

## Section 9 - Intra-Community chain transactions and intra-Community triangular traffic

### 1. Terminology and Comments

#### *A. Concept of intra-Community chain transactions and intra-Community triangular traffic*

A **chain transaction** consists of successive deliveries of goods where the goods are shipped or transported directly from the first supplier to the last customer, between whom there is no direct contractual relationship.

At one **intra-Community chain transaction** there is an intra-Community shipment or intra-Community transport. The goods are therefore sent or transported directly from the first supplier in one Member State to the last customer in another Member State by or on behalf of one of the parties in the chain.

The fact that the party in the chain that takes care of the transport calls on several third parties (several transporters) who each take on a part of the transport does not in itself impede being able to speak of a direct transport from the first party to the last party. This is the case, for example, when the party who undertakes the transport has part of the transport by road carried out by a transport company and then a part by water is carried out by yet another company. The fact that several means of transport are involved in the transport (for example different trucks, barge, airplane) does not in itself preclude the possibility of a direct transport from the first party to the last party.

**Triangular traffic** is a chain transaction with three parties, whereby a first supplier A supplies goods to party B, which in turn resells the goods to party C, while the goods are transported or dispatched directly from A to C's destination, between whom there is no direct contractual relationship exists.

There is **intra-community triangle traffic**, when the three parties concerned are established and / or (where applicable) identified for VAT purposes in three different Member States. The goods are the subject of an intra-Community transport or an intra-Community shipment. That is to say, the goods from the first supplier are transported or dispatched directly to the final customer in another Member State by or on behalf of one of the parties in the chain.

The Council Directive 2006/112 / EC, of 28.11.2006, on the common system of value added tax, and the Belgian VAT Code contain a number of simplification measures with regard to certain situations of intra-Community triangular traffic which are discussed below . We then speak of **simplified intra-Community triangular traffic**.

#### *B. Broker*

The **broker** is a different supplier in a chain transaction than the first supplier.

#### *C. Broker within the meaning of Article 14, § 5, third paragraph, of the VAT Code*

The **broker within the meaning of Article 14, § 5, third paragraph, of the VAT Code** ( see Article 36 *bis*, (3) of Directive 2006/112 / EC, aforementioned) is a different supplier in a chain transaction than the first supplier in the chain, who either dispatches the goods himself or transports them himself or has them shipped or transported for his account by a third party.

#### ***D. General remark***

**In the elaborated examples and situations in this department there is always supposed that**

(unless otherwise stated):

- the goods are not subject to the profit margin scheme
- there are no deliveries with installation and assembly by or on behalf of the supplier
- the intra-Community supply is exempted by Article 138 (1) of Directive 2006/112 / EC, the aforementioned and Article 39 *bis*, first paragraph, 1 °, of the VAT Code
- the successive suppliers in the chain are taxable persons who:
  - are obliged to submit periodic VAT returns
  - are obliged to make all their intra-Community acquisitions of goods subject to VAT to submit
  - do not have permanent establishments in Member States other than the Member State in which they are established to be
  - not benefit from the special scheme for small enterprises.

The same applies to the end customer in the chain, unless determined otherwise.

**In this section, unless stated otherwise, not discussed the complications that may arise from the application of the special arrangements such as in particular the scheme for the new means of transport, excise products, the scheme for distance sales, for custom work or the scheme for the 'group of four'.**

## **2. General principles of intra-Community triangular traffic**

### ***A. Only one delivery is an intra-Community delivery***

In an intra-Community chain transaction (including intra-Community triangular traffic), intra-Community shipment or intra-Community transport can only be attributed to one of the subsequent deliveries.

Intra-Community transport means that the goods are dispatched or transported from one Member State to the destination of the customer to another Member State. Only the one delivery in which that intra-Community transport takes place is considered to be a delivery by transport. **The other deliveries are forced deliveries without transport (Court of Justice of the European Union, Judgment *EMAG Trade*, Case C-245/04, 06.04.2006).**

### ***B. Supply to which intra-Community transport is allocated***

As stated, in an intra-Community chain transaction (including intra-Community triangular traffic), only one delivery can be allocated to intra-Community transport or intra-Community shipment.

