

1986 No. 590**VALUE ADDED TAX****The Value Added Tax Tribunals Rules 1986**

Made - - - - - 26th March 1986
Laid before the House of Commons 9th April 1986
Coming into Operation 1st May 1986

ARRANGEMENT OF RULES

1. Citation, commencement, revocation and savings.
2. Interpretation.
3. Method of appealing.
4. Time for appealing.
5. Acknowledgment and notification of an appeal.
6. Notice that an appeal does not lie or cannot be entertained.
7. Statement of case, defence and reply in a section 13 penalty appeal.
8. Statement of case in an appeal, other than a section 13 penalty appeal and reasonable excuse and mitigation appeals.
9. Further and better particulars.
10. Acknowledgment of and notification of formal documents served in an appeal.
11. Method of applying for a direction.
12. Partners.
13. Death or bankruptcy of an appellant or applicant.
14. Amendments.
15. Transfers between tribunal centres.
16. Withdrawal of an appeal or application.
17. Appeal or application allowed by consent.
18. Power of a tribunal to strike out or dismiss an appeal.
19. Power of a tribunal to extend time and to give directions.
20. Disclosure, inspection and production of documents.
21. Witness statements.
22. Witness summonses and summonses to third parties.
23. Notices of hearings.
24. Hearings in public or in private.
25. Representation at a hearing.
26. Failure to appear at a hearing.
27. Procedure at a hearing.
28. Evidence at a hearing.
29. Awards and directions as to costs.
30. Decisions and directions.
31. Service at a tribunal centre.
32. Sending of documents to the parties.
33. Delegation of powers to the Registrar.

The Commissioners of Customs and Excise, in exercise of the powers conferred upon them by paragraph 9 of Schedule 8 to the Value Added Tax Act 1983^(a) and after consultation with the Council on Tribunals, in accordance with section 10 of the Tribunals and Inquiries Act 1971^(b), hereby make the following Rules:—

Citation, commencement, revocation and savings

1.— (1) These rules may be cited as the Value Added Tax Tribunals Rules 1986 and shall come into operation on 1st May 1986.

(2) The Value Added Tax Tribunals Rules 1972^(c), the Value Added Tax Tribunals (Amendment) Rules 1974^(d), the Value Added Tax Tribunals (Amendment) Rules 1977^(e), and the Value Added Tax Tribunals (Amendment) (No. 2) Rules 1977^(f) are hereby revoked.

(3) Anything begun under or for the purpose of any rules revoked by these rules may be continued under or, as the case may be, for the purpose of the corresponding provision of these rules.

(4) Where any document in any appeal to, or other proceedings before, a tribunal refers to a provision of any rules revoked by these rules, such reference shall, unless a contrary intention appears, be construed as referring to the corresponding provision of these rules.

Interpretation

2. In these rules, unless the context otherwise requires,—

“the Act” means the Value Added Tax Act 1983;

“appellant” means a person who brings an appeal under section 40 of the Act;

“the appropriate tribunal centre” means the tribunal centre for the time being appointed by the President for the area in which is situated the address to which the disputed decision was sent by the Commissioners or the tribunal centre to which the appeal against the disputed decision may be transferred under these rules;

“chairman” has the same meaning as in Schedule 8 to the Act, and includes the President and any Vice-President;

“the Commissioners” means the Commissioners of Customs and Excise;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“disputed decision” means the decision of the Commissioners against which an appellant or intending appellant appeals or desires to appeal to a tribunal;

“mitigation appeal” means an appeal which, according to the notice of

(a) 1983 c. 55; paragraph 9 of Schedule 8 was amended by the Finance Act 1985 (c. 54), sections 27(2) and 28.

(b) 1971 c. 62.

(c) S.I. 1972/1344.

(d) S.I. 1974/1934.

(e) S.I. 1977/1017.

(f) S.I. 1977/1760.

appeal or other document received from the appellant at the appropriate tribunal centre, is against a decision of the Commissioners with respect to the amount of a penalty on the grounds set out in section 13(4) of the Finance Act 1985;

“the President” means the President of Value Added Tax Tribunals or the person nominated by the Lord Chancellor to discharge for the time being the functions of the President;

“proper officer” means a member of the administrative staff of the value added tax tribunals appointed by a chairman to perform the duties of a proper officer under these rules;

“reasonable excuse appeal” means an appeal which, according to the notice of appeal or other document received from the appellant at the appropriate tribunal centre, is against a decision of the Commissioners with respect to the amount of a penalty or surcharge on grounds confined to those set out in sections 14(6), 15(4), 16(4), 17(9) and 19(6) of the Finance Act 1985;

“the Registrar” means the Registrar of the value added tax tribunals or any member of the administrative staff of the value added tax tribunals authorised by the Lord Chancellor to perform for the time being all or any of the duties of a Registrar under these rules;

“section 13 penalty appeal” means an appeal against an assessment to a penalty under section 13 of the Finance Act 1985 which is not solely a mitigation appeal and any accompanying appeal by the appellant against an assessment for the amount of tax alleged to have been evaded by the same conduct;

“tribunal centre” means an administrative office of the value added tax tribunals;

“Vice-President” means a Vice-President of value added tax tribunals.

