

Guidelines: Rectification of VAT Registration Type from Article 10 to Article 11

Date: 13/01/2021

1. Background

Item 2 of the Sixth Schedule to the Value Added Tax Act (“VATA”) as amended by L.N. 463 of 2020 stipulates the following:

“2. (1) Notwithstanding the provisions of item 1, the economic activity of a person registered under article 10 does not qualify as a small undertaking at any time during the first twenty-four full calendar months from the date of the said registration:

Provided that a person who is treated as registered under article 10 in virtue of sub-article (6) of the said article of this Act shall be treated for the purpose of this item as having been registered under that article on the date on which he was first registered under this Act.

(2) Without prejudice to the provisions of paragraph (1) of this item, the economic activity of a person registered under article 10 does not qualify as a small undertaking if the turnover of that person for the relevant period exceeds the Exit Threshold.

(3) Notwithstanding the provisions of sub-item (1) of this item, where a person who registers under article 10 makes a request to the Commissioner within six months from the date of that registration or before the due date of the first VAT Return, whichever is the latest, to convert to a registration under article 11, the Commissioner may accept the request if he is satisfied that the person qualifies as a small undertaking and subject to such other conditions and limitations as may be determined at the time the request is made.”

2. Scope

The purpose of the “Guidelines: Rectification of Registration Type from Article 10 to Article 11” (the “Guidelines”) is to standardise the practice of rectifying the registration type from an Article 10 to an Article 11 registration prior to the lapse of the twenty-four calendar month period imposed by item 2(1) of the Sixth Schedule, only applicable to cases where a person makes a *bona fide* mistake upon registration by registering under article 10, but who’s intention was to register under article 11. The purpose of this Guideline is to define the conditions to be considered by the Commissioner for Revenue (the “Commissioner”) in determining whether a request for rectification of registration type should be accepted or otherwise.

3. Conditions

In order for a person’s request for conversion of registration type from Article 10 to Article 11 to be accepted by the Commissioner, that person shall submit all pending VAT returns and shall satisfy the following conditions:

- a) Where the person has not engaged in any transactions up to the time the request is submitted and until such time the conversion is effected, the request may be accepted subject to the submission of satisfactory evidence by the applicant proving that they have not:

- issued any tax invoices or fiscal receipts for any taxable supplies made;
 - been issued with any tax invoices by other taxable persons;
 - made any intra-Community acquisitions of goods from other Member States; and
 - acquired any services from outside Malta subject to VAT in Malta through the reverse charge mechanism in terms of articles 20 and 21 of the VATA.
- b) Where the applicant would have engaged in any transactions until such time the conversion is effected, the request can only be accepted subject to the submission of satisfactory evidence and the following conditions being met:
- Payment of the full amount of VAT due, if any, is made to the Office of the Commissioner on any tax invoices or fiscal receipts issued during the period within which that person is registered under article 10 for any taxable supplies made;
 - Payment of the full amount of VAT due in Malta, if any, is made to the Office of the Commissioner in connection with the following transactions made during the period in which the person is registered under article 10:
 - any intra-Community acquisitions of goods made from other Member States; and
 - any services procured from outside Malta which are subject to VAT in Malta.

This will not exonerate the person from his obligation to register under article 12 if that person is engaged in any of the above mentioned transactions subsequent to being switched to an article 11 VAT registration.

- Any and all input VAT claimed by the person is to be refunded in full to the Office of the Commissioner;
- Any directions given in terms of Part Five of the Fourteenth Schedule to the VATA are revoked.
- It is evident from the transactions carried out that the turnover, if any, of that person for the relevant period does not exceed the Entry Threshold.

Where a person does not agree or consent to any of the conditions set out above, that person shall not be entitled to convert to an article 11 registration prior to the lapse of the prescribed twenty-four-month period.

4. Satisfactory Evidence

- a) Evidence pertaining to requests falling under item 3(a) of these Guidelines shall include:
- A brief explanation on the basis of the request together with a written declaration to be submitted by the applicant (letter or e-mail) whereby the applicant declares that he has met the conditions listed under item 3(a) of this Guideline;
 - The general ledger showing all transactions carried out by the person (both purchases and sales), if any;
 - A schedule of non-current assets, if any;
 - In the case of a company, a statement by the company's auditors that no transactions have been carried out during the period within which the company was registered under article 10.

- b) Evidence pertaining to requests falling under item 3(b) of these Guidelines shall include:
- A brief explanation on the basis of the request together with a written declaration to be submitted by the applicant (letter or e-mail) whereby the applicant declares that he is in agreement, and has met all of the conditions set out under item 3(b) of this Guideline;
 - The general ledger showing all transactions carried out by the person (both purchases and sales);
 - A schedule of non-current assets, if any;
 - Copies of all invoices/receipts issued to customers;
 - Copies of all invoices/receipts issued by suppliers;

5. Effective date of rectification

The VAT registration type of the applicant will be rectified from an Article 10 to an Article 11 registration with effect from the first day of the month following the date the application for rectification is approved by the Commissioner.

6. Method of application

An e-mail is to be sent to vat.cfr@gov.mt containing the evidence highlighted under Section 4 of this Guideline. The request will be reviewed – the applicant will be contacted should further information be required to validate the request. Once the request has been approved, the applicant will be informed of the change in registration type, at which point the applicant is required to return any fiscal receipts books to the Commissioner.

7. Disclaimer

The Commissioner may substitute, alter or withdraw these guidelines at any time.