



VALUE ADDED TAX ACT 1996 (FULFILMENT BUSINESSES) ORDER 2018

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Statutory Document No. 2018/0111



Value Added Tax Act 1996

VALUE ADDED TAX ACT 1996 (FULFILMENT BUSINESSES) ORDER 2018

Approved by Tynwald: 16 May 2018

Coming into Operation: in accordance with article 2

The Treasury makes the following Order under sections 95 and 96 of the Value Added Tax Act 1996.

1 Title

This Order is the Value Added Tax Act 1996 (Fulfilment Businesses) Order 2018.

2 Commencement

This Order comes into operation as follows —

- (a) article 3(1) and article 3(2) for the purposes of conferring powers to make secondary legislation, on 26 March 2018;
- (b) article 3(3) on 1 April 2018; and
- (c) article 3(2) for all other purposes and article 3(4) on 1 April 2019¹.

3 VAT: fulfilment businesses

- (1) The Value Added Tax Act 1996 is amended as follows.
- (2) After section 18F insert —

¹ Section 95(3) of the Value Added Tax Act 1996 provides that an order to which that subsection applies must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve the order the shall cease to have effect. Section 95(3) applies to this Order by virtue of section 95(4)(f).

☒ FULFILMENT BUSINESSES

18G Carrying on a third country goods fulfilment business

[P2017/32/48]

- (1) For the purposes of sections 18G to 18N and Schedule 5B a person carries on a third country goods fulfilment business if the person, by way of business —
 - (a) stores third country goods which are owned by a person who is not established in a member State; or
 - (b) stores third country goods on behalf of a person who is not established in a member State;at a time when the conditions in subsection (2) are met in relation to the goods.
- (2) The conditions are that —
 - (a) there has been no supply of the goods in the Island for the purposes of this Act; and
 - (b) the goods are being offered for sale in the Island or elsewhere.
- (3) But a person does not carry on a third country goods fulfilment business if the person's activities within subsection (1) are incidental to the carriage of the goods.
- (4) Goods are “**third country**” goods if they have been imported from a place outside the member States within the meaning of section 15 of this Act.
- (5) Whether a person is established in a member State is to be determined in accordance with Article 10 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EEC on the common system of value added tax².

18H Requirement for approval

[P2017/32/49]

- (1) A person may not carry on a third country goods fulfilment business otherwise than in accordance with an approval given by the Treasury under this section.

² OJ L77, 23.3.2011, p.1.

- (2) The Treasury may approve a person to carry on a third country goods fulfilment business only if it is satisfied that the person is a fit and proper person to carry on the business.
- (3) The Treasury may approve a person to carry on a third country goods fulfilment business for such periods and subject to such conditions or restrictions as it may think fit or as it may by regulations made by it prescribe.
- (4) The Treasury may at any time for reasonable cause vary the terms of, or revoke, an approval under this section.
- (5) For sections 18G to 18N “**approved person**” means a person approved under this section to carry on a third country goods fulfilment business.

18I Register of approved persons

[P2017/32/50]

- (1) The Treasury must maintain a register of approved persons.
- (2) The register is to contain such information relating to approved persons as the Treasury considers appropriate.
- (3) The Treasury may make publicly available such information contained in the register as it considers necessary to enable those who deal with a person who carries on a third country goods fulfilment business to determine whether the person in question is an approved person in relation to that activity.
- (4) The information may be made available by such means (including the internet) as the Treasury considers appropriate.

18J Disclosure of information by the Treasury

[P2017/32/52]

- (1) The Treasury may disclose to an approved person information held by it, but only for the purpose mentioned in subsection (2).
- (2) The purpose is to assist the approved person in complying with obligations imposed on that person by virtue of section 18N.
- (3) An approved person to whom information is disclosed under subsection (1) —
 - (a) may use the information only for the purpose of complying with obligations imposed on that person by virtue of section 18N; and

- (b) may not further disclose the information except with the consent of the Treasury.

