



Value Added Tax Act 1994

1994 CHAPTER 23

PART V

APPEALS

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 ^{F1} . . . 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) [^{F2}, (q) [^{F3}, (ra) or (zb)]] 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.

[^{F4}(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 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

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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.

[^{F5}(4ZA) Where an appeal is brought—

- (a) against such a decision as is mentioned in section 83(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 the Commissioners could not reasonably have been satisfied that there were grounds for the decision.]

[^{F6}(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.]

[^{F7}(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 the Commissioners satisfy 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

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- (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 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,
- 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).
- [^{F8}(6A) Without prejudice to section 70, nothing in section 83(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.]
- [^{F9}(6B) Nothing in section 83(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 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, [^{F10}that there were grounds for making the direction.]
- [^{F11}(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.]
- [^{F12}(7B) Where there is an appeal against a decision to make such a direction as is mentioned in section 83(zza)—
- (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 making the direction;
- (b) the direction shall have effect pending the determination of the appeal.]

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- (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 ^{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 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.
- (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

- F1** 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
- F2** Words in s. 84(3) substituted (with application in accordance with s. 18(4) of the amending Act) by **Finance Act 2003 (c. 14), s. 18(3)**
- F3** Words in s. 84(3) substituted (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(2)**; S.I. 2004/1934, art. 2
- F4** S. 84(3A) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. 45(3)(5)
- F5** S. 84(4ZA) inserted (retrospective to 24.4.2002) by **Finance Act 2002 (c. 23), s. 23(3)(4)**
- F6** S. 84(4A)-(4D) inserted (27.7.1999) by 1999 c. 16, s. 16, **Sch. 2 para. 4**
- F7** S. 84(4E)(4F) inserted (retrospective to 10.4.2003) by **Finance Act 2003 (c. 14), s. 17(7)(8)**
- F8** 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
- F9** S. 84(6B) inserted (19.7.2007) by **Finance Act 2007 (c. 11), s. 93(9)**
- F10** 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)
- F11** S. 84(7A) inserted (29.4.1996) by 1996 c. 8, s. 31(4)
- F12** S. 84(7B) inserted (19.7.2006) by **Finance Act 2006 (c. 25), s. 21(5)**

Marginal Citations

- M1** 1994 c. 9.

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