



## WHOLESALING OF CONTROLLED LIQUOR REGULATIONS 2015

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Statutory Document No. 2015/0256

*Alcoholic Liquor Duties Act 1986*

# WHOLESALING OF CONTROLLED LIQUOR REGULATIONS 2015<sup>1</sup>

*Laid before Tynwald:* 20 October 2015  
*Coming into Operation:* 1 October 2015

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The Treasury makes the following Regulations under sections 71A(7), 71B(1), 71C(3), 71E and 71I of the Alcoholic Liquor Duties Act 1986<sup>1</sup>.

## PART 1

### PRELIMINARY

#### 1 Title

These Regulations are the Wholesaling of Controlled Liquor Regulations 2015.

#### 2 Commencement

These Regulations come into operation on 1 October 2015.

#### 3 Interpretation

In these Regulations —

“**the Act**” means the Alcoholic Liquor Duties Act 1986;

“**prescribed**” means prescribed by the Treasury in a published notice, as revised or replaced from time to time and “**prescribe**” is construed accordingly;

“**relevant information**” means information (including information contained in an application under Part 2 or Part 3 of these Regulations) which is required or authorised by virtue of these Regulations to be delivered to the Treasury; and

“**representative member**” means the representative member for a group.

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<sup>1</sup> Sections 71A(7), 71B(1), 71C(3), 71E and 71I were inserted into the Alcoholic Liquor Duties Act 1986 by SD 2015/0162 with effect from 1 June 2015.

## PART 2

### APPROVAL, REGISTRATION, ETC.

#### 4 Application for approval

- (1) Every person who is required to be approved under section 71C of the Act (the “applicant”) must apply on a prescribed form to the Treasury for approval in respect of all the premises on which the applicant carries on or intends to carry on a controlled activity.
- (2) An application for approval must contain full information about every matter referred to in the prescribed form.
- (3) The Treasury may require the applicant to make a declaration that the information provided in the application is true and complete.

#### 5 Letters of registration

- (1) The Treasury must notify every person it approves by issuing a letter of registration.
- (2) The Treasury may prescribe the information which must be contained in a letter of registration.
- (3) A letter of registration must contain the information (if any) prescribed and may contain such other information as the Treasury considers appropriate in an individual case.
- (4) If the Treasury refuses an application for approval it must notify the person who made the application of that fact and give the reasons for the refusal.

#### 6 Requirement to notify changes

- (1) An approved person must give to the Treasury notice of any change in —
  - (a) the information contained in the letter of registration; or
  - (b) such other information as the Treasury may prescribe.
- (2) Where —
  - (a) an approved person gives notice in accordance with paragraph (1);  
or
  - (b) without any such notice having been given, it appears to the Treasury that the letter of registration requires correction,the Treasury may, unless it revokes the approval, issue an amended letter of registration.
- (3) Where an approved person intends to cease to carry on a controlled activity he must give notice of that fact to the Treasury no later than 30 days before the day on which the activity will cease.

## **7 Unique reference numbers**

- (1) The Treasury may assign a unique reference number (the “URN”) to approved persons.
- (2) Where, under Part 3 of these Regulations, group treatment applies to two or more bodies corporate, the Treasury may assign one URN to all the bodies corporate to which group treatment applies.
- (3) An approved person must make the URN available to customers and suppliers and include it on prescribed forms of documentation or communications associated with the business.

## **8 Record keeping**

- (1) An approved person must keep and make available such records relating to controlled activities as the Treasury may prescribe.
- (2) An approved person required by this regulation to keep a record must do so at the time of or as soon as possible after —
  - (a) the happening of the event that is required to be recorded; and
  - (b) in any other case, the moment when the information that is required to be recorded is first known to the approved person.
- (3) Any record that is required to be kept by this regulation must be preserved for a period of six years, or such lesser period as the Treasury may allow, starting on the day that the obligation to keep the record arises.

## **9 Sales treated as sales of controlled liquor**

For the purposes of Part VIA of the Act, a sale is to be treated as a sale of controlled liquor if —

- (a) the sale of the liquor is made at a time before the excise duty point for that liquor falls; and
- (b) in relation to that sale, the purchaser takes delivery of the liquor on or after the excise duty point.

## **10 Excluded sales**

The Treasury may prescribe descriptions of sales that are excluded sales for the purposes of Part VIA of the Act.