In order to determine to which supply in the chain transaction intra-Community transport must be attributed, it is important to know **by or on behalf of which party** transport or dispatch is carried out in the chain. Normally, this is the party that organizes the transport or the shipment (himself or through a third party acting on his behalf), in other words the person who carries out the transport for his own account or contracts for this with a third party.

According to the opinion of Advocate General Kokott in Case C-401/18 before the Court of Justice, the crucial factor in the chain is the risk of loss or damage to the goods during transport (1). However, this criterion may in certain cases lead to practical difficulties. For example, it is possible that the risk of loss or damage is shared between the seller and buyer at certain points of the transport depending on the used Incoterm. In such cases it would be difficult to identify a single taxable person within the chain who bears the risk of loss or damage to the goods during transport.

*(1) It is irrelevant that the taxpayer in question would have insured himself against this risk.*

*(2) Unless, in those cases where the taxable person concerned can demonstrate to the satisfaction of the administration that the transport was carried out or that the contract of carriage was concluded on behalf of another taxable person in the chain who in fact bears the risk of loss or damage to the goods during transport.*

**When the transport is performed by or on behalf of the first supplier the transport will always be attributed to the first delivery.**

**When the transport is performed by or on behalf of the last customer the transport will always be attributed to the last delivery.**

**When the goods are transported by or on behalf of a broker ( see title 1, section B), it is more difficult to determine whether the transport is to be attributed to the delivery he receives or the delivery he carries out himself.**

In order to prevent Member States from adopting a different approach which could lead to double taxation or non-taxation and to increase legal certainty for economic operators, the European legislator has, with effect from 01.01.2020, laid down new rules to determine the supply by which the transport is imputed.

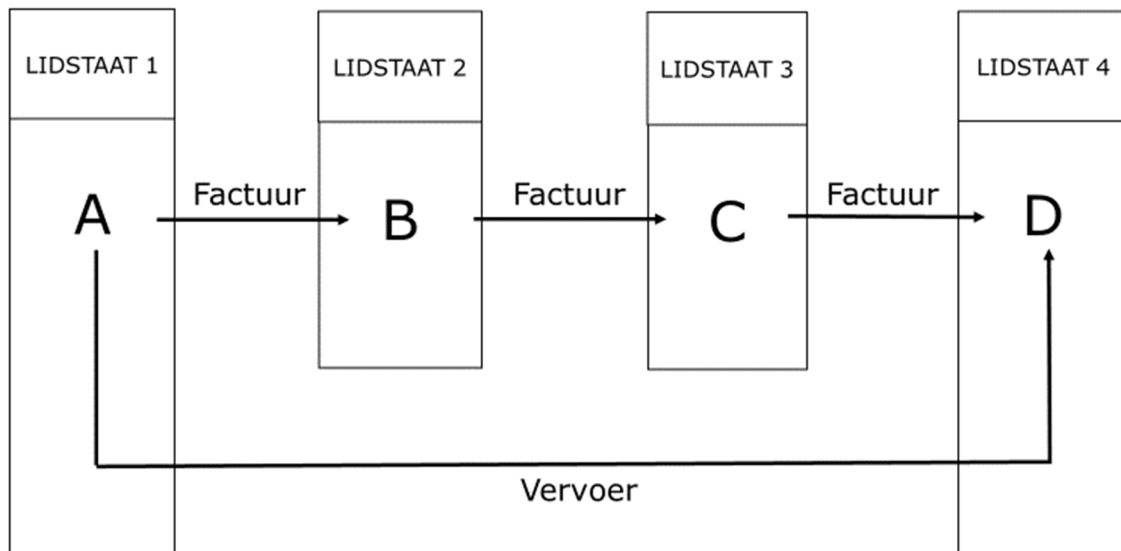
These rules were included in the new Article 36 *bis* of the Directive 2006/112 / EC, the aforementioned, which was transposed into Article 14, § 5 of the VAT Code.

