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STATUTORY INSTRUMENTS

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**2023 No. 817**

**The Platform Operators (Due Diligence and Reporting Requirements) Regulations 2023**

**PART 3**

**Penalties for breach of obligations**

**Penalties for late reports**

**11.** If a reporting platform operator fails to make a report required under regulation 4(1) (reporting of information) on or before the date specified in that paragraph, the reporting platform operator is liable—

- (a) to a penalty not exceeding £5,000, and
- (b) if the failure continues after notice of an assessment of a penalty under paragraph (a) is issued, to a penalty or penalties not exceeding £600 for each subsequent day on which the failure continues.

**Penalties for failure to provide information to reportable sellers**

**12.** If a reporting platform operator fails to comply with regulation 4(4) (reporting of information to reportable sellers), the reporting platform operator is liable—

- (a) to a penalty not exceeding £5,000 for each reportable period in respect of which one or more failures have occurred, and
- (b) if any of the failures continue after notice of an assessment to a penalty under paragraph (a) is issued, to a penalty not exceeding £600 for each subsequent day on which any of the failures continue.

**Penalties for failure to provide information to HMRC**

**13.** If a person fails to comply with regulation 6 (provision of information to HMRC), the person is liable—

- (a) to a penalty not exceeding £5,000, and
- (b) if the failure continues after notice of an assessment of a penalty under paragraph (a) is issued, to a penalty or penalties not exceeding £600 for each subsequent day on which the failure continues.

**Penalties for failure to comply with record-keeping requirements**

**14.—(1)** If a reporting platform operator fails to comply with regulation 3(3) (record-keeping), the reporting platform operator is liable to a penalty not exceeding £5,000 for each reportable period in respect of which one or more failures have occurred.

(2) A failure has occurred in respect of a reportable period if the failure pertains to records which relate to that reportable period for the purposes of regulation 3(5) or 3(6).

#### **Penalties for failure to notify**

15.—(1) If a reporting platform operator fails to comply with regulation 7 (notification to HMRC: reporting platform operators), the reporting platform operator is liable to a penalty not exceeding £1,000.

(2) If a platform operator fails to comply with regulation 8(1) (notification to HMRC: excluded platform operators), the platform operator is liable to a penalty not exceeding £1,000.

#### **Penalties for failure to apply due diligence procedures**

16. If a reporting platform operator fails to comply with regulation 3(1) or (2) (due diligence), the reporting platform operator is liable to a penalty not exceeding £100 for each seller in respect of which the reporting platform operator fails to apply the due diligence procedures referred to in regulation 3(2).

#### **Penalties for inaccurate or incomplete reports**

17. If a reporting platform operator makes a report under regulation 4(1) (reporting of information) which contains inaccurate information, or which is incomplete, the reporting platform operator is liable to a penalty not exceeding £100 for each reportable seller in respect of which the information in the report is inaccurate or incomplete, where—

- (a) the inaccuracy or incompleteness is deliberate,
- (b) the inaccuracy or incompleteness is due to a failure to take reasonable care, or
- (c) the reporting platform operator discovers the inaccuracy or incompleteness some time later and fails to take reasonable steps to inform HMRC.

#### **Reasonable excuse**

18.—(1) Liability to a penalty under regulations 11 to 16 does not arise if the person satisfies an officer of Revenue and Customs or, on an appeal notified to the tribunal, the tribunal that there is a reasonable excuse for a failure to do anything required to be done under the applicable regulation.

(2) For the purposes of this regulation none of the following is a reasonable excuse—

- (a) that there is an insufficiency of funds to do something;
- (b) that a person relies upon another person to do something.

(3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **Duplication of liability to penalties**

19.—(1) A reporting platform operator cannot be liable to penalties under any two or more of regulations 14 (failure to comply with record-keeping requirements), 16 (failure to apply due diligence procedures) and 17 (inaccurate or incomplete reports) in respect of the same act or omission.

(2) Where, apart from paragraph (1), a reporting platform operator would be so liable, the reporting platform operator is liable to a penalty in respect of that act or omission under any one of regulations 14, 16 or 17, whichever is, in the opinion of an officer of Revenue and Customs, correct or appropriate in the circumstances.

### Assessment of penalties by HMRC

**20.**—(1) An officer of Revenue and Customs may make an assessment imposing a penalty under any of regulations 11 to 17 and setting it at such amount as, in the opinion of the officer, is correct or appropriate.

(2) Notice of an assessment of a penalty under this regulation must—

- (a) be given to the person liable to the penalty,
- (b) state the date on which it is issued and the time within which an appeal against the assessment may be made, and
- (c) in the case of an assessment of a penalty under regulation 11, 14, 16 or 17, state the reportable period in respect of which the penalty is assessed.

(3) Subject to paragraph (4), after a notice of assessment of a penalty under this regulation has been given, the assessment must not be altered except on appeal.

(4) If it is discovered by an officer of Revenue and Customs that the amount of a penalty under regulation 11(b) or 13(b) which has been assessed under this regulation is or has become insufficient, the officer may make an assessment in a further amount so that the penalty is set at the amount which, in the opinion of that officer, is correct or appropriate.

### Time limits and treatment of penalties

**21.**—(1) An assessment of a penalty under regulation 11, 12, 13, 14 or 15 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

(2) An assessment of a penalty under regulation 16 or 17 must be made—

- (a) within the period of 12 months beginning with the date on which the inaccuracy, incompleteness or failure first came to the attention of an officer of Revenue and Customs, and
- (b) within the period of 6 years beginning with the date on which the reporting platform operator became liable to the penalty.

(3) A penalty assessed under regulation 20 is due and payable at the end of the period of 30 days beginning with the day on which the notice of assessment is issued.

(4) A penalty assessed under regulation 20 is to be treated for all purposes as if it were tax charged in an assessment and due and payable.

### Right to appeal against penalty assessments by HMRC

**22.** An appeal may be brought against a penalty assessment under regulation 20—

- (a) on the grounds that liability to a penalty under any of regulations 11 to 17 does not arise, or
- (b) as to the amount of a penalty assessed under any of regulations 11 to 17.

### Procedure on appeal

**23.**—(1) Notice of an appeal under regulation 22 must—

- (a) state the grounds of appeal, and
- (b) be given—
  - (i) in writing;
  - (ii) before the end of the period of 30 days beginning with the date on which notice of the assessment under regulation 20(2) was issued;
  - (iii) to HMRC.

(2) Subject to paragraph (3), the provisions of Part 5 of the Taxes Management Act 1970<sup>(1)</sup> relating to appeals have effect in relation to an appeal against an assessment under regulation 20 as they have effect in relation to an appeal against an assessment to income tax.

- (3) On an appeal under regulation 22 that is notified to the tribunal, the tribunal may—
- (a) if it appears that no liability to a penalty has arisen, set the assessment aside,
  - (b) if the amount assessed appears to be appropriate, confirm the assessment,
  - (c) if the amount assessed appears to be excessive, reduce it to such other amount (including nil) as the tribunal considers appropriate, or
  - (d) if the amount assessed appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the tribunal considers appropriate.

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<sup>(1)</sup> 1970 c. 9.