



Value Added Tax Act 1994

1994 CHAPTER 23

PART V

[^{F1}REVIEWS AND APPEALS]

Textual Amendments

- F1** Pt. V heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 217](#)

Modifications etc. (not altering text)

- C1** Pt. V applied (with modifications) (15.12.2007) by [The Money Laundering Regulations 2007 \(S.I. 2007/2157\)](#), regs. 1(1), 44(3), [Sch. 5 para. 1](#)
- C2** Pt. V applied (with modifications) (15.12.2007) by [The Transfer of Funds \(Information on the Payer\) Regulations 2007 \(S.I. 2007/3298\)](#), regs. 1(1), 13(4), [Sch. 2 para. 2](#)
- C3** Pt. V applied (with modifications) by S.I. 2007/2157, reg. 43(3) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 172\(4\)](#))
- C4** Pt. V modified by S.I. 2007/2157, Sch. 5 para. 1 (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 175](#))
- C5** Pt. V modified by S.I. 2007/3298, Sch. 2 para. 2 (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 181](#))
- C6** Pt. V applied (with modifications) by S.I. 2007/3298, reg. 12(2) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 178\(4\)](#))

[^{F282} **Meaning of “tribunal”**

In this Act “tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.]

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Part V. (See end of Document for details)

Textual Amendments

- F2** S. 82 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 218**

83 Appeals.

- [^{F3}(1)] Subject to [^{F4}sections 83G and 84], an appeal shall lie to [^{F5}the tribunal] with respect to any of the following matters—
- (a) the registration or cancellation of registration of any person under this Act;
 - (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);
 - [^{F6}(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;
 - [^{F7}(fza) a decision of the Commissioners—
 - (i) refusing or withdrawing authorisation for a person's liability to pay VAT (or entitlement to credit for VAT) to be determined as mentioned in subsection (1) of section 26B;
 - (ii) as to the appropriate percentage or percentages (within the meaning of that section) applicable in a person's case.]
 - [^{F8}(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;
 - [^{F9}(ha) any decision of the Commissioners to refuse to make a repayment under a scheme under section 39;]
 - (j) the amount of any refunds under section 40;
 - [^{F10}(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 [^{F11}paragraph 4(1A) or (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 [^{F12}59 to [^{F13}69B]];
 - (o) a decision of the Commissioners under section 61 (in accordance with section 61(5));

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- (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 [^{F14}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);
 - [^{F15}(ra) any liability arising by virtue of section 77A;]
 - (s) any liability of the Commissioners to pay interest under section 78 or the amount of interest so payable;
 - [^{F16}(sa) an assessment under section 78A(1) or the amount of such an assessment]
 - (t) a claim for the [^{F17}crediting or] repayment of an amount under section 80 [^{F18}an assessment under subsection (4A) of that section or the amount of such an assessment];
 - [^{F19}(ta) an assessment under section 80B(1) [^{F20}or (1B)] 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 [^{F21}, 1A] or 2 of Schedule 6 or under paragraph 2 of Schedule 4 to the 1983 Act;
 - (w) any direction under paragraph 1 of Schedule 7;
 - [^{F22}(wa) any direction or assessment under Schedule 9A;]
 - [^{F23}(wb) any refusal of the Commissioners to grant any permission under, or otherwise to exercise in favour of a particular person any power conferred by, any provision of Part 1 of Schedule 10;]
 - (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;
 - [^{F24}(z) any conditions imposed by the Commissioners in a particular case by virtue of paragraph 2B(2)(c) or 3(1) of Schedule 11.]
 - [^{F25}(zza) a direction under paragraph 6A of Schedule 11;]
 - [^{F26}(zz)
 - [^{F27}(za) a direction under paragraph 8 of Schedule 11A,
 - (zb) any liability to a penalty under paragraph 10(1) of Schedule 11A, any assessment under paragraph 12(1) of that Schedule or the amount of such an assessment;]
 - [^{F28}(zc) a decision of the Commissioners about the application of regulations under section 135 of the Finance Act 2002 (mandatory electronic filing of returns) in connection with VAT (including, in particular, a decision as to whether a requirement of the regulations applies and a decision to impose a penalty);]
- [^{F29}(2) In the following provisions of this Part, a reference to a decision with respect to which an appeal under this section lies, or has been made, includes any matter listed in subsection (1) whether or not described there as a decision.]