These rules determine the delivery to which the transport must be allocated **when dispatch or transport is carried out by the broker or by a third party for his account ( or one of the brokers if there are several)**. That broker is then referred to as the 'broker within the meaning of Article 14, § 5, third paragraph, of the VAT Code' (see Title 1, section C).

**Article 14, § 5 of the VAT Code exclusively the purpose of which is to determine the delivery to which the transport must be allocated.**

A simplified example explains the supply to which transport should be allocated in practice in the case of an intra-Community chain transaction.

A, a taxable person established and identified for VAT purposes in Member State 1, sells goods to B, a taxable person established in Member State 2 and identified for VAT purposes, who resells the goods to C, a taxable person established in Member State 3 and identified for VAT purposes, which finally resells the goods to D, a taxable person established in Member State 4 and identified for VAT purposes. The goods are transported directly from A in Member State 1 or sent to D in Member State 4.



*a. The transport of the goods is performed by or on behalf of the first supplier (A)*

When intra-Community dispatch or intra-Community transport of the goods is performed by or on behalf of the first supplier (A), the transport can only be allocated to the first delivery (AB) since B is the only one with whom A contracts.

In that case:

- the first delivery (AB) an intra-Community supply by A which takes place in Member State 1 and which is made under B gives rise to an intra-Community acquisition in Member State 4
- the second delivery (BC) a local delivery without transport by B which takes place in Member State 4
- the third delivery (CD) a local delivery without transport by C which takes place in Member State 4.

*b. The transport of the goods is carried out by or on behalf of the first broker (B)*

When intra-Community dispatch or intra-Community transport of the goods is carried out by or on behalf of the first broker (B), the transport can be attributed to both the first delivery (AB) and the second delivery (BC).

B is in this case the 'broker within the meaning of Article 14, § 5, third paragraph, of the VAT Code'. For the application of that provision, B **must have evidence that the goods were transported or dispatched by himself or by a third party on his behalf. B must be able to prove the transport itself, together with the fact that the transport was carried out by himself or on behalf of a third party.**

Where Belgium is Member State 1, it is noted that this proof is in itself separate from the proof of transport to be provided under the **exemption under Article 39 bis, first paragraph, 1 °, of the VAT Code.**

For his part, the party applying the exemption, which can be the same party as the broker within the meaning of Article 14, § 5, third paragraph, of the VAT Code, must be able to provide proof that the conditions for the exemption are fulfilled (see 'Book II: Determination of the taxable basis and the applicable rate - Chapter 8: Exemptions for exports, intra-Community supplies and acquisitions, imports and international transport, Section 3').

If the main rule applies (see point i below), the transport will be allocated to delivery AB and A will have to demonstrate to the administration **that the conditions of the exemption in Article 39 bis of the VAT Code, so that A can exempt the intra-Community supply. This means, among other things, that A will have to have proof that the goods have been transported or dispatched outside Belgium to another Member State and that the transport or dispatch has been carried out by or on behalf of B (since the application of the exemption under Article 39 bis of the VAT Code requires, among other things, that the goods were transported or dispatched by or on behalf of the supplier or the customer).** Consequently, B will not only have to provide proof to A that the transport actually took place, but also that B organized the transport (in other words, that the transport or dispatch was performed by or on behalf of B).

#### **i. Main rule**

According to the main rule, the transport must be allocated to the first delivery (AB) (see Article 14, § 5, first paragraph, of the VAT Code).

In that case:

- the first delivery (AB) an intra-Community supply by A which takes place in Member State 1 and which gives rise to an intra-Community acquisition in Member State under B
- the second delivery (BC) a local delivery without transport which takes place in Member State 4
- the third delivery (CD) a local delivery without transport which takes place in Member State 4.

#### **ii. Different rule**

Suppose B has a VAT identification number in Member State 1, and that he communicates this VAT number to A in the context of the first delivery (AB), then the second delivery (BC) is the delivery with transport in deviation from the main rule (see Article 14, § 5, second paragraph, of the VAT Code).