18K Offence

[P2017/32/53]

- (1) A person who –
 - (a) carries on a third country goods fulfilment business; and
 - (b) is not an approved person;commits an offence.
- (2) In proceedings for an offence under subsection (1) it is a defence to show that the person did not know, and had no reasonable grounds to suspect, that the person –
 - (a) was carrying on a third country goods fulfilment business; or
 - (b) was not an approved person.
- (3) A person is taken to have shown the fact mentioned in subsection (2) if –
 - (a) sufficient evidence of that fact is adduced to raise an issue with respect to it; and
 - (b) the contrary is not proved beyond reasonable doubt.
- (4) A person guilty of an offence under this section is liable on summary conviction to custody for a term not exceeding 6 months, or to a fine, or to both.
- (5) A person guilty of an offence under this section is liable on conviction on information to custody for a term not exceeding 7 years, or to a fine, or to both.

18L Forfeiture

[P2017/32/54]

- (1) If a person –
 - (a) carries on a third country goods fulfilment business; and
 - (b) is not an approved person;any goods within subsection (2) are liable to forfeiture under the Customs and Excise Management Act 1986.
- (2) Goods are within this subsection if –
 - (a) they are stored by the person; and

- (b) their storage by the person constitutes, or has constituted, the carrying on of a third country goods fulfilment business by the person.

18M Penalties

[P2017/32/55(1)]

Schedule 5B provides for a penalty to be payable by a person who carries on a third country goods fulfilment business and is not an approved person. **22**.

18N Sections 18G to 18M: Supplementary

[P2017/32/51, 55, 57 & 58]

- (1) The Treasury may by regulations make provision —
 - (a) regulating the approval and registration of persons under sections 18G to 18I;
 - (b) regulating the variation or revocation of any such approval or registration, or of any condition or restriction to which such an approval or registration is subject;
 - (c) about the register maintained under section 18I;
 - (d) regulating the carrying on of a third country goods fulfilment business; and
 - (e) imposing obligations on approved persons.
- (2) The regulations may, in particular, make provision —
 - (a) requiring applications, and other communications with the Treasury, to be made electronically;
 - (b) as to the procedure for the approval and registration of bodies corporate which are members of the same group;
 - (c) requiring approved persons to keep and make available for inspection such records as may be prescribed by or under the regulations.
- (3) The Treasury may make regulations (“**penalty regulations**”) imposing a penalty for the contravention of —
 - (a) any condition or restriction imposed under sections 18G to 18N;
 - (b) regulations under sections 18G to 18N.
- (4) The penalty regulations may make provision for the assessment and recovery of a penalty imposed by the regulations.

- (5) The amount of a penalty imposed by the penalty regulations is to be specified in the regulations, but must not exceed £3,000.
- (6) The Treasury may by regulations make provision for corporate bodies which are members of the same group to be jointly and severally liable for any penalties imposed under —
- (a) Schedule 5B; or
 - (b) the penalty regulations.
- (7) Regulations under sections 18G to 18N may —
- (a) make provision which applies generally or only for specified cases or purposes;
 - (b) make different provision for different cases or purposes;
 - (c) include incidental, consequential, transitional or transitory provision;
 - (d) confer a discretion on the Treasury;
 - (e) make provision by reference to a notice to be published by the Treasury.
- (8) For the purposes of section 18G to 18N two or more bodies corporate are members of a group if —
- (a) one of them controls each of the others;
 - (b) one person (whether a body corporate or an individual) controls all of them; or
 - (c) two or more individuals carrying on a business in partnership control all of them.
- (9) A body corporate is to be taken to control another body corporate if —
- (a) it is empowered by or under legislation to control that body's activities; or
 - (b) it is that body's holding company within the meaning of section 1(4) of the *Companies Act 1974*.
- (10) An individual or individuals are to be taken to control a body corporate if the individual or individuals (were the individual or individuals a company) would be that body's holding company within the meaning of section 1 of the *Companies Act 1974*. ~~22~~.
- (3) In section 83(1) (appeals), after (da) insert —
- ~~ca~~ (db) any decision of the Treasury for the purposes of sections 18G to 18M (fulfilment businesses) as to —
 - (i) whether or not, and in which respect, any person is to be, or continue to be, approved and registered; or

- (ii) the conditions or restrictions subject to which any person is approved and registered;
 - (dc) any decision of the Treasury that a person is liable to a penalty, or as to the amount of a person's liability under section 18M or Schedule 5B; **22**.
- (4) After Schedule 5A insert the new Schedule 5B set out in the Schedule to this Order.