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Part V. (See end of Document for details)

Textual Amendments

- F3** S. 83 renumbered as s. 83(1) (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 219(2)**
- F4** Words in s. 83(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 219(3)**
- F5** Words in s. 83(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 219(4)**
- F6** 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**
- F7** S. 83(fza) inserted (retrospective to 24.4.2002) by [Finance Act 2002 \(c. 23\)](#), s. **23(2)(4)**
- F8** S. 83(fa) inserted (1.12.1997) by S.I. 1997/2542, **art 2**
- F9** [S. 83\(1\)\(ha\)](#) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), s. **77(4)**
- F10** S. 83(k)(ka) substituted (27.7.1999) for s. 83(k) by 1999 c. 16, s. 16, **Sch. 2 para. 3**
- F11** Words in s. 83(l) substituted (retrospective to 10.4.2003) by [Finance Act 2003 \(c. 14\)](#), s. **17(6)(8)**
- F12** Words in s. 83(n) substituted (28.7.2000) by 2000 c. 17, s. **137(5)**
- F13** Word in s. 83(n) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. **21(4)(a)**
- F14** 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**
- F15** S. 83(ra) inserted (retrospective to 10.4.2003) by [Finance Act 2003 \(c. 14\)](#), s. **18(2)(4)**
- F16** S. 83(sa) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. **45(2)(5)**
- F17** Words in s. 83(t) inserted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. **4(5)(a)**
- F18** Words in s. 83(t) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. **47(7)(9)**
- F19** S. 83(ta) inserted (19.3.1997) by 1997 c. 16, s. **46(3)**
- F20** Words in s. 83(ta) inserted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. **4(5)(b)**
- F21** Words in s. 83(v) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. **22(3)**
- F22** S. 83(wa) inserted (29.4.1996) by 1996 c. 8, s. **31(3)**
- F23** S. 83(wb) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Value Added Tax \(Buildings and Land\) Order 2008 \(S.I. 2008/1146\)](#), arts. 1(1), **3(2)** (with Sch. 2)
- F24** S. 83(z) substituted (1.12.2003) by [Finance Act 2002 \(c. 23\)](#), s. **24(4)(b)(5)**; S.I. 2003/3043, art. 2
- F25** S. 83(zza) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. **21(4)(b)**
- F26** S. 83(zz) omitted (15.12.2007) by virtue of [The Money Laundering Regulations 2007 \(S.I. 2007/2157\)](#), reg. 1(1), **Sch. 6 para. 1**
- F27** S. 83(za)(zb) inserted (22.7.2004 for specified purposes, 1.8.2004 in so far as not already in force) by [Finance Act 2004 \(c. 12\)](#), s. 19(2), **Sch. 2 para. 4**; S.I. 2004/1934, art. 2
- F28** S. 83(zc) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), s. **93(8)**
- F29** S. 83(2) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 219(5)**

Modifications etc. (not altering text)

- C7** S. 83(c) modified (20.10.1995) by S.I. 1995/2518, **regs. 182, 195**

[^{F30}83A Offer of review

- (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under section 83 in respect of the decision.

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Part V. (See end of Document for details)

- (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
- (3) This section does not apply to the notification of the conclusions of a review.

Textual Amendments

F30 Ss. 83A-83G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 220**

83B Right to require review

- (1) Any person (other than P) who has the right of appeal under section 83 against a decision may require HMRC to review that decision if that person has not appealed to the tribunal under section 83G.
- (2) A notification that such a person requires a review must be made within 30 days of that person becoming aware of the decision.

