

Guidelines in relation to the VAT rules applicable to small enterprises

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Purpose and Background

The purpose of this document is for the Commissioner for Tax and Customs ('CfTC') to provide guidance, in conformity with article 75(2) of the VAT Act (Chapter 406, Laws of Malta), on the interpretation and application of the provisions contained in the VAT Act as regards the exemption for small enterprises established in Malta for supplies made in Malta, particularly taking into consideration the new rules applicable effective from 1 January 2025 pursuant to the adoption of Act XXXVIII of 2024 amending the VAT Act and Legal Notices 344 to 352 amending various Schedules and Regulations under the VAT Act.

By way of background, item 16 of Part Two of the Fifth Schedule to the VAT Act provides for an exemption, without credit (i.e. without the right of deductibility of VAT incurred on expenditure), on various supplies made by small enterprises which have opted to register under articles 11, 11A and 11B of the VAT Act.

The article 11 registration is relevant to taxable persons **established in Malta** who wish to benefit from the exemption for small enterprises for supplies made **in Malta**.

The article 11A registration is relevant to taxable persons **established in Malta** who wish to benefit from the exemption for small enterprises for supplies made **in other Member States**.

The article 11B registration is relevant to taxable persons **established in another Member State** who wish to benefit from the exemption for small enterprises for supplies **made in Malta**.

Interpretation

Article 11: Exemption for small enterprises established in Malta for supplies taking place in Malta

Registration

A person is eligible to register under article 11, and thus eligible to benefit from the respective exemption, if they qualify as a small enterprise for this purpose. In terms of Part One of the Sixth Schedule to the VAT Act, a small enterprise would be any taxable person whose domestic annual turnover during the preceding calendar year, if any, does not exceed the domestic

threshold (€35,000) at the time of application. This notwithstanding, a person would not be eligible to register under article 11 where their turnover for the calendar year in which the application is made has already exceeded the domestic threshold.

In terms of article 11(2), a backdated registration under article 11 is not possible. This notwithstanding, where a person is not already registered under article 10 of the VAT Act, a registration under article 11 takes effect as from the 1st day of the month in which the Commissioner receives the application for registration under article 11, or from the date of commencement of the economic activity indicated by the taxable person, whichever the later.

Where a person already registered under article 10 of the VAT Act opts to switch to an article 11 registration, such article 11 registration shall only take effect as from the first day of the month following that in which the Commissioner receives the application for registration under article 11.

Turnover

The term “turnover”, relevant for the purpose of assessing whether the domestic threshold has been exceeded, is defined in item 3(1) of the Definitions to the Sixth Schedule of the VAT Act. This definition essentially lists various types of supplies, the taxable value of which is to be included in the turnover calculation of the small enterprise.

For the avoidance of doubt, in relation to an article 11 registration, only supplies which take place in Malta for VAT purposes (i.e. in accordance with the place of supply rules contained in the Third Schedule to the VAT Act) are to be taken into consideration, both for the purpose of calculating the domestic annual turnover and for the purpose of assessing whether the domestic threshold has been exceeded.

Immovable property, financial transactions, insurance and reinsurance services, and the treatment thereof as ancillary transactions

For the purpose of calculating turnover, item 3(1)(c) of the Definitions contained in the Sixth Schedule to the VAT Act specifically includes the following exempt transactions as forming part of the turnover of small enterprises:

“(c) the value of immovable property transactions, financial transactions referred to in item 3 of Part Two of the Fifth Schedule, and insurance and reinsurance services, unless those transactions are ancillary transactions.”

Immovable property transactions shall include any of the exempt transactions referred to in item 1 of Part 2 of the 5th Schedule to the VAT Act¹.

As regards the treatment of the transactions referred in said item as ancillary transactions, it is the interpretation of the Commissioner that, solely for the purpose of this item, the term “ancillary transactions” shall refer to those transactions which **do not** constitute the direct, permanent and necessary extension of the usual business activity of the person concerned.

For the purpose of establishing whether an immovable property transaction is an ancillary transaction, the kind of immovable property concerned, the origin of the finances used to purchase that property and its use shall be considered.