With regard to the taxable transactions that take place on Belgian territory (this is the case if Belgium is Member State 1 or 4), the position of the Belgian administration is as follows:

- The communication by B of his VAT identification number of Member State 1 can be done by any form of communication that allows to prove that the communication was received by A (for example an exchange of e-mails). This notification does not necessarily have to be repeated for every single transaction. For example, B may communicate his VAT identification number of Member State 1 once to A which must be used for all deliveries to a particular Member State.
- In principle, the notification by B of his VAT identification number must take place before the chargeable event occurs. If not, the general rule of Article 14, § 5, first paragraph, of the VAT Code applies in principle (see point i).

However, it cannot be ruled out that the communication by B to A of his VAT identification number of Member State 1 will still take place after the taxable event in the context of a spontaneous rectification (this is the case, for example, when B was initially mistaken for a VAT number of another Member State). Conversely, it could also be that B initially accidentally communicated his VAT identification number of Member State 1 to A, and wants to rectify this by communicating his VAT identification number of Member State 2 (the main rule then applies). The necessary corrections with regard to invoicing, declaration... must then of course be made (3).

- A and B must keep the evidence of that communication and submit it to the administration when requested. It must be possible to provide some form of written communication (electronic or otherwise) proving that the VAT identification number has been communicated.

In the absence of such evidence, the main rule of Article 14, § 5, first paragraph, of the VAT Code applies (see point i).

However, if A or B does not have such proof, the rule of Article 14, § 5, second paragraph, of the VAT Code will still apply insofar as:

O the VAT identification number of B of Member State 1 is stated on the invoice sent to him  
was awarded by A, EN

O the VAT due from Member State 1 was charged on that invoice (4). In case one reverse charge of VAT applies, the invoice must contain the statement 'VAT reverse charge' (see Article 226, 11 *bis*, of the Directive 2006/112 / EC, aforementioned, and when Belgium is Member State 1: see Article 5, § 1, 9 ° *bis*, of Royal Decree No 1 of 29.12.1992 regarding the system for the payment of value added tax). In the event of an exemption, the invoice must contain a reference to the applicable provision of this Directive or to the corresponding national provision or any other indication that the supply of goods or services is exempt (see Article 226, 11) of Directive 2006/112 / EC, aforementioned, and when Belgium is Member State 1: see Article 5, § 1, 10 °, of Royal Decree no. 1, aforementioned).

*(3) It is recommended to check whether the other Member State concerned (as appropriate, Member State 1 or 4 accepts this view.*

*(4) This means that the accounts of A and B (VAT bill of Member State 1) must be consistent with the invoice issued.*

When applying the different scheme:

- the first delivery (AB) a local delivery without transport which takes place in Member State 1
- the second delivery (BC) is an intra-Community supply which takes place in Member State 1 and which gives rise to an intra-Community acquisition in Member State under C
- the third delivery (CD) a local delivery without transport which takes place in Member State 4.

*c. The transport of the goods is carried out by or on behalf of the second broker (C)*

When intra-Community dispatch or intra-Community transport of the goods is carried out by or on behalf of the second broker (C), the transport can be attributed to either the second delivery (BC) or the third delivery (CD).

C is in this case the 'broker within the meaning of Article 14, § 5, third paragraph of the VAT Code'. For the purposes of that provision, C must **have evidence that the goods have been transported or dispatched by himself or by a third party on his behalf. C must be able to prove the transport itself, together with the fact that the transport was carried out by himself or on behalf of a third party.**

When Belgium is Member State 1, it is noted that this proof is in itself separate from the proof of transport that must be provided in the context of the exemption of Article 39bis, first paragraph, 1 °, of the VAT Code.

For his part, the party applying the exemption, which can be the same party as the broker within the meaning of Article 14, § 5, third paragraph, of the VAT Code, must be able to provide proof that the conditions for the exemption are fulfilled (see 'Book II: Determination of the taxable basis and the applicable rate - Chapter 8: Exemptions for exports, intra-Community supplies and acquisitions, imports and international transport, Section 3').