MADE 23 MARCH 2018

A L CANNAN
Minister for the Treasury

SCHEDULE

[Article 3(6)]

SCHEDULE 5B

[P2017/32/Sch. 13]

THIRD COUNTRY GOODS FULFILMENT BUSINESSES: PENALTY

1 Liability to a penalty

- (1) A penalty is payable by a person (“P”) who –
 - (a) carries on a third country goods fulfilment business; and
 - (b) is not an approved person.
- (2) In this Schedule references to a “**contravention**” are to acting as mentioned in sub-paragraph (1).

2 Amount of penalty

- (1) If the contravention is deliberate and concealed, the amount of the penalty is the maximum amount (see paragraph 9).
- (2) If the contravention is deliberate but not concealed, the amount of the penalty is 70% of the maximum amount.
- (3) In any other case, the amount of the penalty is 30% of the maximum amount.
- (4) The contravention is –
 - (a) “**deliberate and concealed**” if the contravention is deliberate and P makes arrangements to conceal the contravention; and
 - (b) “**deliberate but not concealed**” if the contravention is deliberate but P does not make arrangements to conceal the contravention.

3 Reductions for disclosure

- (1) This paragraph provides for reductions in penalties under this Schedule where P discloses a contravention.
- (2) P discloses a contravention by –
 - (a) telling the Treasury about it;
 - (b) giving the Treasury reasonable help in identifying any other contraventions of which P is aware; and

- (c) allowing the Treasury access to records for the purpose of identifying such contraventions.
- (3) Disclosure of a contravention —
- (a) is “**unprompted**” if made at a time when P has no reason to believe that the Treasury has discovered or is about to discover the contravention; and
 - (b) otherwise, is “**prompted**”.
- (4) In relation to disclosure, “**quality**” includes timing, nature and extent.
- (5) Where P discloses a contravention, the Treasury must reduce the penalty to one that reflects the quality of the disclosure.
- (6) If the disclosure is prompted, the penalty may not be reduced below —
- (a) in the case of a contravention that is deliberate and concealed, the maximum amount;
 - (b) in the case of a contravention that is deliberate but not concealed, 35% of the maximum amount; and
 - (c) in any other case, 20% of the maximum amount.
- (7) If the disclosure is unprompted, the penalty may not be reduced below —
- (a) in the case of a contravention that is deliberate and concealed, 30% of the maximum amount;
 - (b) in the case of a contravention that is deliberate but not concealed, 30% of the maximum amount; and
 - (c) in any other case, 10% of the maximum amount.

4 **Special reduction**

- (1) If the Treasury thinks it right because of special circumstances, it may reduce a penalty under this Schedule.
- (2) In sub-paragraph (1), “**special circumstances**” does not include ability to pay.
- (3) In sub-paragraph (1), the reference to reducing a penalty includes a reference to —
 - (a) staying a penalty; and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

5 Assessment

- (1) Where P becomes liable for a penalty under this Schedule, the Treasury must —
 - (a) assess the penalty;
 - (b) notify P; and
 - (c) state in the notice the contravention in respect of which the penalty is assessed.
- (2) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) A penalty under this Schedule is recoverable as a debt due to the Crown.
- (4) An assessment of a penalty under this Schedule may not be made later than one year after evidence of facts sufficient in the opinion of the Treasury to indicate the contravention comes to its knowledge.
- (5) Two or more contraventions may be treated by the Treasury as a single contravention for the purposes of assessing a penalty under this Schedule.