For the avoidance of doubt, the long-term letting of one single undivided private property of a person would not be deemed to constitute the direct, permanent and necessary extension of the usual business activity of the person concerned and would thus classify as an ancillary transaction for the purpose of this provision.

For the purpose of the application of item 3(2) of the Definitions section in the 6th Schedule to the VAT Act, the term “capital assets” shall refer to assets which are used on a long-term basis in the furtherance of the economic activity of the person. Any assets which are held for re-sale shall not classify as a “capital asset” for the person holding such assets for such purpose.

Turnover of related persons not being physical persons (related persons anti-abuse provision)

Item 4 of Part One of the Sixth Schedule to the VAT Act contains an anti-abuse provision which stipulates that, in calculating the domestic annual turnover and for the purpose of assessing whether the domestic threshold has been exceeded, persons other than physical persons, registered or applying to be registered under article 11, must take into account:

- a. their own domestic turnover; and
- b. the proportionate domestic turnover of any **related persons**.

A person, including a physical person (person A), shall be deemed to be related to a person (person B) where the latter person, not being a physical person (person B), is owned or controlled, directly or indirectly, as to more than 10% by the former person (person A), **or as may be prescribed by the Commissioner**.

For the purpose of the application of this provision, a person (person A) would be deemed to own or control, directly or indirectly, as to more than 10% of another person (person B) where person A fulfils any one of the following criteria:

¹ CJEU judgement, CT, C-716/18 of 9th July 2020, paragraph 29

1. owns and/or holds, directly or indirectly, more than 10% of the ordinary share capital (or equivalent interests in the case of persons other than a limited liability company) of person B; or
2. holds, directly or indirectly, more than 10% of the voting rights (or equivalent rights in the case of persons other than a limited liability company) of person B; or
3. is, directly or indirectly, entitled to receive more than 10% of the profits available for distribution or any other form of remuneration (or equivalent rights in the case of persons other than a limited liability company) from person B.

Any salaries or remuneration paid to the partners of any form of partnership shall be deemed to form part of the profits to which such partners are entitled for the purpose of point (3) above. Any such salaries/remuneration paid during a calendar year shall be added to any profits paid to said partners by the partnership and such figure shall be divided by the total profits available for distribution for the year for the partnership in order to assess whether the percentage referred to in point (3) above has been exceeded.

For the avoidance of doubt, with respect to participations in non-profit making organisations as defined in terms of item 5 of Part Five of the Fifth Schedule to the VAT Act, participation in the management committee or similar committees shall not be deemed to constitute voting rights for this purpose.

Notwithstanding the above, the Commissioner may prescribe other instances where two or more persons are deemed as *related persons*. For this purpose, particularly in situations where the Commissioner has reason to believe that a taxable person has established a structure for the purpose of benefitting from the exemption for small enterprises, directly or indirectly, more than once, he may deem persons owned or controlled, directly or indirectly, as to more than 10% by the same person as a related person. This may be the case, for example, in situations where a taxable person owns or controls, directly or indirectly, various bodies of persons which apply to be registered under article 11.

Obligation to register under article 12

A person registered under article 11 shall also be required to register under article 12 of the VAT Act in order to self-charge and pay Maltese VAT on their respective purchases through their article 12 VAT registration, where they:

- a) acquire goods in Malta used for the purpose of their economic activity from other EU Member States whose value in a calendar year exceeds the acquisitions threshold (€10,000); and/or
- b) receive services from suppliers established outside Malta (both EU and non-EU) used for the purpose of their economic activity.

Where a person registered under article 11 supplies services within the territory of another EU Member State for which VAT is payable solely by the recipient, they shall also be obliged to register under article 12.