If the main rule applies (see point i below), the transport will be allocated to delivery BC and B will have to demonstrate to the administration **that the conditions of the exemption of Article 39 bis of the VAT Code, so that B can exempt the intra-Community supply. This means, among other things, that B will have to have proof that the goods have been transported or dispatched outside Belgium to another Member State and that the transport or dispatch has been carried out by or on behalf of C (since the application of the exemption under Article 39 bis of the VAT Code requires, among other things, that the goods were transported or dispatched by or on behalf of the supplier or the customer).** Consequently, not only will C have to provide proof to B that the transport actually took place, but also that C organized the transport (in other words, that the transport or dispatch was performed by or on behalf of C).

#### **i. Main rule**

According to the rule of Article 14, § 5, first paragraph, of the VAT Code, the transport must be allocated to the second delivery (BC).

In that case:

- the first delivery (AB) a local delivery without transport which takes place in Member State 1
- the second delivery (BC) is an intra-Community supply which takes place in Member State 1 and which gives rise to an intra-Community acquisition in Member State under C
- the third delivery (CD) a local delivery without transport which takes place in Member State 4.

#### **ii. Different rule**

Suppose that C has a VAT identification number in Member State 1, and that he communicates this VAT number to B in the context of the second delivery (BC), then the third delivery (CD) is the delivery with transport in deviation from the main rule (see Article 14, § 5, second paragraph, of the VAT Code).

With regard to the taxable transactions that take place on Belgian territory (this is the case if Belgium is Member State 1 or 4), the position of the Belgian administration is as follows:

- The communication by C of his VAT identification number of Member State 1 can be done by any form of communication that allows to prove that the communication was received by B (for example an exchange of e-mails). This notification does not necessarily have to be repeated for every single transaction. For example, C may communicate his VAT identification number of Member State 1 once to B which must be used for all deliveries to a particular Member State.
- In principle, the notification by C of his VAT identification number must take place before the chargeable event occurs. If not, the general rule of Article 14, § 5, first paragraph, of the VAT Code applies in principle (see point i).

However, it cannot be ruled out that the communication by C to B of his VAT identification number of Member State 1 will still take place after the taxable event in the context of a spontaneous correction (this is the case, for example, if C was initially mistaken for a VAT number of another Member State). Conversely, it could also be that C initially accidentally communicated his VAT identification number of Member State 1 to B, and wants to rectify this by communicating his VAT identification number of Member State 3 (the main rule then applies). The necessary corrections with regard to invoicing, declaration... must of course then be made (5).

- B and C must keep the evidence of that communication and submit it to the administration when requested. It must be possible to provide some form of written communication (electronic or otherwise) proving that the VAT identification number has been communicated.

In the absence of such evidence, the main rule of Article 14, § 5, first paragraph, of the VAT Code applies (see point i).

However, if B or C do not have such proof, the rule of Article 14, § 5, second paragraph, of the VAT Code will still apply insofar as:

- O the VAT identification number of C of Member State 1 is stated on the invoice sent to him was awarded by B EN
- O the VAT due from Member State 1 was charged on that invoice (6). In case one reverse charge of VAT applies, the invoice must contain the statement 'VAT reverse charge' (see Article 226, 11 *bis*, of the Directive 2006/112 / EC, aforementioned, and when Belgium is Member State 1: see Article 5, § 1, 9 ° *bis*, of Royal Decree No. 1, aforementioned). In the event of an exemption, the invoice must contain a reference to the applicable provision in this Directive or to the corresponding national provision or any other indication that the supply of goods or services is exempt (see Article 226, 11) of Directive 2006/112 / EC, aforementioned and when Belgium is Member State 1: see Article 5, § 1, 10 °, of Royal Decree No. 1, aforementioned).

*(5) It is recommended to check whether the other Member State concerned (as appropriate, Member States 1 or 4) accepts this view.*

*(6) This means that the accounts of A and B (VAT bill of Member State 1) must be consistent with the invoice issued.*

When applying the different scheme:

- the first delivery (AB) a local delivery without transport which takes place in Member State 1
- the second delivery (BC) a local delivery without transport that takes place in Member State 1
- the third delivery (CD) an intra-Community supply which takes place in Member State 1 and which gives rise to an intra-Community acquisition in Member State under D.