Textual Amendments

F30 Ss. 83A-83G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 220**

83C Review by HMRC

- (1) HMRC must review a decision if—
 - (a) they have offered a review of the decision under section 83A, and
 - (b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.
- (2) But P may not notify acceptance of the offer if P has already appealed to the tribunal under section 83G.
- (3) HMRC must review a decision if a person other than P notifies them under section 83B.
- (4) HMRC shall not review a decision if P, or another person, has appealed to the tribunal under section 83G in respect of the decision.

Textual Amendments

F30 Ss. 83A-83G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 220**

83D Extensions of time

- (1) If under section 83A HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.

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Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Part V. (See end of Document for details)

- (2) If under section 83B another person may require HMRC to review a matter, HMRC may within the relevant period notify the other person that the relevant period is extended.
- (3) If notice is given the relevant period is extended to the end of 30 days from—
- (a) the date of the notice, or
 - (b) any other date set out in the notice or a further notice.
- (4) In this section “relevant period” means—
- (a) the period of 30 days referred to in—
 - (i) section 83C(1)(b) (in a case falling within subsection (1)), or
 - (ii) section 83B(2) (in a case falling within subsection (2)), or
 - (b) if notice has been given under subsection (1) or (2), that period as extended (or as most recently extended) in accordance with subsection (3).

Textual Amendments

F30 Ss. 83A-83G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 220**

83E Review out of time

- (1) This section applies if—
- (a) HMRC have offered a review of a decision under section 83A and P does not accept the offer within the time allowed under section 83C(1)(b) or 83D(3); or
 - (b) a person who requires a review under section 83B does not notify HMRC within the time allowed under that section or section 83D(3).
- (2) HMRC must review the decision under section 83C if—
- (a) after the time allowed, P, or the other person, notifies HMRC in writing requesting a review out of time,
 - (b) HMRC are satisfied that P, or the other person, had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
 - (c) HMRC are satisfied that P, or the other person, made the request without unreasonable delay after the excuse had ceased to apply.
- (3) HMRC shall not review a decision if P, or another person, has appealed to the tribunal under section 83G in respect of the decision.

Textual Amendments

F30 Ss. 83A-83G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 220**

83F Nature of review etc

- (1) This section applies if HMRC are required to undertake a review under section 83C or 83E.

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- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
- (3) For the purpose of subsection (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—
 - (a) by HMRC in reaching the decision, and
 - (b) by any person in seeking to resolve disagreement about the decision.
- (4) The review must take account of any representations made by P, or the other person, at a stage which gives HMRC a reasonable opportunity to consider them.
- (5) The review may conclude that the decision is to be—
 - (a) upheld,
 - (b) varied, or
 - (c) cancelled.
- (6) HMRC must give P, or the other person, notice of the conclusions of the review and their reasoning within—
 - (a) a period of 45 days beginning with the relevant date, or
 - (b) such other period as HMRC and P, or the other person, may agree.
- (7) In subsection (6) “relevant date” means—
 - (a) the date HMRC received P’s notification accepting the offer of a review (in a case falling within section 83A), or
 - (b) the date HMRC received notification from another person requiring review (in a case falling within section 83B), or
 - (c) the date on which HMRC decided to undertake the review (in a case falling within section 83E).
- (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in subsection (6), the review is to be treated as having concluded that the decision is upheld.
- (9) If subsection (8) applies, HMRC must notify P or the other person of the conclusion which the review is treated as having reached.

Textual Amendments

F30 Ss. 83A-83G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 220](#)

83G Bringing of appeals

- (1) An appeal under section 83 is to be made to the tribunal before—
 - (a) the end of the period of 30 days beginning with—
 - (i) in a case where P is the appellant, the date of the document notifying the decision to which the appeal relates, or
 - (ii) in a case where a person other than P is the appellant, the date that person becomes aware of the decision, or
 - (b) if later, the end of the relevant period (within the meaning of section 83D).