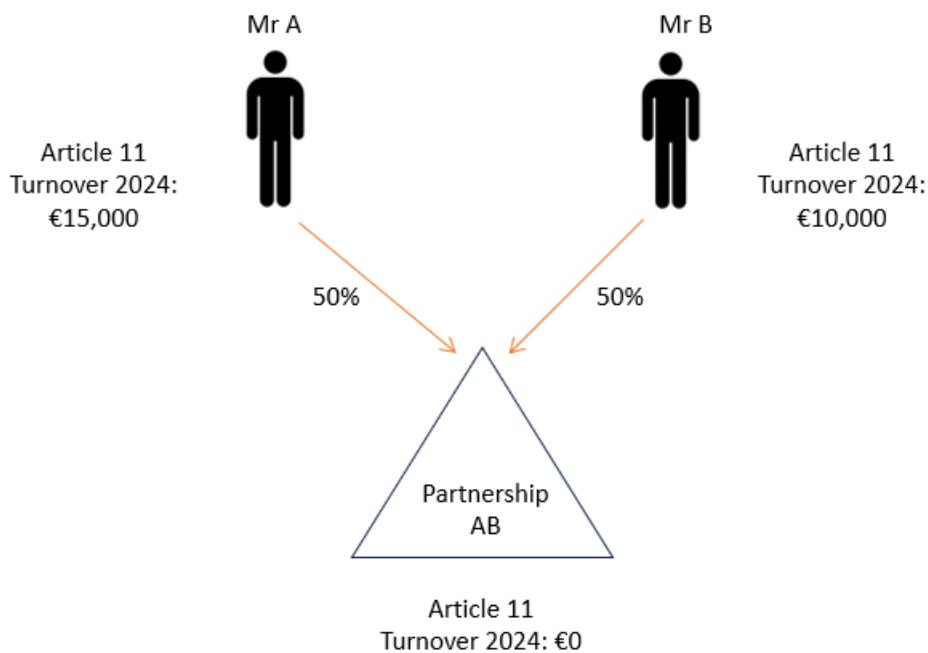
Examples

In order to illustrate how to calculate the domestic turnover of a person registered or applying to be registered in terms of article 11, consider the following examples:

Example A

As of 1 January 2025, Mr A and Mr B, both duly registered for VAT purposes in terms of article 11, form a partnership (hereinafter “**Partnership AB**”) which is also applying for VAT registration in terms of article 11. Mr A and Mr B have equal (50%) interests in the partnership. The relevant turnover for calendar year 2024 is as follows:

- a. Mr A: €15,000
- b. Mr B: €10,000
- c. Partnership AB: €0



In order to determine whether Partnership AB qualifies as a small enterprise and therefore is eligible to register for VAT purposes under article 11, account must be taken of:

Domestic annual turnover during the preceding calendar year (2024) – Partnership AB (applying to register under art. 11)	€0
+ Proportionate domestic annual turnover of related persons:	
Mr A:	
50% * €15,000	€7,500

