

14th September 2007

Report and issuance of a Directive following consultation on the proposed issuance of a directive on the provision of certain services by Maltapost plc under the Postal Services (General) Regulations.

Consultation and report

In accordance with the requirements of regulation 43 of the Postal Services (General) Regulations (the 'Regulations') (as per Legal Notice 328 of 2005), the Malta Communications Authority (the 'Authority') consulted with the universal service provider and other stakeholders whom the Authority considered to have an interest. The only respondent to this consultation was Maltapost plc ('Maltapost').

Maltapost in its submissions contested the Authority's view that the service being provided under article 29 (2) of the Income Tax Management Act (Cap. 372 of the Laws of Malta) whereby a person may send all income tax returns, additional information and resulting correspondence and payment of tax, free of postage to the Commissioner of Inland Revenue in envelopes marked 'Income Tax', is a Business Reply Service.

Maltapost contend that internationally Business Reply Service is recognised through certain features and the service in question does not contain these features. Maltapost argue that what is stated in regulation 31 of the Regulations is not the only feature of a Business Reply Service. Maltapost contend that the design of a Business Reply Service envelope has a central role in the service and that this should satisfy certain requirements of shape, size, method of address, and citation of a licence number. Maltapost further contend that having only the word 'Income Tax' without the 'remaining requirements' identified by Maltapost, will lead to a lengthier and more expensive process.

The Authority notes that the proposal for the issue of this directive arose following the decision taken by Maltapost to start considering the service as referred to under article 29 (2) of the Income Tax Management Act as falling under regulation 53 of the Regulations and therefore justifying the unilateral decision by Maltapost of imposing double the allegedly deficient postage not paid by the sender of the postal article, when in the circumstances a negotiated solution with the Commissioner of Inland Revenue as opposed to an unilateral imposition as described above, would have been the better solution.

The Authority refers to the erroneous contention by Maltapost that article 29 of the Income Tax Management Act places an obligation on the Department of Inland Revenue to absorb the postage costs of the public. In actual fact this article is silent on the matter and simply states that a person when sending his correspondence to the Commissioner of Inland Revenue, can do so free of charge.

Furthermore it is relevant to note that the Authority in its decision dated 10th August 2007 following a dispute between Maltapost plc and the Commissioner of Inland Revenue on this issue, stated that in the context of the service in question Maltapost is to charge the Commissioner of Inland Revenue the same rates Maltapost charges for the provision of a Business Reply Service. The Authority considers that Maltapost should be compensated for the provision of the service in question. However the solution adopted by Maltapost in considering such a service as falling under regulation 53 of the Regulations is not tenable at law given that clearly the service in question does not relate to the instances referred to in this regulation once the sender of the postal article is specifically entitled by law to send postal articles free of charge.

The Authority considers that the service in question falls under the description of a Business Reply Service as provided for at law primarily as stated under regulation 31 of the Regulations. Consequently Maltapost should be paid the rates established for the provision of a Business Reply Service. There are no legal requirements under the applicable legislation relating to the design of a Business Reply Service envelope. The only characteristic established at law in relation to a Business Reply Service is that the universal service provider is required to provide such a service "whereby payment of postage payable on postal articles is made by a person other than the sender of those postal articles".¹ The Authority considers that this characteristic also applies to the service referred to under article 29 (2) of the Income Tax Management Act.

The so-called requirements that Maltapost refers to in its submissions result only from a postal service scheme that Maltapost itself introduced. Under regulation 43 of the Regulations the Authority has the faculty of either requiring Maltapost to have in place a new postal service scheme as the Authority may consider necessary, or require Maltapost to amend an existing scheme such as the one that Maltapost introduced on Business Reply Service, this without prejudice to other regulatory measures that the Authority may take in accordance with its powers at law.

Maltapost also argue that the mail in question "quite often" does not constitute a reply. The Authority notes that this contention by Maltapost is an assumption that has not been supported by any tangible proof. In practice the Authority considers that taxpayers write to the Commissioner of Inland Revenue in response to a communication by the said Commissioner whether it is an income tax return, a request to pay outstanding dues or a similar communication and the use of the word 'reply' should be interpreted accordingly.

The Authority therefore considers that it is justified in issuing the directive as proposed.

¹ See Postal Service (General) Regulations, regulation 31 thereof.

Directive No. 2 of 2007

Directive of 2007 on the Provision of certain services by Maltapost plc under the Postal Services (General) Regulations.

The Malta Communications Authority after having consulted in accordance with regulation 43 of the Postal Services (General) Regulations and in accordance with its powers under this regulation, and under article 4 of the Malta Communications Authority Act (Cap. 418 of the Laws of Malta) has made the following Directive.

Title and application L.N.328 of 2005

1.1 The title of this directive is the Directive of 2007 on the Provision of certain services by Maltapost plc under the Postal Services (General) Regulations.

1.2 The provisions of this Directive shall come into force on the date of its publication on the website of the Malta Communications Authority.

Definitions

2.1 Unless otherwise provided in this directive, the provisions of article 2 of the Postal Services Act and of regulation 2 of the Postal Services (General) Regulations shall apply to this Directive.

2.2. For the purposes of this Directive:

the word "Authority" means the Malta Communications Authority.

the words "the Regulations" unless the context requires otherwise, refer to the "Postal Service (General) Regulations".

Considerations

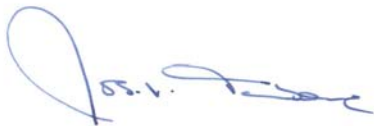
3.1 In accordance with article 29. (2) of the Income Tax Management Act (Cap. 372 of the Laws of Malta), a person may send all income tax returns, additional information and resulting correspondence and payment of tax free of postage to the Commissioner of Inland Revenue in envelopes marked "Income Tax". The applicable legislation does not however provide any other additional details.

3.2 The Authority considers that such a service must be provided by Maltapost plc given that this is a Business Reply Service. Reference in this regard is made to regulation 31 of the Regulations which in describing a Business Reply Service states that the universal service provider is required to provide a service whereby payment of postage payable on postal articles is made by a person other than the sender of those postal articles.

3.3 The business reply service reflected in the Business Reply Service Scheme of Maltapost plc currently has some elements that serve to differentiate it from the service required to be provided by Maltapost plc as described in article 29 cited above. Primarily Maltapost plc in its Business Reply Service Scheme, requires the use of cards, envelopes, folders or gummed address labels of a design approved by it, whereas in the service referred to in article 29. (2) of the Income Tax Management Act, there is no such requirement apart from requiring the sender to write the words 'Income Tax' on the envelope.

Directive

4.1. The Authority requires Maltapost plc within thirty days from the issue of this directive to submit to the Authority its proposals for a new postal service scheme or for amendments to its present Business Reply Service Scheme, to factor in the elements that characterise the service referred to under article 29. (2) of the Income Tax Management Act and this also in line with the decision of the Authority dated 10th August 2007 further to the complaint lodged by the Inland Revenue Department against Maltapost plc.



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