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- (2) But that is subject to subsections (3) to (5).
- (3) In a case where HMRC are required to undertake a review under section 83C—
- (a) an appeal may not be made until the conclusion date, and
 - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (4) In a case where HMRC are requested to undertake a review in accordance with section 83E—
- (a) an appeal may not be made—
 - (i) unless HMRC have decided whether or not to undertake a review, and
 - (ii) if HMRC decide to undertake a review, until the conclusion date; and
 - (b) any appeal is to be made within the period of 30 days beginning with—
 - (i) the conclusion date (if HMRC decide to undertake a review), or
 - (ii) the date on which HMRC decide not to undertake a review.
- (5) In a case where section 83F(8) applies, an appeal may be made at any time from the end of the period specified in section 83F(6) to the date 30 days after the conclusion date.
- (6) An appeal may be made after the end of the period specified in subsection (1), (3)(b), (4)(b) or (5) if the tribunal gives permission to do so.
- (7) In this section “conclusion date” means the date of the document notifying the conclusions of the review.]

Textual Amendments

F30 Ss. 83A-83G inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 220](#)

84 Further provisions relating to appeals.

- (1) References in this section to an appeal are references to an appeal under section 83.

^{F31}(2)

[^{F32}(3) Subject to subsections (3B) and (3C), where the appeal is against a decision with respect to any of the matters mentioned in section 83(1)(b), (n), (p), (q), (ra) or (zb), it shall not be entertained unless the amount which HMRC have determined to be payable as VAT has been paid or deposited with them.]

[^{F33}(3A) Subject to subsections (3B) and (3C), where the appeal is against an assessment which is a recovery assessment for the purposes of this subsection, or against the amount of such an assessment, it shall not be entertained unless the amount notified by the assessment has been paid or deposited with HMRC.]

[^{F34}(3B) In a case where the amount determined to be payable as VAT or the amount notified by the recovery assessment has not been paid or deposited an appeal shall be entertained if—

- (a) HMRC are satisfied (on the application of the appellant), or
- (b) the tribunal decides (HMRC not being so satisfied and on the application of the appellant),

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that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship.

(3C) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007, the decision of the tribunal as to the issue of hardship is final.]

(4) Subject to subsection (11) below, where—

- (a) there is an appeal against a decision of [F³⁵HMRC] 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 [F³⁵HMRC]—
 - (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 [F³⁵HMRC] had been available to be taken into account when the determination was made.

[F³⁶(4ZA) Where an appeal is brought—

- (a) against such a decision as is mentioned in section [F³⁷83(1)](fza), or
- (b) to the extent that it is based on such a decision, against an assessment,

the tribunal shall not allow the appeal unless it considers that [F³⁸HMRC] could not reasonably have been satisfied that there were grounds for the decision.]

[F³⁹(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 [F⁴⁰HMRC] 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 [F⁴¹HMRC] 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,

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the tribunal shall not allow the appeal in respect of the date unless it considers that [F42HMRC] could not reasonably have been satisfied that it was appropriate.]

[F43(4E) Where an appeal is brought against a requirement imposed under paragraph 4(2)(b) of Schedule 11 that a person give security, the tribunal shall allow the appeal unless [F44HMRC satisfies] the tribunal that—

- (a) there has been an evasion of, or an attempt to evade, VAT in relation to goods or services supplied to or by that person, or
- (b) it is likely, or without the requirement for security it is likely, that VAT in relation to such goods or services will be evaded.

(4F) A reference in subsection (4E) above to evading VAT includes a reference to obtaining a VAT credit that is not due or a VAT credit in excess of what is due.]

(5) Where, on an appeal against a decision with respect to any of the matters mentioned in section [F4583(1)](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,

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 [F4683(1)](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).

[F47(6A) Without prejudice to section 70, nothing in section [F4883(1)](zb) shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 11 of Schedule 11A.]