Mr B:	
50% * €10,000	€5,000
<u>TOTAL DOMESTIC ANNUAL TURNOVER</u>	<u>€12,500</u>

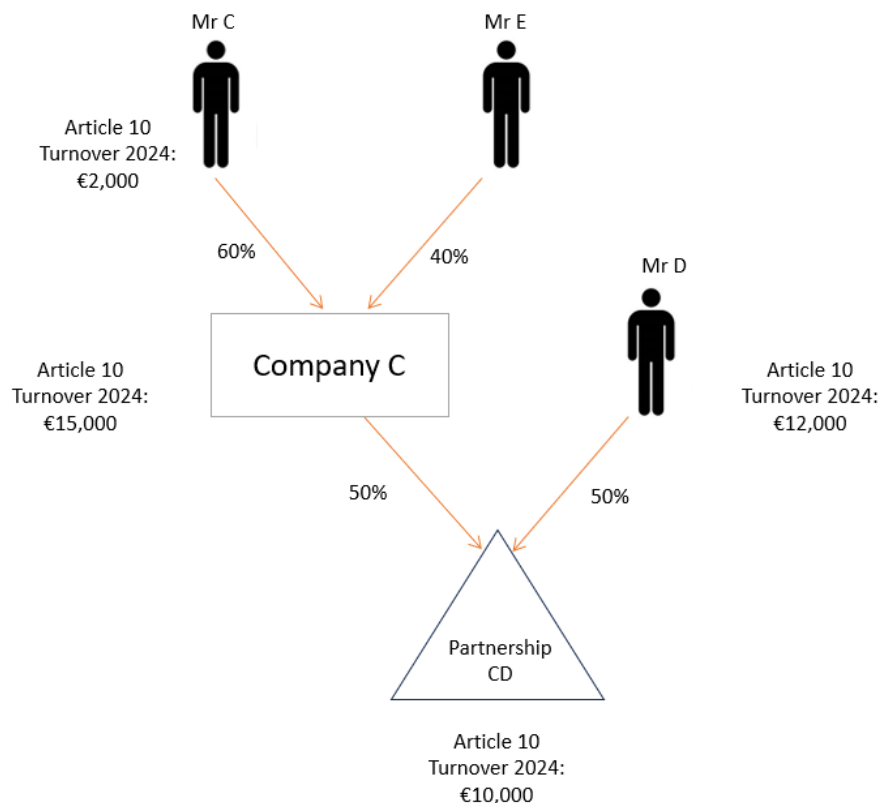
Partnership AB would be eligible for registration in accordance with article 11. Nevertheless, in the event that, during 2025, the domestic annual turnover of Partnership AB together with the proportionate domestic annual turnover of Mr A and Mr B exceeds €35,000 at any point during the year, Partnership AB would no longer qualify as a small enterprise and would have an obligation to shift to an article 10 VAT registration.

Example B

In January 2021, Company C and Mr D formed a partnership (hereinafter “**Partnership CD**”) which is currently registered for VAT purposes in terms of article 10 (effective as of 1 February 2021). The partners would like to shift the partnership from an article 10 to an article 11 registration as from 1 March 2025.

In order to determine whether Partnership CD qualifies as a small enterprise and therefore is eligible to shift to an article 11 registration, the following points must be considered:

- Company C and Mr D have an equal (50%) interest in the partnership;
- Company C is owned by Mr C (60%) and his son Mr E (40%);
- Mr C, Mr D and Company C are all duly registered for VAT purposes in terms of article 10 whilst Mr E does not carry on an economic activity and is not registered for VAT purposes;
- The relevant domestic annual turnover for calendar year 2024 is as follows:
 - a. Mr C: €2,000
 - b. Mr D: €12,000
 - c. Company C: €15,000
 - d. Partnership CD: €10,000



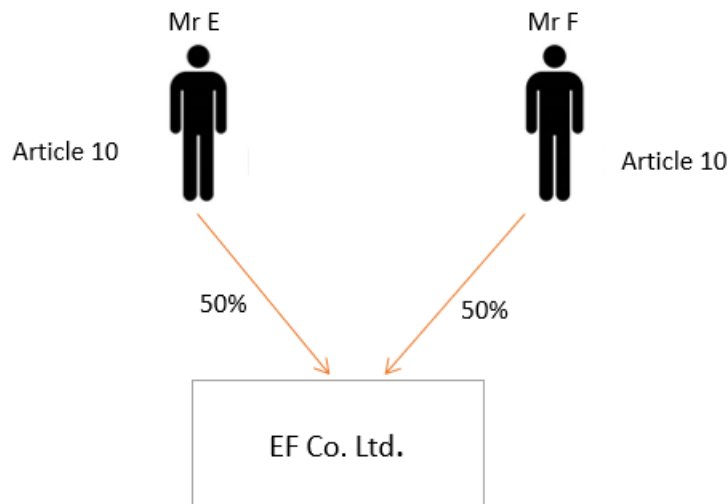
Calculation:

Domestic annual turnover during the preceding calendar year (2024) – Partnership CD – (applying to register under art. 11)	€10,000
+ proportionate domestic annual turnover of related persons:	
Company C:	
50% * €15,000	€7,500
Mr D:	
50% * €12,000	€6,000
Mr C:	
60% * 50% * €2,000	€600
<u>TOTAL DOMESTIC ANNUAL TURNOVER</u>	<u>€24,100</u>

In view of the above, it is currently possible for Partnership CD to shift to an article 11 VAT registration. Nevertheless, in the event of such a shift, if the *turnover* of Partnership CD during 2025 exceeds €10,301 (therefore total domestic annual turnover exceeds €35,000), Partnership CD shall no longer qualify as a *small enterprise* and would have an obligation to shift back to an article 10 VAT registration. This provided that the turnover for 2025 up to the date of application for registration under article 11 calculated on the above basis also does not exceed the domestic threshold.