## PART 3

### GROUPS

#### **11 Applications for approval and registration of bodies corporate which are members of the same group**

This Part applies where two or more bodies corporate are members of a group for the purposes of Part VIA of the Act (for which see section 71J of the Act<sup>2</sup>).

#### **12 Applications for approval and registration of bodies corporate which are members of the same group: applications by members of a group**

- (1) Where this Part applies, an application may be made for each member of the group who is required to be approved under section 71C of the Act to be approved and registered under a single registration (“group treatment”).
- (2) In this regulation “registered” means entered on the register maintained by the Treasury in accordance with section 71D(1) of the Act<sup>3</sup> and “registration” is construed accordingly.

#### **13 Applications for approval and registration of bodies corporate which are members of the same group: information required**

- (1) The application must contain the information (or any part of the information) mentioned in regulation 4(2) in respect of each of the bodies corporate that are the subject of the application for group treatment.
- (2) The person making the application must satisfy the Treasury that the bodies corporate which are the subject of the application have consented to group treatment.
- (3) The Treasury may require the person making the application to make a declaration that the information is true and complete.
- (4) The application must specify which one of the bodies corporate that are the subject of the application will be the representative member.
- (5) If the Treasury accepts the application, it must notify the representative member of the date on which group treatment will commence.
- (6) If the Treasury refuses the application, it must notify the representative member.
- (7) The Treasury may refuse any applications under this Part if it appears necessary to do so for the protection of the revenue.

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<sup>2</sup> Section 71J was inserted by SD 2015/0162.

<sup>3</sup> Section 71D was inserted by SD 2015/0162.

- (8) A body corporate may not be treated under this Part as a member of more than one group at the same time.

#### **14 Applications by a representative member**

- (1) This regulation applies where two or more bodies corporate are treated as members of a group and the representative member applies to the Treasury for —
- (a) another body corporate (which is eligible under this Part) to be treated as a member of the group;
  - (b) a body corporate to cease to be treated as a member of the group;
  - (c) the bodies corporate no longer to be treated as members of the group; or
  - (d) another member to be substituted as the group's representative member.
- (2) In respect of an application under paragraph (1)(a), the representative member must satisfy the Treasury that —
- (a) the existing members of the group; and
  - (b) any body corporate which is the subject of the application,
- have consented to group treatment.
- (3) A body corporate is to be treated as a member of the group only —
- (a) if the application is accepted by the Treasury; and
  - (b) from a date notified by the Treasury to the representative member.
- (4) In respect of an application under paragraph (1)(b) or (c), a body corporate is to be treated as not being a member of the group only —
- (a) if the application is accepted by the Treasury; and
  - (b) from a date notified by the Treasury to the representative member and any body corporate which is the subject of the application.
- (5) An application under paragraph (1)(d) may be made by —
- (a) the current representative member; or
  - (b) the body corporate that is applying to be substituted for the current representative member,
- and the applicant must satisfy the Treasury that the members of the group have consented to the substitution.
- (6) In respect of an application under paragraph (1)(d), another member of the group is to be substituted as the representative member —
- (a) if the application is accepted by the Treasury; and
  - (b) from a date that the Treasury is satisfied has been notified to all of the members of the group.

**15 Applications by group members other than the representative member**

- (1) A body corporate may apply to the Treasury to —
  - (a) transfer from its current group to a different group; or
  - (b) cease to be treated as a member of a group.
- (2) The Treasury must be satisfied that the body corporate has given notice of the application to the representative member of the current group and the group it is applying to join.
- (3) A body corporate is to be treated as not being a member of the group by virtue of this regulation only —
  - (a) if the application is accepted by the Treasury; and
  - (b) from a date notified by the Treasury to the representative member and the body corporate which made the application.

**16 Termination of group membership by the Treasury**

- (1) The Treasury may, by notice given to a body corporate, terminate its treatment as a member of a group from a date which is specified in the notice.
- (2) The Treasury may give notice under paragraph (1) if it appears to it —
  - (a) to be necessary for the protection of the revenue; or
  - (b) that the body corporate is not (or is no longer) eligible to be treated as a member of the group.
- (3) Where the Treasury gives notice to a body corporate under paragraph (1), notice must also be given to the representative member (if different from the body corporate).
- (4) If the body corporate referred to in paragraph (1) is the representative member —
  - (a) notice must also be given to each member of the group; and
  - (b) the members of the group must with immediate effect appoint a new representative member in order to continue to be treated as a group.
- (5) If it appears to the Treasury that —
  - (a) the group does not (or has ceased to) have a representative member who is acceptable to the Treasury; or
  - (b) there are fewer than two bodies corporate being treated as members of the group,

it may give notice to each member that the group treatment will cease from a date which is specified in the notice.