[F49(6B) Nothing in section [F5083(1)](zc) shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty except in so far as it is necessary to reduce it to the amount which is appropriate under regulations made under section 135 of the Finance Act 2002.]

(7) Where there is an appeal against a decision to make such a direction as is mentioned in section [F5183(1)](u), the tribunal shall not allow the appeal unless it considers that [F52HMRC] 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, [F53that there were grounds for making the direction.]

[F54(7A) Where there is an appeal against a decision to make such a direction as is mentioned in section [F5583(1)](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.]

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[^{F56}(7ZA) Where there is an appeal against such a refusal as is mentioned in section [^{F57}83(1)](wb)—

- (a) the tribunal shall not allow the appeal unless it considers that [^{F58}HMRC] could not reasonably have been satisfied that there were grounds for the refusal, and
- (b) the refusal shall have effect pending the determination of the appeal.]

[^{F59}(7B) Where there is an appeal against a decision to make such a direction as is mentioned in section [^{F60}83(1)](zza)—

- (a) the tribunal shall not allow the appeal unless it considers that [^{F61}HMRC] could not reasonably have been satisfied that there were grounds for making the direction;
- (b) the direction shall have effect pending the determination of the appeal.]

^{F62}(8)

(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 [^{F63}or 15A] of the ^{M1}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 [^{F64}HMRC] under section 14 of that Act requiring them to review it [^{F65}and]

[^{F66}(c) a review is not being undertaken following a request under section 14A of that Act; and

(d) a review is not being undertaken under section 15 of that Act as a consequence of section 15B(3), 15C(3) or 15E(3) of that Act].

(10) Where an appeal is against [^{F67}an HMRC decision] which depended upon a prior decision taken ^{F68}... 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.

(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

- F31** S. 84(2) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 221(2)**
- F32** S. 84(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 221(3)**
- F33** S. 84(3A) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 221(4)**
- F34** S. 84(3B)(3C) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 221(5)**
- F35** Word in s. 84(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 221(6)**
- F36** S. 84(4ZA) inserted (retrospective to 24.4.2002) by [Finance Act 2002 \(c. 23\)](#), **s. 23(3)(4)**
- F37** Word in s. 84(4ZA)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 221(8)**

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- F38** Word in s. 84(4ZA) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(7)**
- F39** S. 84(4A)-(4D) inserted (27.7.1999) by 1999 c. 16, s. 16, **Sch. 2 para. 4**
- F40** Word in s. 84(4A)(a) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(7)**
- F41** Word in s. 84(4C) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(7)**
- F42** Word in s. 84(4D) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(7)**
- F43** S. 84(4E)(4F) inserted (retrospective to 10.4.2003) by Finance Act 2003 (c. 14), s. 17(7)(8)
- F44** Words in s. 84(4E) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(9)**
- F45** Word in s. 84(5) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(8)**
- F46** Word in s. 84(6) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(8)**
- F47** S. 84(6A) inserted (22.7.2004 for specified purposes, 1.8.2004 in so far as not already in force) by Finance Act 2004 (c. 12), s. 19(2), **Sch. 2 para. 5(3)**; S.I. 2004/1934, art. 2
- F48** Word in s. 84(6A) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(8)**
- F49** S. 84(6B) inserted (19.7.2007) by Finance Act 2007 (c. 11), s. 93(9)
- F50** Word in s. 84(6B) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(8)**
- F51** Word in s. 84(7) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(8)**
- F52** Word in s. 84(7) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(7)**
- F53** 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)
- F54** S. 84(7A) inserted (29.4.1996) by 1996 c. 8, s. 31(4)
- F55** Word in s. 84(7A) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(8)**
- F56** S. 84(7ZA) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by The Value Added Tax (Buildings and Land) Order 2008 (S.I. 2008/1146), arts. 1(1), 3(3) (with Sch. 2)
- F57** Word in s. 84(7ZA) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(8)**
- F58** Word in s. 84(7ZA) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(7)**
- F59** S. 84(7B) inserted (19.7.2006) by Finance Act 2006 (c. 25), s. 21(5)
- F60** Word in s. 84(7B) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(8)**
- F61** Word in s. 84(7B) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(7)**
- F62** S. 84(8) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(10)** (with Sch. 3 para. 9(2)(a))
- F63** Words in s. 84(9) added (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(11)(a)**
- F64** Word in s. 84(9)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(11)(b)**
- F65** Word in s. 84(9)(b) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(11)(c)**
- F66** S. 84(9)(c)(d) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 221(11)(d)**