Method of appealing

3.— (1) An appeal to a tribunal shall be brought by a notice of appeal served at the appropriate tribunal centre.

(2) A notice of appeal shall be signed by or on behalf of the appellant and shall—

- (a) state the name and address of the appellant;
- (b) state the address of the office of the Commissioners from which the disputed decision was sent;
- (c) state the date of the document containing the disputed decision and the address to which it was sent;
- (d) set out, or have attached thereto a copy of the document containing the disputed decision; and
- (e) set out, or have attached thereto a document containing, the grounds of the appeal, including in a reasonable excuse appeal, particulars of the excuse relied upon.

(3) A notice of appeal shall have attached thereto a copy of any letter from the Commissioners extending the appellant’s time to appeal against the

disputed decision and of any further letter from the Commissioners notifying him of a date from which his time to appeal against the disputed decision shall run.

(4) Subject to any direction made under rule 13, the parties to an appeal shall be the appellant and the Commissioners.

Time for appealing

4.— (1) Subject to paragraph (2) of this rule and any direction made under rule 19, a notice of appeal shall be served at the appropriate tribunal centre before the expiration of 30 days after the date of the document containing the disputed decision of the Commissioners.

(2) If, during the period of 30 days after the date of the document containing the disputed decision, the Commissioners shall have notified the appellant by letter that his time to appeal against the disputed decision is extended until the expiration of 21 days after a date set out in such letter, or to be set out in a further letter to him, a notice of appeal against that disputed decision may be served at the appropriate tribunal centre at any time before the expiration of the period of 21 days set out in such letter or further letter.

Acknowledgment and notification of an appeal

5. A proper officer shall send—

- (a) an acknowledgment of the service of a notice of appeal at the appropriate tribunal centre to the appellant; and
- (b) a copy of the notice of appeal and of any accompanying document or documents to the Commissioners;

and the acknowledgment and such copy of the notice of appeal shall state the date of service of the notice of appeal.

Notice that an appeal does not lie or cannot be entertained

6.— (1) Where the Commissioners contend that an appeal does not lie to, or cannot be entertained by, a tribunal they shall serve a notice to that effect at the appropriate tribunal centre containing the grounds for such contention and applying for the appeal to be struck out or dismissed, as the case may be, as soon as practicable after the receipt by them of the notice of appeal.

(2) Any notice served by the Commissioners under this rule shall be accompanied by a copy of the disputed decision unless a copy thereof has been served previously at the appropriate tribunal centre by either party to the appeal.

(3) In a reasonable excuse or a mitigation appeal the hearing of any application made by the Commissioners under the provisions of this rule may immediately precede the hearing of the substantive appeal.

(4) A proper officer shall send a copy of any notice or certificate served under this rule and of any document or documents accompanying the same to the appellant.

Statement of case, defence and reply in a section 13 penalty appeal

7.— (1) Unless a tribunal shall otherwise direct, in a section 13 penalty appeal—

- (a) the Commissioners shall within 42 days of the date of the service of the notice of appeal or the withdrawal or dismissal of any application made by them under rule 6 hereof (whichever shall be the later) serve at the appropriate tribunal centre a statement of case in the appeal setting out the matters and facts on which they rely for the making of the penalty assessment and (where also disputed) the making of the assessment for the tax alleged to have been evaded by the same conduct;
- (b) the appellant shall within 42 days of the date of the service of such statement of case serve at the appropriate tribunal centre a defence thereto setting out the matters and facts on which he relies for his defence; and
- (c) the Commissioners may within 21 days of the date of the service of such defence serve at the appropriate tribunal centre a reply to a defence and shall do so if it is necessary thereby to set out specifically any matter or any fact showing illegality, or
 - (i) which they allege makes the defence not maintainable; or
 - (ii) which, if not specifically set out, might take the appellant by surprise; or
 - (iii) which raises any issue of fact not arising out of the statement of case.

(2) At any hearing of a section 13 penalty appeal the Commissioners shall not be required to prove, or to bring evidence relating to, any matter or fact which is admitted by the appellant in his defence.

(3) Every statement of case, defence and reply hereunder shall be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(4) Each such document shall contain in summary form a brief statement of the matters and facts on which the party relies but not the evidence by which those facts are to be proved.

(5) A party may raise a point of law in such documents.