6 Reasonable excuse

- (1) Liability to a penalty does not arise under this Schedule in respect of a contravention which is not deliberate if P satisfies the Treasury or (on an appeal made to the VAT and Duties Tribunal) the tribunal that there is a reasonable excuse for the contravention.
- (2) For the purposes of sub-paragraph (1), where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the contravention.

7 Companies: officer's liability

- (1) Where a penalty under this Schedule is payable by a company in respect of a contravention which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as the Treasury may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow the Treasury to recover more than 100% of the penalty.
- (3) In the application of sub-paragraph (1) to a body corporate other than a limited partnership that has elected to have legal

personality under section 48B of the *Partnership Act 1909*, “**officer**” means —

- (a) a director;
- (b) a manager;
- (c) the registered agent of a limited liability company; and
- (d) a secretary.

(4) In the application of sub-paragraph (1) to a limited partnership that has elected to have legal personality under section 48B of the *Partnership Act 1909*, “**officer**” means a member.

(5) In the application of sub-paragraph (1) in any other case, “**officer**” means —

- (a) a director;
- (b) a manager;
- (c) a secretary; and
- (d) any other person managing or purporting to manage any of the company’s affairs.

(6) Where the Treasury has specified a portion of a penalty in a notice given to an officer under sub-paragraph (1) —

- (a) paragraph 4 applies to the specified portion as to a penalty;
- (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given;
- (c) sub-paragraphs (3) to (5) of paragraph 5 apply as if the notice were an assessment of a penalty; and
- (d) paragraph 8 applies as if the officer were liable to a penalty.

(7) In this paragraph —


“**company**” means a body corporate (including a limited partnership that has elected to have legal personality for the purposes of section 48B of the *Partnership Act 1909*) or unincorporated association but does not include a partnership, a local authority or a local authority association.

8 Double jeopardy

P is not liable to a penalty under this Schedule in respect of a contravention in respect of which P has been convicted of an offence.

9 The maximum amount

(1) In this Schedule “**the maximum amount**” means £10,000.

- (2) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, it may by regulations substitute for the sum for the time being specified in subparagraph (1) such other sum as appears to it to be justified by the change.
- (3) In subparagraph (2), “**relevant date**” means —
 - (a) the date on which this Schedule comes into operation; and
 - (b) each date on which the power conferred by that subparagraph has been exercised.
- (4) Regulations under this paragraph do not apply to any contravention which occurs wholly before the date on which they come into operation. .

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order amends the Value Added Tax Act 1996, by inserting new sections 18G to 18N and new Schedule 5B, as a consequence of amendments made in the United Kingdom by the Finance (No. 2) Act 2017 (of Parliament).

The new provisions implement the Fulfilment House Due Diligence Scheme (the “Scheme”) and require third country goods fulfilment businesses to be registered by the Treasury where –

- a) the goods are imported from a country outside the EU;
- b) the goods are owned by, or stored on behalf of, someone established outside the EU; and
- c) the goods are being offered for sale and have not been sold in the Island before.

Fulfilment businesses, which are defined in the new section 18G and are located in the Island will have to register with the Treasury, keep certain records and carry out robust due diligence checks on their overseas customers. The new provisions are intended to make it more difficult for non-compliant overseas businesses to trade in the Island and will enable the Treasury to identify and tackle them more easily.

The full provisions of the new Scheme will come into operation on 1 April 2019 when any person (including corporate bodies) carrying on a third party goods fulfilment business and not approved by the Treasury will commit an offence.

This Order creates offences and penalties for failure to meet the requirements of the Scheme and confers powers on the Treasury to make regulations in relation to the Scheme.

This Order comes into operation in 3 stages –

- a) article 3(1) and article 3(2) for the purpose of conferring powers on the Treasury to make regulations in relation to the Scheme on 26 March 2018;
- b) article 3(3) on 1 April 2018 in relation to appeals; and
- c) article 3(2) for all other purposes and article 3(4) on 1 April 2019.