## PART 4

### PENALTIES

#### 17 Interpretation of this Part

In this Part “P” means —

- (a) a person who contravenes any requirement imposed by regulations 6(1), 6(3), 7(3) or 8 of these Regulations; or
- (b) a person who contravenes any condition or restriction of an approval to carry on a controlled activity given to that person.<sup>2</sup>

#### 18 Liability to a penalty

- (1) A penalty is payable by P.
- (2) The amount of the penalty is £500 for each contravention.

#### 19 Assessment and recovery

- (1) Where P is liable to a penalty under regulation 18, the Treasury may assess the amount due by way of penalty and notify P, or P’s representative, accordingly.
- (2) The notification must state the contravention in respect of which the penalty is assessed.
- (3) Two or more contraventions may be treated by the Treasury as a single contravention for the purposes of assessing a penalty under this regulation.
- (4) A penalty under this regulation must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (5) An assessment is treated as an amount of duty due from P under the Act and may be recovered accordingly.
- (6) An assessment of a penalty under this regulation 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.
- (7) In this regulation “representative” means a person’s personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to that person or any of that person’s property or any other person acting in a representative capacity in relation to that person.

## 20 Reasonable excuse

- (1) Liability to a penalty does not arise under regulation 18 if P satisfies the Treasury or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.
- (2) For the purposes of 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.
- (3) Where it appears to the Treasury or (on an appeal made to the appeal tribunal) the tribunal that there is no reasonable excuse for continuation of conduct for which there was at first a reasonable excuse, liability to a penalty under regulation 18 is to be determined as if the conduct began at the time when there ceased to be a reasonable excuse for its continuation.
- (4) In this regulation, “appeal tribunal” means the VAT and Duties Tribunal.

## 21 Joint and several liability of members of a group

All bodies corporate who, in accordance with Part 3 of these Regulations, are treated as members of a group when any penalty under Schedule 2B of the Act, or these Regulations, becomes payable by the representative member, together with any bodies corporate who become treated as members of the group while any penalty remains unpaid, are jointly and severally liable for any penalty payable by the representative member.

# PART 5

## FORFEITURE

## 22 Forfeiture

- (1) Paragraph (2) applies if a person (“P”) contravenes —
  - (a) section 71C(1) of the Act (approval to carry on controlled activity);
  - (b) any requirement imposed by regulations 6(1), 6(3), 7(3) or 8 of these Regulations; or<sup>3</sup>
  - (c) any condition or restriction of an approval to carry on a controlled activity given to P.<sup>4</sup>
- (2) Where this paragraph applies, any dutiable alcoholic liquor (whether or not charged with any duty and whether or not that duty has been paid) which is in the possession, custody or control of P for the purposes of carrying on a controlled activity is subject to forfeiture.
- (3) If P is a body corporate that is treated as a member of a group in accordance with Part 3 of these Regulations, paragraph (2) applies to any dutiable alcoholic liquor which is in the possession, custody or control of

any member of the group for the purposes of carrying on a controlled activity.

- (4) Paragraph (5) applies if a person (“P”) contravenes section 71F<sup>4</sup> of the Act (restriction on buying controlled liquor wholesale).
- (5) Where this paragraph applies, any dutiable alcoholic liquor (whether or not charged with any duty and whether or not that duty has been paid) purchased in contravention of section 71F and which is in the possession, custody or control of P is subject to forfeiture.
- (6) If P is a body corporate that is treated as a member of a group in accordance with Part 3 of these Regulations, paragraph (5) applies to any dutiable alcoholic liquor purchased in contravention of section 71F which is in the possession, custody or control of any member of the group.

**MADE 29 JULY 2015**

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<sup>4</sup> Section 71F was inserted by SD 2015/0162.

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

<sup>2</sup> Reg 17 substituted by SD2015/0385.

<sup>3</sup> Subpara (b) substituted by SD2015/0385.

<sup>4</sup> Subpara (c) substituted by SD2015/0385.