Statement of case in an appeal other than a section 13 penalty appeal and reasonable excuse and mitigation appeals

8. Unless a tribunal otherwise directs, in appeals other than reasonable excuse and mitigation appeals and section 13 penalty appeals the Commissioners shall within 30 days of the date of the service of the notice of appeal or the withdrawal or dismissal of any application in the appeal under rule 6 hereof (whichever shall be the later) serve at the appropriate tribunal centre a statement of case in the appeal setting out the matters and facts on which they rely to support the disputed decision.

Further and better particulars

9.— (1) A tribunal may at any time direct a party to an appeal to serve further particulars of his case at the appropriate tribunal centre for the appeal within such period from the date of such direction (not being less than 14 days from the date thereof) as it may specify therein.

(2) Where on an appeal against a decision with respect to an assessment or the amount of an assessment the Commissioners wish to contend that an amount specified in the assessment is less than it ought to have been, they shall so state in their statement of case in that appeal, indicating the amount of the alleged deficiency and the manner in which it has been calculated.

Acknowledgment and notification of service of formal documents served in an appeal

10.— (1) Any statement of case served by the Commissioners under rule 7 or rule 8 of these rules shall be accompanied by a copy of the disputed decision unless a copy of the disputed decision has been served previously at the appropriate tribunal centre by either party to the appeal.

(2) In a reasonable excuse or a mitigation appeal the Commissioners shall serve a copy of the disputed decision at the appropriate tribunal centre as soon as practicable after the receipt by them of the copy of the notice of appeal unless a copy of the disputed decision has been so served previously by the appellant.

(3) A proper officer shall send—

- (a) an acknowledgment of the service at the appropriate tribunal centre of any statement of case, defence, reply or particulars in any appeal to the party serving the same; and
- (b) a copy of such document or particulars and any other document accompanying the same to the other party to the appeal.

Method of applying for a direction

11.— (1) An application to a tribunal, made otherwise than at a hearing, for a direction (including a direction that an appeal or intended appeal may be entertained notwithstanding that an amount of tax has not been paid or deposited with the Commissioners or for the issue or the setting aside of a witness summons) shall be made by notice served at the appropriate tribunal centre.

(2) A notice under this rule shall—

- (a) state the name and address of the applicant;
- (b) state the direction sought or details of the witness summons sought to be issued or set aside; and
- (c) set out, or have attached thereto a document containing, the grounds of the application.

(3) In addition to the requirement of paragraph (2) hereof, any notice of application by an intending appellant shall—

- (a) state the address of the office of the Commissioners from which the disputed decision was sent;
 - (b) state the date of the disputed decision and the address to which it was sent;
 - (c) set out shortly the disputed decision or have attached thereto a copy of the document containing the same; and
 - (d) have attached thereto a copy of any letter from the Commissioners extending the applicant's time to appeal against the disputed decision and of any letter from the Commissioners notifying him of a date from which his time of appeal against the disputed decision shall run.
- (4) A notice of application for an appeal to be entertained without payment or deposit of the disputed tax shall be served at the appropriate tribunal centre within the period for the service of a notice of appeal.
- (5) Except as provided by rule 22, the parties to an application shall be the parties to the appeal or intended appeal.
- (6) Except as provided by rule 22, a proper officer shall send—
- (a) an acknowledgment of the service of a notice of application at the appropriate tribunal centre to the applicant; and
 - (b) a copy of such notice of application and of accompanying document or documents to the other party to the application (if any);
- and the acknowledgment and copy of the notice of application shall state the date of service of the notice of application.
- (7) Within 14 days of the date of service of a notice of application the other party to the application (if any) shall indicate whether or not he consents thereto and, if he does not consent thereto, the reason therefor.

Partners

12. Partners in a firm which is not a legal person distinct from the partners of whom it is composed may appeal against a decision of the Commissioners relating to the firm or its business, or apply to a tribunal in an appeal or intended appeal, in the name of the firm and, unless a tribunal shall otherwise direct, the proceedings shall be carried on in the name of the firm, but with the same consequences as would have ensued if the appeal or application had been brought in the names of the partners.

Death or bankruptcy of an appellant or applicant

13. Where, at any stage in the proceedings in an appeal or application, the liability or interest of the appellant or applicant, by reason of his death or bankruptcy or for any other reason whatsoever, is assigned or transmitted to or devolves upon some other person, the appeal or application shall not abate or determine, but a tribunal, on the application of the Commissioners or of such other person, may direct that such other person if he so consents in writing be made a party to the appeal or application, and the appeal or application be carried on by such other person as if he had been substituted for the appellant or applicant.

