



Finance Act 2003

2003 CHAPTER 14

PART 3

TAXES AND DUTIES ON IMPORTATION AND EXPORTATION: PENALTIES

[^{F1}Appeals and reviews]

Textual Amendments

- F1** S. 33 crossheading 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. 362](#) (with Sch. 3 paras. 2-4)

33 **[^{F2}Right to appeal against certain decisions]**

- (1) If, in the case of any relevant tax or duty, [^{F3}HMRC] give a person or his representative a notice informing him—
- (a) that they have decided that the person has engaged in conduct by which he contravenes a relevant rule, and
 - (b) that the person is, in consequence, liable to a penalty under section 26, but
 - (c) that they do not propose to give a demand notice in respect of the penalty,
- the person or his representative may [^{F4}make an appeal to an appeal tribunal in respect of] the decision mentioned in paragraph (a).
- (2) Where [^{F5}HMRC] give a demand notice to a person or his representative, the person or his representative may [^{F6}make an appeal to an appeal tribunal in respect of] —
- (a) their decision that the person is liable to a penalty under section 25 or 26, or
 - (b) their decision as to the amount of the liability.
- (3) Where [^{F7}HMRC] give a notice under section 28 to a body corporate and to a relevant officer—

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- (a) subsection (2) does not apply to any demand notice given in respect of the liability of either of them to a penalty under this Part in respect of the conduct in question, but
 - (b) subsections (4) and (5) have effect instead in relation to any such demand notice.
- (4) Where [^{F8}HMRC] give a demand notice to the relevant officer or his representative for a penalty which corresponds to the portion of the basic penalty specified in the notice under section 28, the relevant officer or his representative may [^{F9} make an appeal to an appeal tribunal in respect of] —
- (a) their decision that the conduct of the body corporate referred to in section 28(1)(b) is, in whole or in part, attributable to the relevant officer's dishonesty, or
 - (b) their decision as to the portion of the basic penalty which the [^{F10}HMRC] are seeking to recover from the relevant officer or his representative.
- (5) Where [^{F11}HMRC] give a demand notice to the body corporate or its representative for so much of the basic penalty as is not recoverable from the relevant officer by virtue of section 28(3), the body corporate or its representative may [^{F12} make an appeal to an appeal tribunal in respect of] —
- (a) their decision that the body corporate is liable to a penalty under section 25, or
 - (b) their decision as to amount of the basic penalty as if it were the amount specified in the demand notice.
- [^{F13}(6) The powers of an appeal tribunal on an appeal under this section include—
- (a) power to quash or vary a decision; and
 - (b) power to substitute the tribunal's own decision for any decision so quashed.
- (7) On an appeal under this section—
- (a) the burden of proof as to the matters mentioned in section 25(1) or 26(1) lies on HMRC; but
 - (b) it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established.]

Textual Amendments

- F2** S. 33 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. 363(2)** (with Sch. 3 paras. 2-4)
- F3** Word in s. 33(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. 363(3)(a)** (with Sch. 3 paras. 2-4)
- F4** Words in s. 33(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. 363(3)(b)** (with Sch. 3 paras. 2-4)
- F5** Word in s. 33(2) 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. 363(4)(a)** (with Sch. 3 paras. 2-4)
- F6** Words in s. 33(2) 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. 363(4)(b)** (with Sch. 3 paras. 2-4)
- F7** Word in s. 33(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. 363(5)** (with Sch. 3 paras. 2-4)
- F8** Word in s. 33(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. 363(6)(a)** (with Sch. 3 paras. 2-4)
- F9** Words in s. 33(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. 363(6)(b)** (with Sch. 3 paras. 2-4)

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- F10** Word in s. 33(4)(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. 363(6)(c)** (with Sch. 3 paras. 2-4)
- F11** Word in s. 33(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. 363(7)(a)** (with Sch. 3 paras. 2-4)
- F12** Words in s. 33(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. 363(7)(b)** (with Sch. 3 paras. 2-4)
- F13** S. 33(6)(7) substituted for s. 33(6) (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. 363(8)** (with Sch. 3 paras. 2-4)

Commencement Information

- I1** S. 33 in force at 27.11.2003 by [S.I. 2003/2985](#), art. 2

[^{F14}33A 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 33 in respect of the decision.
- (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

- F14** Ss. 33A-33F 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. 364** (with Sch. 3 paras. 2-4)

33B Review by HMRC

- (1) HMRC must review a decision if—
 - (a) they have offered a review of the decision under section 33A, 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 appeal tribunal under section 33F.
- (3) HMRC shall not review a decision if P has appealed to the appeal tribunal under section 33F in respect of the decision.