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- F67** Words in s. 84(10) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 221(12)(a)**
- F68** Words in s. 84(10) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 221(12)(b)**

Marginal Citations

- M1** 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, [F69HMRC] 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 ^{F70}....
- (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 [F69HMRC] 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 [F69HMRC] to the appellant or by the appellant to [F69HMRC], 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 [F69HMRC], 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 [F69HMRC] giving to the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn,
- the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and [F69HMRC] 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.

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Textual Amendments

- F69** Word in s. 85 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 222(3)**
- F70** Words in s. 85(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 222(2)**

Modifications etc. (not altering text)

- C8** 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\(7\)](#)
- C9** S. 85 extended (29.4.1996) by [1996 c. 8, s. 57\(a\)](#)
- C10** S. 85 modified (27.11.2003) by [Finance Act 2003 \(c. 14\)](#), ss. 24(7), **37(1)**; [S.I. 2003/2985](#), art. 2
- C11** S. 85 modified (23.12.2003) by [Export \(Penalty\) Regulations 2003 \(S.I. 2003/3102\)](#), regs. 1, **13(1)**
- C12** S. 85 modified by [1994 c. 9, s. 60\(10\)](#) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 207(12)**)
- C13** S. 85 modified by [1994 c. 9, s. 16\(3B\)](#) (as inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(6)**)
- C14** S. 85 applied (with modifications) by [2008 c. 28, Sch. 7 para. 26\(6\)](#) (as substituted (1.4.2009) by [The Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 2(4)**)
- C15** S. 85 modified by [S.I. 2007/1509](#), reg. 5 (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 165**)
- C16** S. 85 modified by [S.I. 2003/3102](#), reg. 13 (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 126**)
- C17** S. 85 modified by [2003 c. 14, s. 37](#) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 366**)
- C18** S. 85 modified by [1996 c. 8, s. 56\(8\)](#) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 237(8)**)
- C19** S. 85 modified by [2000 c. 17, Sch. 6 para. 123\(7\)](#) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 291(9)**)
- C20** S. 85 modified by [2001 c. 9, s. 42\(7\)](#) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(9)**)

[^{F71}85A Payment of tax on determination of appeal

- (1) This section applies where the tribunal has determined an appeal under section 83.
- (2) Where on the appeal the tribunal has determined that—
 - (a) the whole or part of any disputed amount paid or deposited is not due, or
 - (b) the whole or part of any VAT credit due to the appellant has not been paid,
 so much of that amount, or of that credit, as the tribunal determines not to be due or not to have been paid shall be paid or repaid with interest at the rate applicable under section 197 of the Finance Act 1996.
- (3) Where on the appeal the tribunal has determined that—
 - (a) the whole or part of any disputed amount not paid or deposited is due, or
 - (b) the whole or part of any VAT credit paid was not payable,
 so much of that amount, or of that credit, as the tribunal determines to be due or not payable shall be paid or repaid to HMRC with interest at the rate applicable under section 197 of the Finance Act 1996.

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- (4) Interest under subsection (3) shall be paid without any deduction of income tax.
- (5) Nothing in this section requires HMRC to pay interest—
 - (a) on any amount which falls to be increased by a supplement under section 79 (repayment supplement in respect of certain delayed payments or refunds); or
 - (b) where an amount is increased under that section, on so much of the increased amount as represents the supplement.

