123(7)
S. 87 amended (11.5.2001) by 2001 c. 9, s. 42(7)

Marginal Citations

M5 S.I.1981/226 (N.I.6).

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