L.N. 33 of 2010

MALTA RESOURCES AUTHORITY ACT (CAP. 423)

Petroleum for the Inland (Wholesale) Fuel Market (Amendment) Regulations, 2010

IN exercise of the powers conferred by sub-article (1) of article 28 of the Malta Resources Authority Act, the Minister for Resources and Rural Affairs, after consultation with the Malta Resources Authority have made the following regulations:

Title.

1. The title of these regulations is the Petroleum for the Inland (Wholesale) Fuel Market (Amendment) Regulations, 2010, and they shall be read and construed as one with the Petroleum for the Inland (Wholesale) Fuel Market Regulations, 2007 hereinafter referred to as "the principal regulations".

L.N. 278 of 2007.

Amends regulation 1 of the principal regulations.

2. Regulation 1 of the principal regulations shall be amended as follows:

(a) in sub-regulation (2) thereof, for the words "the inland wholesale fuel market of petroleum", there shall be substituted the words "the importation and wholesaling of petroleum for the inland fuel market, primary storage facilities and the bottling of LPG"; and

(b) immediately after sub-regulation (2) thereof, there shall be added the following new sub-regulation:

"(3) These regulations are being made for the safeguarding of the public interest and public safety. Any requirements contained therein, including those relating to authorisations and to services, are made for overriding reasons relating to public interest.".

Amends regulation 2 of the principal regulations.

3. Regulation 2 of the principal regulations shall be amended as follows:

(a) in the definition "authorisation", immediately after the words "these regulations" there shall be added the words ", and in relation to services and service providers means a permit, licence, warrant, appointment, concession or any

decision concerning access to a service activity or the exercise thereof";

(b) in the definition "authorised provider", for the word "regulations;" there shall be substituted the words "regulations, or a service provider who is authorised to operate under any law in force in a Member State of the European Union or a state which is a participant to the European Economic Area:", and immediately thereafter there shall be inserted the following proviso:

"Provided that whenever the Authority is required to exercise its functions under these regulations in relation to offshore storage facilities, the Authority shall act in collaboration with the authority responsible for maritime matters;";

(c) immediately after the definition "boycott" there shall be added the following new definition:

"cartridge" means a non-refillable container designed to be disposed of when empty and constructed to a recognised standard;

(d) immediately after the new definition "cartridge" there shall be added the following new definition:

" "CN codes" means the code numbers of the combined nomenclature established by Regulation 2658/87 on the tariff and statistical nomenclature and on the customs tariff;";

(e) in paragraph (b) of the definition "competent person", for the words "carry out" there shall be substituted the word "supervise";

(f) immediately after the definition "competent person" there shall be added the following new definition:

" "establishment" means the actual pursuit of an economic activity by a service provider for an indefinite period and through stable infrastructure from where the business of providing services is actually carried out;";

(g) in the definition "final customer" in the English text, for the words "final customer" there shall be substituted the words "final consumer", and wherever they occur in the principal regulations, these shall be substituted with the words "final consumer";

(h) immediately after the definition "material alterations" there shall be added the following new definition:

" "Member State" means a member state of the European Union;";

(i) immediately after the definition "the Minister" there shall be added the following new definition:

" "motor spirit" means an oil used in spark ignition engines of which 90 % or more by volume, including losses distils at 210°C;";

(j) immediately after the new definition "motor spirit" there shall be added the following new definition:

" "overriding reasons relating to public interest" means reasons recognised as such in case law of the European Courts of Justice and which reasons present a justification for the issue of an authorisation and, or the issue of a condition thereto and, or to any other policy decision taken in terms of such authorisation, when such authorisation, and, or condition and, or policy decision thereto could not have been issued or taken under normal circumstances but for such overriding reasons relating to public interest which include the following grounds:

(a) public policy, public security, public safety and public health; provided that, these grounds shall be interpreted within the meaning of Article 46 and Article 55 of the Treaty;

(b) the maintenance of order in society;

(c) social policy objectives;

(d) the protection of the recipients of services;

(e) consumer protection;

(f) the prevention of unfair competition;

(g) the prevention of fraud; and

(h) the protection of the environment;";

(k) in the definition "petroleum", immediately after the words "the Act", there shall be added the words ", but shall not include those products listed in the Fourth Schedule to these regulations";

(l) immediately after the definition "portable cylinders", there shall be added the following new definition:

" "premises" means land and the improvements on it, a building, store, shop, apartment, laboratory or other designated permanent structure in a specific location;";

(m) immediately after the definition "primary storage facility", there shall be added the following new definition:

" "recipient" means any natural person who is a national of a Member State, who benefits from rights conferred upon him by community acts or any legal person established in a Member State, who for professional or non-professional purposes, uses, or wishes to use a service against non-economic considerations;

(n) immediately after the new definition "recipient", there shall be added the following new definition:

" "service" means any self-employed activity performed for economic considerations;

(o) immediately after the new definition "service", there shall be added the following new definition:

" "service provider" means any natural person who is a national of a Member State, or any legal person established in a Member State, who offers or provide a service;"; and

(p) immediately after the new definition "service

provider", there shall be added the following new definition:

" "the Treaty" means the Treaty establishing the European Community.".