Textual Amendments

- F14** Ss. 33A-33F 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. 364** (with Sch. 3 paras. 2-4)

33C Extensions of time

- (1) If under section 33A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.
- (2) If notice is given the relevant period is extended to the end of 30 days from—

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- (a) the date of the notice, or
 - (b) any other date set out in the notice or a further notice.
- (3) In this section “relevant period” means—
- (a) the period of 30 days referred to in section 33B(1)(b), or
 - (b) if notice has been given under subsection (1) that period as extended (or as most recently extended) in accordance with subsection (2).

Textual Amendments

F14 Ss. 33A-33F 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. 364** (with Sch. 3 paras. 2-4)

33D Review out of time

- (1) This section applies if—
- (a) HMRC have offered a review of a decision under section 33A, and
 - (b) P does not accept the offer within the time allowed under section 33B(1)(b) or 33C(2).
- (2) HMRC must review the decision under section 33B if—
- (a) after the time allowed, P notifies HMRC in writing requesting a review out of time,
 - (b) HMRC are satisfied that P had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
 - (c) HMRC are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.
- (3) HMRC shall not review a decision if P has appealed to the appeal tribunal under section 33F in respect of the decision.

Textual Amendments

F14 Ss. 33A-33F 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. 364** (with Sch. 3 paras. 2-4)

33E Nature of review etc

- (1) This section applies if HMRC are required to undertake a review under section 33B or 33D.
- (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 at a stage which gives HMRC a reasonable opportunity to consider them.

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- (5) The review may conclude that the decision is to be—
 - (a) upheld,
 - (b) varied, or
 - (c) cancelled.
- (6) HMRC must give P 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 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 33A), or
 - (b) the date on which HMRC decided to undertake the review (in a case falling within section 33D).
- (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the 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 of the conclusions which the review is treated as having reached.

Textual Amendments

F14 Ss. 33A-33F 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. 364](#) (with [Sch. 3 paras. 2-4](#))

33F Bringing of appeals

- (1) An appeal under section 33 is to be made to the appeal tribunal before—
 - (a) the end of the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates, or
 - (b) if later, the end of the relevant period (within the meaning of section 33C).
- (2) But that is subject to subsections (3) to (5).
- (3) In a case where HMRC are required to undertake a review under ^{F15}section 33B] —
 - (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.
- ^{F16}(4) In a case where HMRC are requested to undertake a review in accordance with section 33D—
 - (a) an appeal may not be made to an appeal tribunal—
 - (i) unless HMRC have notified P as to whether or not a review will be undertaken, and
 - (ii) if HMRC have notified P that a review will be undertaken, until the conclusion date;
 - (b) any appeal where paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date;

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- (c) if HMRC have notified P that a review will not be undertaken, an appeal may be made only if the appeal tribunal gives permission to do so.]
- (5) In a case where section 33E(8) applies, an appeal may be made at any time from the end of the period specified in section 33E(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 an appeal 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

F14 Ss. 33A-33F 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. 364** (with Sch. 3 paras. 2-4)

F15 Words in s. 33F(3) substituted (1.6.2014) by [The Revenue and Customs \(Amendment of Appeal Provisions for Out of Time Reviews\) Order 2014 \(S.I. 2014/1264\)](#), arts. 1(2), **8(2)**

F16 S. 33F(4) substituted (1.6.2014) by [The Revenue and Customs \(Amendment of Appeal Provisions for Out of Time Reviews\) Order 2014 \(S.I. 2014/1264\)](#), arts. 1(2), **8(3)** (with art. 1(3))

^{F17}34 Time limit and right to further review

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Textual Amendments

F17 Ss. 34-36 and cross-heading preceding s. 36 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. 365** (with Sch. 3 paras. 2-4)

^{F17}35 Powers of Commissioners on a review

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Textual Amendments

F17 Ss. 34-36 and cross-heading preceding s. 36 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. 365** (with Sch. 3 paras. 2-4)

^{F17}36 Appeals to a tribunal

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Textual Amendments

- F17** Ss. 34-36 and cross-heading preceding s. 36 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. 365** (with Sch. 3 paras. 2-4)

[^{F18}37 Appeal tribunals

Section 85 of the Value Added Tax Act 1994 (settling appeals by agreement) has effect as if the reference to section 83 of that Act included a reference to section 33 above.]

Textual Amendments

- F18** S. 37 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** (with Sch. 3 paras. 2-4)

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