*d. The transport of the goods is performed by or on behalf of the final customer (D)*

When the intra-Community shipment or the intra-Community transport of the goods is performed by or on behalf of the final customer D, the transport can only be attributed to the third delivery (CD). After all, C is the only one with whom D contracts.

In that case:

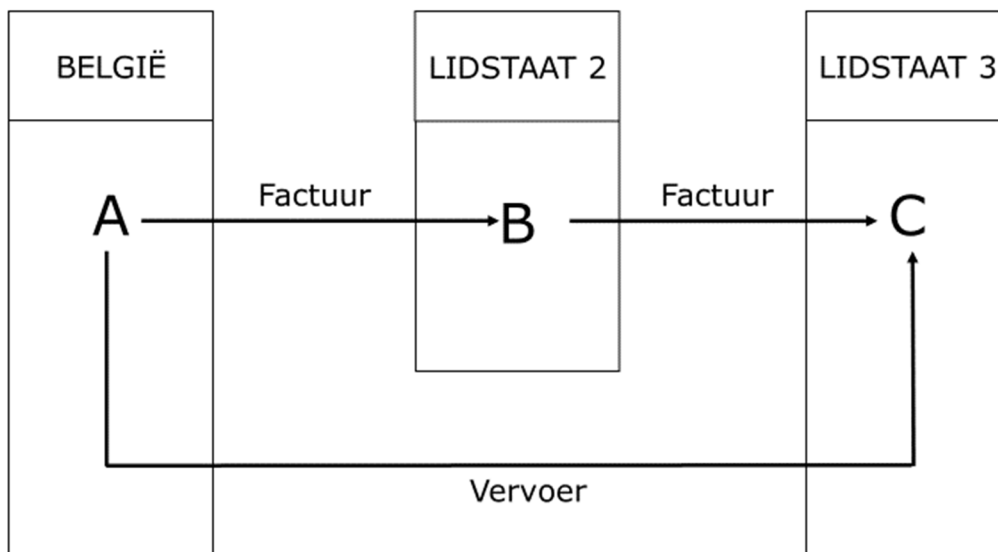
- the first delivery (AB) a local delivery by A without transport that takes place in Member State 1
- the second delivery (BC) a local delivery without transport by B which takes place in Member State 1
- the third delivery (CD) an intra-Community supply by C which takes place in Member State 1 and which gives rise to an intra-Community acquisition in Member State under D.

### **C. VAT treatment of non-simplified triangular traffic**

*a. Belgium is the Member State of departure of the goods (Member State 1)*

A, a taxable person established in Belgium and identified for VAT purposes, sells goods to B, a taxable person established in Member State 2 and identified for VAT purposes, who in turn resells the goods to C, a company established in Member State 3 and for VAT - taxpayer identified for purposes. The goods are transported or dispatched directly from A in Belgium to destination C in Member State 3.





**The transport is allocated to the first delivery (AB):**

The first supplier (A) makes an intra-Community delivery with transport that takes place in Belgium, namely where the transport of the goods starts (see Article 14, § 2, first paragraph, of the VAT Code).

**This supply can benefit from the exemption for intra-Community supplies from Article 39 *bis*,**

first paragraph, 1 °, of the VAT Code, insofar as the conditions of that exemption are met (see 'Book II: Determination of the taxable basis and the applicable rate - Chapter 8: Exemptions for exports, intra-Community supplies and acquisitions, imports and international transport, Section 3 '), which means that:

- the supply is made by a taxable person (A) who is not subject to the special scheme for small enterprises and the supply is not covered by the profit margin scheme
- the supply is made for a taxable person (B) who, as such, is acting in another Member State and is required to make all intra-Community acquisitions of goods subject to VAT
- B has communicated his valid VAT identification number to A that was issued to him by a Member State other than Belgium
- the goods are transported to another Member State by the seller, by the customer or on their behalf
- A has included the transaction in the Belgian VAT declaration of the intra-Community transactions and submits it in time.

The first supplier (A) is obliged to include the transaction in his periodic VAT return (grid 46) and in the VAT declaration of intra-Community transactions.