Amends regulation 3 of the principal regulations.

4. Regulation 3 of the principal regulations shall be amended as follows:-

(a) in sub-regulation (1) thereof, for the words "No person shall, unless he has been granted a valid authorisation in accordance with these or other regulations, carry out any of the following operations and, or activities:", there shall be substituted the words "The following operations and activities shall require an authorisation:";

(b) in paragraphs (a) and (b) of sub-regulation (2) thereof, the words "by any one person" shall be deleted;

(c) in the proviso to paragraph (a) thereof, for the words "he shall notify the Authority of his intention to store" there shall be substituted the words "the Authority shall be notified of" and immediately after the words "types of petroleum" there shall be added the words "intended to be stored";

(d) in paragraphs (c) and (d) of sub-regulation (2) thereof, the words "by any one person" wherever they occur, shall be deleted; and

(e) immediately after paragraph (d) thereof, there shall be added the following:

"(e) the importation and wholesaling of petroleum in a calendar year in quantities not exceeding the amounts per type mentioned in the Fifth Schedule to these regulations:

Provided that the person importing or wholesaling such petroleum shall submit to the Authority a signed declaration in the form and manner established by the Authority, that the amounts to be imported in the particular calendar year shall not exceed the amounts stated in the Fifth Schedule:

Provided further that the person making such a declaration in terms of the foregoing, shall pay to the

Authority a yearly administrative fee of €500 together with the declaration and shall make in favour of the Authority a bank guarantee of not less than € 2,500 which bank guarantee shall be paid in favour of the Authority in case the declaration is found by the Authority to be incorrect, false and, or incomplete.".

Amends regulation 6 of the principal regulations.

5. In sub-regulation (1) of regulation 6 of the principal regulations, for the words "activities and practices." there shall be substituted the words "activities and practices:", and immediately thereafter there shall be added the following proviso:

"Provided that, the conditions for the granting of an authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the service provider is already subject in another Member State or in Malta.".

Amends regulation 11 of the principal regulations.

6. Immediately after regulation 11 of the principal regulation, there shall added the following new regulation:

"11A. A person authorised to carry out the activity of an importer and, or of a wholesaler of petroleum shall pay to the Authority a regulation charge on every litre and, or kilogram of imported fuel as may be specified in terms of these regulations and, or authorisation conditions:

Provided that a regulation charge shall not be due on the fuels included in the Fourth Schedule to these regulations.".

Amends regulation 13 of the principal regulations.

7. Sub-regulation (1) of regulation 13 of the principal regulations shall be deleted and sub-regulation (2) thereof shall be renumbered as regulation 13 thereof.

Amends regulation 14 of the principal regulations.

8. In paragraph (c) of regulation 14 of the principal regulations for the words "these regulations." there shall be substituted the words "these regulations:", and immediately thereafter there shall be added the following provisos to the whole regulation:

"Provided that, any decision taken by the Authority, including refusal or withdrawal of an authorisation, shall be fully reasoned and shall be open to challenge before the Appeals Board:

Provided further that in case of failure by the Authority to inform the applicant regarding any decision taken concerning access to a service activity or the exercise thereof, including refusal or withdrawal of an authorisation, shall not mean in any manner whatsoever, that the Authority has tacitly granted such authorisation and that the applicant has automatically been granted access to a service activity or the exercise thereof.".

Amends regulation 15 of the principal regulations.

9. Sub-regulations (4) and (5) of regulation 15 of the principal regulations shall be renumbered as sub-regulations (5) and (6) respectively and immediately after subregulation (3) thereof there shall be added the following new sub-regulation:

"(4) The authorised provider shall inform the Authority of any changes relating to his activity which result in the conditions for his authorisation no longer being met and the creation of subsidiaries whose activities fall within the scope of the authorisation and, or the authorisation scheme.".

Amends regulation 17 of the principal regulations.

10. The proviso of sub-regulation (2) of regulation 17 of the principal regulations shall be deleted.

Amends regulation 18 of the principal regulations.

11. Regulation 18 of the principal regulations shall be amended as follows:-

(a) sub-regulation (3) thereof shall be renumbered as sub-regulation (4); and

(b) immediately after sub-regulation (2) thereof, there shall be added the following:

"(3) During the course of inspection the authorised provider shall give all reasonable assistance which such inspectors may require for that purpose. The authorised provider shall not be entitled to any compensation with regard to any samples lifted.".

Amends regulation 33 of the principal regulations.

12. For regulation 33 of the principal regulations, there shall be substituted the following:

"33. The Authority may require a provider authorised to carry out the activity of an importer and, or of a wholesaler of petroleum to have a specific percentile of biofuel content as part of the total annual aggregate of petroleum products

imported and wholesaled in the inland fuel market:

Provided that such amount shall not exceed that specified in any applicable standard or directive.”.