Amendments

14.— (1) For the purposes of determining the issues in dispute or of correcting an error or defect in an appeal or application or intended appeal, a tribunal may at any time, either of its own motion or on the application of any party to the appeal or application, or any other person interested, direct that a notice of appeal, notice of application, statement of case, defence, reply, particulars or other document in the proceedings be amended in such manner as may be specified in such direction on such terms as it may think fit.

(2) This rule shall not apply to a decision or direction of a tribunal.

Transfers between tribunal centres

15. A tribunal on the application of a party to an appeal may direct that the appeal and all proceedings in the appeal be transferred to such tribunal centre as may be specified in such direction whereupon, for the purposes of these rules, the tribunal centre specified in such direction shall become the appropriate tribunal centre for such appeal and all proceedings therein, without prejudice to the power of a tribunal to give a further direction relating thereto under this rule.

Withdrawal of an appeal or application

16.— (1) An appellant or applicant may at any time withdraw his appeal or application by serving at the appropriate tribunal centre a notice of withdrawal signed by him or on his behalf, and a proper officer shall send a copy thereof to the Commissioners.

(2) The withdrawal of an appeal or application under this rule shall not prevent a party to such appeal or application from applying under rule 29 for an award or direction as to his or their costs or under section 40(4) of the Act for a direction for the payment or repayment of a sum of money with interest or prevent a tribunal from making such an award or direction if it thinks fit so to do.

Appeal or application allowed by consent

17. Where the parties to an appeal or application have agreed upon the terms of any decision or direction to be given by a tribunal, a tribunal may give a decision or make a direction in accordance with those terms without a hearing.

Power of a tribunal to strike out or dismiss an appeal

18.— (1) A tribunal shall—

- (a) strike out an appeal where no appeal against the disputed decision lies to a tribunal; and
- (b) dismiss an appeal where the appeal cannot be entertained by a tribunal.

(2) A tribunal may dismiss an appeal for want of prosecution where the appellant or the person to whom the interest or liability of the appellant has

been assigned or transmitted, or upon whom such interest or liability has devolved, has been guilty of inordinate and inexcusable delay.

(3) Except in accordance with rule 17, no appeal shall be struck out or dismissed under this rule without a hearing.

Power of a tribunal to extend time and to give directions

19.— (1) A tribunal may of its own motion or on the application of any party to an appeal or application extend the time within which a party to the appeal or application or any other person is required or authorised by these rules or any decision or direction of a tribunal to do anything in relation to the appeal or application (including the time for service for a notice of appeal or notice of application) upon such terms as it may think fit.

(2) A tribunal may make a direction under paragraph (1) of this rule of its own motion without prior notice or reference to any party or other person and without a hearing.

(3) Without prejudice to the preceding provisions of this rule a tribunal may on the application of a party to an appeal or application or other person interested give or make any direction as to the conduct of or as to any matter or thing in connection with the appeal or application which it may think necessary or expedient to ensure the speedy and just determination of the appeal.

(4) If any party to an appeal or application or other person fails to comply with any direction of a tribunal, a tribunal may allow or dismiss the appeal or may summarily award a penalty not exceeding £1,000, or both.

(5) A tribunal may, of its own motion or on the application of any party to an appeal or application, waive any breach or non-observance of any provision of these rules or of any decision or direction of a tribunal upon such terms as it may think just.

Disclosure, inspection and production of documents

20.— (1) The parties to an appeal other than a reasonable excuse or a mitigation appeal and the parties to an application for a direction that an appeal be entertained without payment or deposit of the tax in dispute shall, before the expiration of the time set out in paragraph (2) of this rule, serve at the appropriate tribunal centre a list of the documents in his possession, custody or power which he proposes to produce at the hearing of the appeal or application.

(2) The time within which a list of documents shall be served under paragraph (1) of this rule shall be—

- (a) in a section 13 penalty appeal, a period of 15 days after the last day for the service by the Commissioners of any reply pursuant to rule 7(1)(c) hereof;
- (b) in any other appeal except a reasonable excuse or a mitigation appeal, a period of 30 days after the service of the notice of appeal or application.

(3) In addition, and without prejudice to the foregoing provisions of this

rule, a tribunal may, where it appears necessary for disposing fairly of the proceedings, on the application of a party to an appeal direct that the other party to the appeal shall serve at the appropriate tribunal centre for the appeal within such period as it may specify a list of the documents or any class of documents which are or have been in his possession, custody or power relating to any question in issue in the appeal, and may at the same time or subsequently order him to make and serve an affidavit verifying such list.

(4) If a party desires to claim that any document included in a list of documents served by him in pursuance of a direction made under paragraph (3) of this rule is privileged from production in the appeal, that claim must be made in the list of documents with a sufficient statement of the grounds of privilege.