The broker (B) makes an intra-Community acquisition which is in principle subject to VAT in the Member State of arrival of the goods (Member State 3) (see Article 2 (1) (b) (i), 20, first subparagraph, and 40 of Directive 2006/112 / EC, aforementioned).

In principle, B is obliged to identify himself in advance in Member State 3 for VAT purposes and to communicate this VAT identification number allocated by Member State 3 to A.

Subsequently, the broker (B) makes a delivery without transport in Member State 3 to final customer C (see Article 31 of Directive 2006/112 / EC), which is in principle subject to VAT in that Member State.

**The transport is allocated to the second delivery (BC):**

The first supplier (A) makes a delivery without transport that takes place in Belgium (see article 14, § 1, of the VAT Code) and which is subject to VAT in Belgium. He is obliged as debtor to pay the VAT on this supply via his periodic VAT return (see Article 51, § 1, 1 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code ).

The broker (B) makes an intra-Community delivery with transport that takes place in Belgium, namely where the transport of the goods starts (see Article 14, § 2, first paragraph, of the VAT Code).

This supply can benefit from the exemption for intra-Community supplies from Article 39 *bis*, first paragraph, 1 °, of the VAT Code, insofar as the conditions of that exemption are met (see 'Book II: Determination of the taxable basis and the applicable rate - Chapter 8: Exemptions for exports, intra-Community supplies and acquisitions, imports and international transport, Section 3 '), which means that:

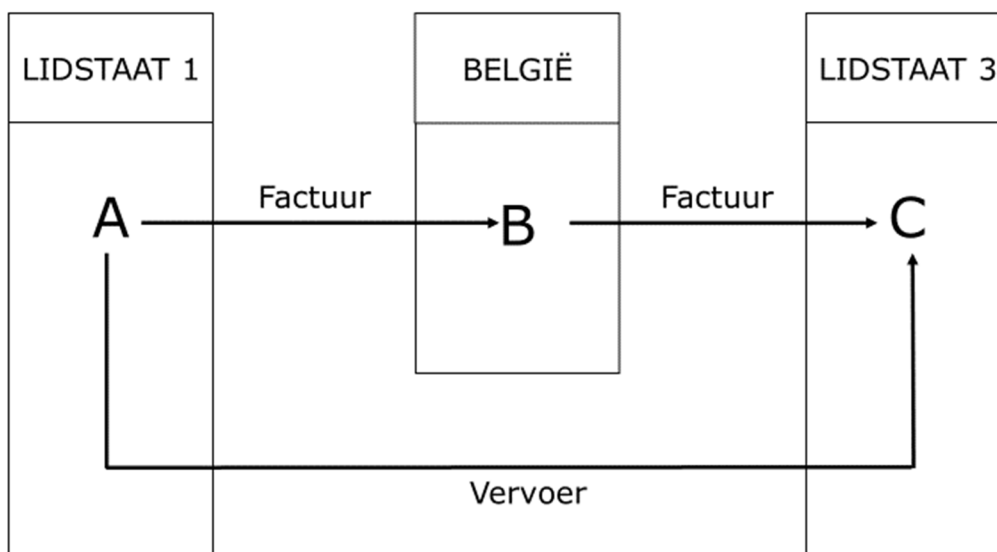
- the supply is made by a taxable person (A) who is not subject to the special scheme for small enterprises and the supply is not covered by the profit margin scheme
- the supply is made for a taxable person (B) who, as such, is acting in another Member State and is required to make all intra-Community acquisitions of goods subject to VAT
- B has communicated his valid VAT identification number to A that was issued to him by a Member State other than Belgium
- the goods are transported to another Member State by the seller, by the customer or on their behalf
- A has included the transaction in the Belgian VAT declaration of the intra-Community transactions and submits it in time.

Because of the intra-Community supply he makes in Belgium, the broker (B) is obliged to identify himself in advance for VAT purposes in Belgium and to include the transaction in his periodic VAT return (grid 46) and in the VAT statements of intra-Community transactions, both of which he must submit in Belgium.

The final customer (C) makes an intra-Community acquisition which is in principle subject to VAT in the Member State of arrival of the goods (Member State 3) (see Article 2 (1) (b) (i), 20, first subparagraph, and 40 of Directive 2006/112 / EC).