Example C

Mr E and Mr F, both self-employed consultants, are considering setting up a limited liability company in Malta (EF Co. Ltd.) to provide consultancy services as from 1 June 2025. The proposed corporate structure would be as follows:



Mr E and Mr F would like to understand whether EF Co Ltd. would be eligible for registration under article 11 of the VAT Act.

In answering this question, a detailed breakdown of the 2024 turnover of Mr E and Mr F must be analysed, as follows:

Turnover - Mr E

Activities	Place of supply	Malta VAT Treatment	Value of Supplies
provision of consultancy services to business customers identified for VAT purposes in Italy	Italy	Outside scope	€24,000
provision of consultancy services to business customers identified for VAT purposes in France	France	Outside scope	€25,000

Turnover - Mr F

Activities	Place of supply	Malta VAT Treatment	Value of Supplies
provision of consultancy services to business customers in Malta	Malta	18%	€75,000

In determining the eligibility of EF Co. Ltd to apply for VAT registration under article 11, reference should be made to the domestic annual turnover of EF Co. Ltd. as well as the proportionate domestic annual turnover of any related persons:

Domestic annual turnover during the preceding calendar year (2024) – EF Co. Ltd. – (applying to register under art. 11)	€0
+ proportionate domestic annual turnover (2024) of related persons:	
Mr E:	
50% * €0	€0
Mr F:	
50% * €75,000	€37,500
TOTAL DOMESTIC ANNUAL TURNOVER	€37,500

In view of the fact that the total domestic annual turnover would be in excess of €35,000, it would not be possible for EF Co. Ltd. to apply for VAT registration in terms of article 11.

Example D

Mr X, a person registered under article 11 of the VAT Act, is a full-time employee of ABC Limited; however, also carried out the following activities during 2024:

Activities	Place of supply	Malta VAT Treatment	Value of Supplies
provision of consultancy services to a business customer identified for VAT purposes in Italy	Italy	Outside scope	€14,000
provision of consultancy services to a business customer in Malta	Malta	subject to 18% VAT	€12,000
long-term letting of various immovable property located in Malta	Malta	exempt without credit	€40,000

Mr X would like to understand whether he may remain so registered as from 1 January 2025.

Until 31 December 2024, all supplies which were taxable by nature were required to be included in the turnover calculation, whilst on the other hand all exempt without credit supplies were **not** to be taken into consideration.

In assessing whether the domestic threshold has been exceeded as from 1 January 2025, the supplies which need to be taken into consideration in this case, which would now exclude supplies taking place outside Malta (i.e. consultancy services to a business customer identified for VAT purposes in Italy) but will include exempt immovable property transactions (such as the long-term letting of various immovable properties in Malta) which are not ancillary transactions, are the following:

provision of consultancy services to a business customer in Malta	Malta	subject to 18% VAT	€12,000
long-term letting of various immovable property located in Malta	Malta	exempt without credit	€40,000
Total domestic annual turnover 2024			€52,000

Mr X would no longer qualify for an article 11 registration and would therefore have an obligation to shift from an article 11 to an article 10 VAT registration.

Disclaimers

These guidelines shall not prejudice in any way any of the powers of the CfTC in terms of the VAT Act.

These guidelines shall replace and supersede any previously applicable guidelines on the same matter. Notwithstanding, this shall not prejudice the application of any previous guidelines prior to the date of publication of these guidelines.

The CfTC reserves the right to substitute, alter or withdraw these guidelines as necessary at any time.

Contact

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