(5) A proper officer shall send a copy of any list of documents and affidavit served under paragraph (1) or paragraph (3) of this rule to the other party to the appeal or application and such other party shall be entitled to inspect and take copies of the documents set out in such list which are in the possession, custody or power of the party who made the list and are not privileged from production in the appeal at such time and place as he and the party who served such list of documents may agree or a tribunal may direct.

(6) At the hearing of an appeal or application a party shall produce any document included in a list of documents served by him in relation to such appeal or application under paragraph (1) or paragraph (3) of this rule which is in his possession, custody or power and is not privileged from production when called upon so to do by the other party to the appeal or application.

Witness statements

21.— (1) A party to an appeal may, within the time specified in paragraph (6) of this rule, serve at the appropriate tribunal centre a statement in writing (in these rules called “a witness statement”) containing evidence proposed to be given by any person at the hearing of the appeal.

(2) A witness statement shall contain the name, address and description of the person proposing to give the evidence contained therein and shall be signed by him.

(3) A proper officer shall send a copy of a witness statement served at the appropriate tribunal centre to the other party to the appeal and such copy shall state the date of service and shall contain or be accompanied by a note to the effect that unless a notice of objection thereto is served in accordance with paragraph (4) of this rule, the witness statement may be read at the hearing of the appeal as evidence of the facts stated therein without the person who made the witness statement giving oral evidence thereat.

(4) If a party objects to a witness statement being read at the hearing of the appeal as evidence of any fact stated therein he shall serve a notice of objection to such witness statement at the appropriate tribunal centre not later than 14 days after the date of the service of such witness statement at the appropriate tribunal centre whereupon a proper officer shall send a copy of the notice of objection to the other party and the witness statement shall not be read or

admitted in evidence at such hearing but the person who signed such witness statement may give evidence orally at the hearing.

(5) Subject to paragraph (4) of this rule, unless a tribunal shall otherwise direct, a witness statement signed by any person and duly served under this rule shall be admissible in evidence at the hearing of the appeal as evidence of any fact stated therein of which oral evidence by him at that hearing would be admissible.

(6) The time within which a witness statement may be served under this rule shall be—

- (a) in the case of a section 13 penalty appeal, before the expiration of 21 days after the last day for the service by the Commissioners of a reply pursuant to paragraph (1)(c) of rule 7;
- (b) in the case of a mitigation appeal or a reasonable excuse appeal, before the expiration of 21 days after the date of service of the Notice of Appeal; and
- (c) in the case of any other appeal, before the expiration of 21 days after the date of the service of the statement of case by the Commissioners.

Witness summonses and summonses to third parties

22.— (1) Where a witness is required by a party to an appeal or application to attend the hearing of an appeal or application to give oral evidence or to produce any document in his possession, custody or power necessary for the purpose of that hearing, a chairman or the Registrar shall, upon the application of such party, issue a summons requiring the attendance of such witness at such hearing or the production of the document, wherever such witness may be in the United Kingdom or the Isle of Man.

(2) Where a party to an appeal or application desires to inspect any document necessary for the purpose of the hearing thereof which is in the possession, custody or power of any other person in the United Kingdom or the Isle of Man (whether or not such other person is a party to that appeal or application) a chairman or the Registrar shall, upon the application of such party, issue a summons requiring either—

- (a) the attendance of such other person at such date, time and place as the chairman or the Registrar may direct and then and there to produce such document for inspection by such party or his representative and to allow such party or his representative then and there to peruse such document and to take a copy thereof; or
- (b) such other person to post the document by ordinary post to an address in the United Kingdom or Isle of Man by First Class Mail in an envelope duly prepaid and properly addressed to the party requiring to inspect the same.

(3) A chairman or the Registrar may issue a summons under this rule without prior notice or reference to the applicant or any other person and without a hearing and the only party to the application shall be the applicant.

(4) A summons issued under this rule shall be signed by a chairman or the Registrar and must be served personally upon the witness or third party by leaving a copy of the summons with him and showing him the original thereof

not less than 4 days before the day on which the attendance of the witness or third party or the posting of the document is thereby required. A summons issued under this rule shall contain a statement, or be accompanied by a note, to the effect that the witness or third party may apply, by a notice served at the tribunal centre from which the summons was issued, for a direction that the summons be set aside.

(5) A witness summons issued under this rule for the purpose of a hearing and duly served shall have effect until the conclusion of the hearing at which the attendance of the witness is thereby required.

(6) No person shall be required to attend to give evidence or to produce any document at any hearing or otherwise under paragraph (2) of this rule which he could not be required to give or produce on the trial of an action in a court of law.

(7) No person shall be bound to attend any hearing or to produce or post any document for the purpose of a hearing or for inspection and perusal in accordance with a summons issued under this rule unless a reasonable and sufficient sum of money to defray the expenses of coming to, attending at and returning from such hearing or place of inspection and perusal was tendered to him at the time when the summons was served on him.