Textual Amendments

F71 Ss. 85A, 85B inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 223**

85B Payment of tax where there is a further appeal

- (1) Where a party makes a further appeal, notwithstanding that the further appeal is pending, value added tax or VAT credits, or a credit of overstated or overpaid value added tax shall be payable or repayable in accordance with the determination of the tribunal or court against which the further appeal is made.
- (2) But if the amount payable or repayable is altered by the order or judgment of the tribunal or court on the further appeal—
 - (a) if too much value added tax has been paid or the whole or part of any VAT credit due to the appellant has not been paid the amount overpaid or not paid shall be refunded with such interest, if any, as the tribunal or court may allow; and
 - (b) if too little value added tax has been charged or the whole or part of any VAT credit paid was not payable so much of the amount as the tribunal or court determines to be due or not payable shall be due or repayable, as appropriate, at the expiration of a period of thirty days beginning with the date on which HMRC issue to the other party a notice of the total amount payable in accordance with the order or judgment of that tribunal or court.
- (3) If, on the application of HMRC, the relevant tribunal or court considers it necessary for the protection of the revenue, subsection (1) shall not apply and the relevant tribunal or court may—
 - (a) give permission to withhold any payment or repayment; or
 - (b) require the provision of adequate security before payment or repayment is made.
- (4) If, on the application of the original appellant, HMRC are satisfied that financial extremity might be reasonably expected to result if payment or repayment is required or withheld as appropriate, HMRC may do one or more of the things listed in subsection (6).
- (5) If on the application of the original appellant, the relevant tribunal or court decides that—
 - (a) the original appellant has applied to HMRC under subsection (4),
 - (b) HMRC have decided that application,
 - (c) financial extremity might be reasonably expected to result from that decision by HMRC,

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the relevant tribunal or court may replace, vary or supplement the decision by HMRC by doing one or more of the things listed in subsection (6).

- (6) These are the things which HMRC or the relevant tribunal or court may do under subsection (4) or (5)—
- (a) decide how much, if any, of the amount under appeal should be paid or repaid as appropriate,
 - (b) require the provision of adequate security from the original appellant,
 - (c) stay the requirement to pay or repay under subsection (1).
- (7) Subsections (3) to (6) cease to have effect when the further appeal has been determined.
- (8) In this section—
- “adequate security” means security that is of such amount and given in such manner—
- (a) as the tribunal or court may determine (in a case falling within subsection (3) or (5)), or
 - (b) as HMRC consider adequate to protect the revenue (in a case falling within subsection (4));
- “further appeal” means an appeal against—
- (a) the tribunal’s determination of an appeal under section 83, or
 - (b) a decision of the Upper Tribunal or a court that arises (directly or indirectly) from that determination;
- “original appellant” means the person who made the appeal to the tribunal under section 83;
- “relevant tribunal or court” means the tribunal or court from which permission or leave to appeal is sought.]

Textual Amendments

F71 Ss. 85A, 85B inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 223**

Modifications etc. (not altering text)

- C21** S. 85B excluded (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 3 para. 10**
- C22** S. 85B modified by 1994 c. 9, s. 16(3B) (as inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 203(6)**)
- C23** S. 85B modified by 1994 c. 9, s. 60(10) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 207(12)**)
- C24** S. 85B modified by 1996 c. 8, s. 56(8) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 237(8)**)
- C25** S. 85B modified by 2000 c. 17, Sch. 6 para. 123(7) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 291(9)**)
- C26** S. 85B modified by 2001 c. 9, s. 42(7) (as substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 306(9)**)

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^{F72}**86 Appeals to Court of Appeal.**

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Textual Amendments

F72 S. 86 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 224](#)

^{F73}**87 Enforcement of registered or recorded tribunal decisions etc.**

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Textual Amendments

F73 S. 87 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 224](#)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Value Added Tax Act 1994, Part V.