



# Finance (No. 2) Act 2017

## 2017 CHAPTER 32

### PART 3

#### FULFILMENT BUSINESSES

#### **48 Carrying on a third country goods fulfilment business**

- (1) For the purposes of this Part 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 United Kingdom for the purposes of VATA 1994, and
  - (b) the goods are being offered for sale in the United Kingdom 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 VATA 1994.
- (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/EC](#) on the common system of value added tax.

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*Status: This is the original version (as it was originally enacted).*

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#### **49 Requirement for approval**

- (1) A person may not carry on a third country goods fulfilment business otherwise than in accordance with an approval given by the Commissioners under this section.
- (2) The Commissioners may approve a person to carry on a third country goods fulfilment business only if they are satisfied that the person is a fit and proper person to carry on the business.
- (3) The Commissioners may approve a person to carry on a third country goods fulfilment business for such periods and subject to such conditions or restrictions as they may think fit or as they may by regulations made by them prescribe.
- (4) The Commissioners may at any time for reasonable cause vary the terms of, or revoke, an approval under this section.
- (5) In this Part “approved person” means a person approved under this section to carry on a third country goods fulfilment business.

#### **50 Register of approved persons**

- (1) The Commissioners must maintain a register of approved persons.
- (2) The register is to contain such information relating to approved persons as the Commissioners consider appropriate.
- (3) The Commissioners may make publicly available such information contained in the register as they consider 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 Commissioners consider appropriate.

#### **51 Regulations relating to approval, registration etc.**

- (1) The Commissioners may by regulations make provision—
  - (a) regulating the approval and registration of persons under this Part,
  - (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 50,
  - (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 Commissioners, 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.

## **52 Disclosure of information by HMRC**

- (1) The Commissioners may disclose to an approved person information held by Her Majesty's Revenue and Customs in connection with a function of Her Majesty's Revenue and Customs, 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 51.
- (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 51, and
  - (b) may not further disclose the information except with the consent of the Commissioners.
- (4) Section 19 of the Commissioners for Revenue and Customs Act 2005 (offence) applies to a disclosure in contravention of subsection (3)(b) as it applies to a disclosure, in contravention of section 20(9) of that Act, of revenue and customs information relating to a person whose identity is specified in the disclosure or can be deduced from it.

## **53 Offence**

- (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—
  - (a) in England and Wales, to imprisonment for a term not exceeding 12 months, or a fine, or both;
  - (b) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
  - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.
- (5) A person guilty of an offence under this section is liable on conviction on indictment to—
  - (a) imprisonment for a period not exceeding 7 years,
  - (b) a fine, or
  - (c) both.

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- (6) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.

#### **54 Forfeiture**

- (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 CEMA 1979.
- (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.

#### **55 Penalties**

- (1) Schedule 13 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.
- (2) The Commissioners may make regulations (“penalty regulations”) imposing a penalty for the contravention of—
- (a) any condition or restriction imposed under this Part;
  - (b) regulations under this Part.
- (3) The amount of a penalty imposed by the penalty regulations is to be specified in the regulations, but must not exceed £3,000.
- (4) The penalty regulations may make provision for the assessment and recovery of a penalty imposed by the regulations.
- (5) The Commissioners 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 13;
  - (b) penalty regulations.

#### **56 Appeals**

- (1) FA 1994 is amended as follows.
- (2) In section 13A(2) (customs and excise reviews and appeals: relevant decisions) after paragraph (gb) insert—
- “(gc) any decision by HMRC that a person is liable to a penalty, or as to the amount of a person’s liability, under—
    - (i) regulations under section 55 of the Finance (No. 2) Act 2017,
    - or
    - (ii) Schedule 13 to that Act;”.
- (3) In Schedule 5 to that Act (decisions subject to review and appeal) after paragraph 9A insert—

*“The Finance (No. 2) Act 2017*

- 9B Any decision for the purposes of Part 3 of the Finance (No. 2) Act 2017 (third country goods fulfilment businesses) as to—
- (a) whether or not, and in which respects, any person is to be, or to continue to be, approved and registered, or
  - (b) the conditions or restrictions subject to which any person is approved and registered.”

**57 Regulations**

- (1) Regulations under this Part 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 Commissioners;
  - (e) make provision by reference to a notice to be published by the Commissioners.
- (2) Regulations under this Part are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of the House of Commons.
- (4) This section does not apply to regulations under section 59 (commencement).

**58 Interpretation**

- (1) In this Part—
  - “approved person” has the meaning given by section 49(5);
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.
- (2) For the purposes of this Part 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.
- (3) 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 1159 of, and Schedule 6 to, the Companies Act 2006.
- (4) 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 1159 of, and Schedule 6 to, the Companies Act 2006.

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## **59 Commencement**

- (1) This Part comes into force—
  - (a) so far as it confers powers to make regulations, on the day on which this Act is passed, and
  - (b) for all other purposes, on such day as the Commissioners may by regulations made by statutory instrument appoint.
- (2) Regulations under subsection (1)(b) may appoint different days for different purposes.