(8) A tribunal may, upon the application of any person served at the appropriate tribunal centre, set aside a summons served upon him under this rule.

(9) The parties to an application to set aside a summons issued under this rule shall be the applicant and the party who obtained the issue of the summons.

Notice of hearings

23.— (1) A proper officer shall send a notice stating the date and time when, and place where, an appeal will be heard to the parties to the appeal which, unless the parties otherwise agree, shall be not earlier than 14 days after the date on which the notice is sent.

(2) Unless a tribunal otherwise directs, an application made at a hearing shall be heard forthwith, and no notice thereof shall be sent to the parties thereto.

(3) Subject to paragraph (2) of this rule, a proper officer shall send a notice stating the date and time when, and the place where, an application will be heard which, unless the parties shall otherwise agree, shall be not earlier than 14 days after the date on which the notice is sent—

- (a) in the case of an application for the issue of a witness summons, to the applicant;
- (b) in the case of an application to set aside the issue of a witness summons, to the applicant and the party who obtained the issue of the witness summons;
- (c) in the case of any other application, to the parties to the application.

Hearings in public or in private

24.— (1) The hearing of an appeal shall be in public unless a tribunal, on the application of a party thereto, directs that the hearing or any part of the hearing shall take place in private.

(2) Unless a tribunal otherwise directs, the hearing of any application made otherwise than at or subsequent to the hearing of an appeal shall take place in private.

(3) Any member of the Council on Tribunals or the Scottish Committee of the Council on Tribunals in his capacity as such a member may attend the hearing of any appeal or application notwithstanding that the appeal or application takes place in private.

Representation at a hearing

25. At the hearing of an appeal or application—

- (a) any party to the appeal or application (other than the Commissioners) may conduct his case himself or may be represented by any person whom he may appoint for the purpose; and
- (b) the Commissioners may be represented at any hearing at which they are entitled to attend by any person whom they may appoint for the purpose.

Failure to appear at a hearing

26.— (1) If, when an appeal or application is called on for hearing no party thereto appears in person or by his representative, a tribunal may dismiss or strike out the appeal or application, but a tribunal may, on the application of any such party or of any person interested served at the appropriate tribunal centre within 14 days after the date when the decision of the tribunal was released in accordance with rule 30, reinstate such appeal or application on such terms as it may think just.

(2) If, when an appeal or application is called on for hearing, a party does not appear in person or by his representative, the tribunal may proceed to consider the appeal or application in the absence of that party, but any decision or direction given in the absence of a party may, on the application of such party or of any other person interested served at the appropriate tribunal centre within 14 days after the date when the decision or direction of the tribunal was released as aforesaid, be set aside by a tribunal on such terms as it may think just.

Procedure at a hearing

27.— (1) At the hearing of an appeal or application other than a section 13 penalty appeal the tribunal shall allow—

- (a) the appellant or applicant or his representative to open his case;
- (b) the appellant or applicant to give evidence in support of the appeal or application and to produce documentary evidence;
- (c) the appellant or applicant or his representative to call other witnesses

to give evidence in support of the appeal or to produce documentary evidence, and to re-examine any such witness following his cross-examination;

- (d) the other party to the appeal or application or his representative to cross-examine any witness called to give evidence in support of the appeal or application (including the appellant or applicant if he gives evidence);
- (e) the other party to the appeal or application or his representative to open his case;
- (f) the other party to the appeal or application to give evidence in opposition to the appeal or application and to produce documentary evidence;
- (g) the other party to the appeal or application or his representative to call other witnesses to give evidence in opposition to the appeal or application or to produce documentary evidence and to re-examine any such witness following his cross-examination;
- (h) the appellant or applicant or his representative to cross-examine any witness called to give evidence in opposition to the appeal or application (including the other party to the appeal or application if he gives evidence);
- (i) the other party to the appeal or application or his representative to make a second address closing his case; and
- (j) the appellant or applicant or his representative to make a final address closing his case.

(2) At the hearing of a section 13 penalty appeal the tribunal shall follow the same procedure as is set out in paragraph (1) of this rule for the hearing of an appeal or application as if the same were herein repeated with the substitution of the words “the Commissioners” for “the appellant or applicant” and the words “in opposition to” should be substituted for the words “in support of” in rule 27(1)(b), (c) and (d) and the words “in support of” should be substituted for the words “in opposition to” in rule 27(1)(f), (g) and (h).

(3) At the hearing of an appeal or application the chairman and any other member of the tribunal may put any question to any witness called to give evidence thereat (including a party to the appeal or application if he gives evidence).

(4) Subject to the foregoing provisions of this rule, a tribunal may regulate its own procedure as it may think fit.