Substitutes the First and Second Schedule to the principal regulations.

13. The First Schedule and the Second Schedule to the principal regulations shall be substituted by the following new Schedules:

"FIRST SCHEDULE

Regulation 8(2)

Authorisation application fee payable in respect of an application for an:

Authorisation to carry out the activity of an importer and, or wholesaler of petroleum

The applicable fee for applying for an authorisation for carrying out the activity of an importer and, or wholesaler of petroleum in the inland market is of €233

Authorisation to operate a primary storage facility

The applicable fee for applying for an authorisation for operating a primary storage facility is of €233

Authorisation to carry out the activity of bottling of LPG

The applicable fee for applying for an authorisation for carrying out the activity of bottling of LPG is of €233

SECOND SCHEDULE

Regulation 11(2)

Authorisation fee payable in respect of a:

Authorisation to carry out the activity of an importer and, or wholesaler of petroleum

The applicable authorisation fee for carrying out the activity of an importer and, or wholesaler of petroleum in the inland market is of €2,329 per annum and of 0.02c per litre of imported fuel.

Authorisation to operate a primary storage facility

The applicable authorisation fee for operating a primary storage facility is:

(*a*) €4,659 per annum in the case of a primary storage facility which does not exceed 25,000 tonnes capacity;

(*b*) €9,317 per annum in the case of a primary storage facility which exceeds 25,000 tonnes but does not exceed 100,000 tonnes capacity;

(*c*) €13,976 per annum in the case of a primary storage facility which exceeds 100,000 tonnes capacity

Authorisation to carry out the activity of bottling of LPG

The applicable authorisation fee for carrying out the activity of bottling of LPG is of €2,329.".

Adds new Fourth and Fifth Schedules to the principal regulations.

14. Immediately after the Third Schedule to the principal regulations, there shall be added the following new Schedules:

"**FOURTH SCHEDULE**

Regulation 2, 11

Product	CN CODE	Comment as Listed in CN CODE
Benzol (benzene)	2707 10 90	For purposes other than as a power or heating fuel
Toluol (toluene)	2707 20 90	For purposes other than as a power or heating fuel
Xylol (xylenes)	2707 30 90	For purposes other than as a power or heating fuel
Other aromatic hydrocarbon mixtures of which 65 % or more by	2707 50 90	For purposes other than as a power or heating fuel

volume (including losses) distils at 250ºC by the ASTM D 86 method		
Phenols Creosote oils	2707 60 00 2707 91 00	
Sulphuretted toppings Basic products Anthracene	2707 99 30 2707 99 50 2707 99 70	
Light oils and preparations	2710 11 11	For undergoing a specific process
Light oils and preparations	2710 11 15	For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 11 15
White Spirit Medium oils	2710 11 21 2710 19 11	For undergoing a specific process
Gas oils	2710 19 31	For undergoing a specific process
Gas oils	2710 19 35	For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 19 31

Lubricating oils; other oils	2710 19 71	For undergoing a specific process
Lubricating oils; other oils	2710 19 75	For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 19 71
Liquids for hydraulic purposes Motor oils, compressor lube oils, turbine lube oils	2710 19 81 2710 19 83	
White oils, liquid paraffin	2710 19 85	
Gear oils and reductor oils Metalworking compounds, mould–release oils, anti–corrosion oils Electrical insulating oils Other lubricating oils and other oils	2710 19 87 2710 19 91 2710 19 93 2710 19 99	
Propane	2711 12 11	For purposes other than as a power or heating fuel
Butanes	2711 13 10	For undergoing a specific process
Butanes	2711 13 30	For undergoing chemical

		transformation by a process other than those specified in respect of subheading 2710 13 10
Ethylene, propylene, buthylene and butadiene Petroleum jelly; Crude Petroleum jelly; Other	2711 14 00 2712 10 10 2712 10 90	
Paraffin wax containing by weight less than 0,75 % of oil	2712 20 10	Synthetic paraffin wax of a molecular weight of 460 or more but not exceeding 1 560
Paraffin wax containing by weight less than 0,75 % of oil	2712 20 90	Other
Bitumen and asphalt, natural; bituminous or oil–shale and tar sands; asphaltites and asphaltic rocks	2714 10 00	Bituminous or oil–shale and tar sands
Bitumen and asphalt, natural; bituminous or oil–shale and tar sands; asphaltites and asphaltic rocks	2714 90 00	Other
Bituminous mixtures	2715 00 00	

based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cut–backs)		

FIFTH SCHEDULE

Regulation 3 (e)

The importation and wholesaling of 20,000 litres of motor spirit during the course of one calendar year is exempt from the requirement of obtaining an authorisation in terms of these regulations.

The importation and wholesaling of 1500 kgs of liquefied petroleum gas in cartridges and similar small containers during the course of one calendar year is exempt from the requirement of obtaining an authorization in terms of these regulations.

Any person who is so exempt shall still be bound to observe any applicable regulation, decision or directive of the Authority.”.

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