(5) A chairman or the Registrar may postpone the hearing of any appeal or application.

(6) A tribunal may adjourn the hearing of any appeal or application on such terms as it may think just.

Evidence at a hearing

28.— (1) Subject to paragraph (4) and (5) of rule 21 a tribunal may direct or

allow evidence of any fact to be given in any manner it may think fit and shall not refuse evidence tendered to it on the grounds only that such evidence would be inadmissible in a court of law.

(2) A tribunal may require oral evidence of a witness (including a party to an appeal or application) to be given on oath or affirmation and for that purpose a chairman and any member of the administrative staff of the tribunals on the direction of a chairman shall have power to administer oaths or take affirmations.

(3) At the hearing of an appeal or application the tribunal shall allow a party to produce any document set out in his list of documents served under rule 20 and unless a tribunal otherwise directs—

- (a) any document contained in such a list of documents which appears to be an original document shall be deemed to be an original document printed, written, signed or executed as it respectively appears to have been; and
- (b) any document contained in such list of documents which appears to be a copy shall be deemed to be a true copy.

Award and direction as to costs

29.— (1) A tribunal may direct that a party or applicant shall pay to the other party to the appeal or application—

- (a) within such period as it may specify such sum as it may determine on account of the costs of such other party of and incidental to and consequent upon the appeal or application; or
- (b) the costs of such other party of and incidental to and consequent upon the appeal or application to be taxed by a Taxing Master or District Registrar of the Supreme Court of Judicature in England or by the Auditor of the Court of Session in Scotland or by the Taxing Master of the Supreme Court of Northern Ireland or by the Taxing Master of the High Court of Justice of the Isle of Man on such basis as it shall specify.

(2) Where a tribunal gives a direction under paragraph 1(b) of this rule in proceedings in England and Wales the provisions of Order 62 of the Rules of the Supreme Court 1965(a) shall apply, with the necessary modifications, to the taxation of the costs as if the proceedings in the tribunal were a cause or matter in the Supreme Court of Judicature in England.

(3) Where a tribunal gives a direction under paragraph 1(b) of this rule in proceedings in Scotland the provisions of Rules 347 to 349 both inclusive of the Rules of Court enacted by the Act of Sederunt (Rules of Court) (Consolidation and Amendment) 1965(b) shall apply, with the necessary modifications, to the taxation of the costs as if those proceedings were a cause or matter in the Court of Session in Scotland.

(4) Where a tribunal gives a direction under paragraph 1(b) of this rule in proceedings in Northern Ireland the provision of Order 62 of the Rules of the

(a) S.I. 1965/1776.

(b) S.I. 1965/321.

Supreme Court (Northern Ireland) 1980(a) shall apply, with the necessary modifications, to the taxation of the costs as if those proceedings were a cause or matter in the High Court of Northern Ireland.

(5) Any costs awarded under this rule shall be recoverable as a civil debt.

Decisions and directions

30.— (1) At the conclusion of the hearing of an appeal the chairman may give or announce the decision of the tribunal but in any event the decision shall be recorded in a written document containing the findings of fact by the tribunal and its reasons for the decision which shall be signed by a chairman; provided that if a party to the appeal shall so request by notice in writing served at the appropriate tribunal centre within one year of the date of a decision the outcome of the appeal and any award and direction as to costs or for the payment or repayment of any sum of money with or without interest given or made by the tribunal during or at the conclusion of the hearing of the appeal shall be recorded in a written direction which shall be signed by a chairman or the Registrar.

(2) At the conclusion of the hearing of an application the chairman may give or announce the decision of the tribunal but in any event the outcome of the application and any award or direction given or made by the tribunal during or at the conclusion of the hearing shall be recorded in a written direction which shall be signed by a chairman or the Registrar; provided that if a party to the application shall so request by notice in writing served at the appropriate tribunal centre within 14 days of the date of such direction the decision of the tribunal on the application shall be recorded in a written document containing the findings of fact by the tribunal and its reasons for the decision which shall be signed by a chairman.

(3) A proper officer shall send a copy of the decision and of any direction in an appeal to each party to the appeal and a duplicate of the direction and of any decision in an application to each party to the application.

(4) Every decision in an appeal shall bear the date when the copies thereof are released to be sent to the parties and such copies and any direction, and all copies of any direction, recording the outcome of the appeal shall state that date.

(5) Every direction on an application shall bear the date when the copies thereof are released to be sent to the parties and such copies and any decision on that application given or made under the proviso to paragraph (2) of this rule and all copies thereof shall state that date.

(6) A chairman or the Registrar may correct any clerical mistake or other error in expressing his manifest intention in a decision or direction signed by him but if a chairman or the Registrar corrects any such document after a copy thereof has been sent to a party, a proper officer shall as soon as practicable thereafter send a copy of the corrected document, or the page or pages which have been corrected, to that party.

(7) Where a copy of a decision or a direction dismissing an appeal or

(a) S.R. (N.I.) 1980 No. 346.

application or containing a decision or direction given or made in the absence of a party is sent to a party or other person entitled to apply under rule 26 to apply to have the appeal or application reinstated, the copy shall contain or be accompanied by a note to that effect.

Service at a tribunal centre

31.— (1) Service of a notice of appeal, notice of application or other document shall be effected by the same being handed to a proper officer at the appropriate tribunal centre or by the same being received by post at the appropriate tribunal centre.

(2) Any notice of appeal, notice of application or other document handed in or received at a tribunal centre other than the appropriate tribunal centre may be sent by post in a letter addressed to a proper officer at the appropriate tribunal centre, or handed back to the person from whom it was received, or sent by post in a letter addressed to the person from whom it appears to have been received or by whom it appears to have been sent.

Sending of documents to the parties

32.— (1) Any document authorised or required to be sent to the Commissioners may be sent to them by post in a letter addressed to them at the address of their office from which the disputed decision appears to have been sent, or handed or sent to them by post or in such manner and at such address as the Commissioners may from time to time request by a general notice served at the appropriate tribunal centre.

(2) Any document authorised or required to be sent to any party to an appeal or application other than the Commissioners may be sent by post in a letter addressed to him at his address stated in his notice of appeal or application, or sent by post in a letter addressed to any person named in his notice of appeal or application as having been instructed to act for him in connection therewith at the address therein stated, or sent by post in a letter addressed to such person and at such address as he may specify from time to time by notice served at the appropriate tribunal centre; provided that where partners appeal or apply to a tribunal in the name of their firm, any document sent by post in a letter addressed to the firm at the address of the firm stated in the notice of appeal or notice of application or to any person named in the notice of appeal or application as having been instructed to act for the firm at the address therein stated or to such other address as such partners may from time to time specify by notice served at the appropriate tribunal centre, shall be deemed to have been duly sent to all such partners.

(3) Subject to the foregoing provisions of this rule any document authorised or required to be sent to any party to an appeal or application or other person may be sent by post in a letter addressed to him at his usual or last known address or addressed to him or to such other person at such address as he may from time to time specify by notice served at the appropriate tribunal centre.

Delegation of powers to the Registrar

33.— (1) All or any of the following powers of a tribunal or a chairman under these rules shall be exercisable by the Registrar, that is to say—

- (a) power to give or make any direction by consent of the parties to the appeal or application;
- (b) power to give or make any direction on the application of one party which is not opposed by the other party to the application;
- (c) power to issue a witness summons;
- (d) power to postpone any hearing; and
- (e) power to extend the time for the service of any notice of appeal, notice of application or other document at the appropriate tribunal centre for a period not exceeding one month without prior notice or reference to any party or other person and without a hearing.

(2) The Registrar shall have power to sign a direction recording the outcome of an appeal and any award or direction given or made by the tribunal during or at the conclusion of the hearing of an appeal as provided by rule 30(1) and to sign any document recording any direction given or made by him under this rule.

D. J. Howard,
Commissioner of Customs and Excise.

King's Beam House,
Mark Lane,
London, EC3R 7HE.
26th March 1986.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules (which have been prepared in consultation with the Council on Tribunals) prescribe the procedure to be followed when an appeal is made to a value added tax tribunal under section 40 of the Value Added Tax Act 1983 against a decision of the Commissioners of Customs and Excise following the amendments made thereto by Part I of the Finance Act 1985 to give effect to recommendations made by the Committee on Enforcement Powers of the Revenue Departments (Cmnd 8822 and 9440).

Special provision is made for the conduct of "reasonable excuse" and "mitigation" appeals and for appeals against assessments to a penalty under section 13 of the Finance Act 1985.

Provision is made for the serving of a notice of appeal at the appropriate tribunal centre and for limiting the time within which appeals are to be brought, although such time may be extended by the tribunal, as may any other

time limit. Provision is also made for the exchange of lists of documents (Rule 20), the use of witness statements (Rule 21), the summoning of witnesses (Rule 22), the procedure at a hearing (Rule 27), the methods of proof at a hearing (Rule 28), the award of costs (Rule 29) and the giving and making of decisions and directions by the tribunal (Rule 30). There is also a provision conferring on the Registrar of the tribunals, or any member of the administrative staff of the tribunals appointed by the Lord Chancellor to perform all or any of the duties of a registrar under the rules, certain limited powers of making interlocutory directions otherwise exercisable by a tribunal or a chairman (Rule 33).

SI 1986/590
ISBN 0-11-066590-2



780110 665900