*b. Belgium is a Member State where the broker is established (Member State 2)*

A, a taxable person established and identified for VAT purposes in Member State 1, sells goods to B, a taxable person established in Belgium and identified for VAT purposes, who in turn resells the goods to C, a Member State established for VAT purposes and - taxpayer identified for purposes. The goods are transported or dispatched directly from A in Member State 1 to the destination of C in Member State 3.



**The transport is allocated to the first delivery (AB):**

The first supplier A makes an intra-Community supply with transport that takes place in Member State 1, namely where the transport of the goods starts (see Article 32, first paragraph, of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) 1 of Directive 2006/112 / EC, the aforementioned, if the conditions are met.

The broker B makes an intra-Community acquisition that is in principle subject to VAT in the Member State of arrival of the goods (Member State 3) (see Articles 2 (1) (b) (i), 20, first paragraph, and 40 of Directive 2006/112 / EC, aforementioned). In principle, it is obliged to identify itself for VAT purposes in Member State 3.

Subsequently, the broker (first customer and second supplier) B makes a supply without transport in Member State 3 to the final customer C (see Article 31 of Directive 2006/112 / EC, aforementioned), which is in principle subject to VAT in that Member State.

**The transport is allocated to the second delivery (BC):**

The first supplier A makes a supply without transport which takes place in Member State 1 (see Article 31 of Directive 2006/112 / EC, aforementioned) and is subject to VAT in Member State 1.

The broker B makes an intra-Community supply with transport that takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

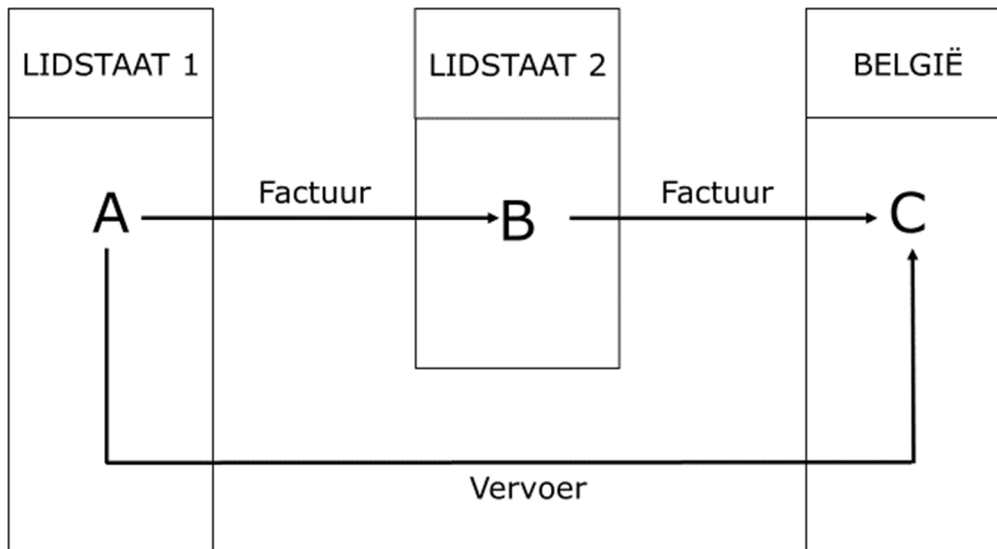
This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) 1 of Directive 2006/112 / EC, the aforementioned, if the conditions are met.

Because of the intra-Community supply he makes in Member State 1, the broker B is obliged to identify himself in advance for VAT purposes.

Final customer C makes an intra-Community acquisition which is in principle subject to VAT in the Member State of arrival of the goods (Member State 3) (see Articles 2 (1) (b) (i), 20, first subparagraph, and 40 of Directive 2006/112 / EC, aforementioned).

*c. Belgium is the Member State of arrival of the goods (Member State 3)*

A, a taxable person established in Member State 1 and identified for VAT purposes, sells goods to B, a taxable person established in Member State 2 and identified for VAT purposes, who in turn resells the goods to C, a company established in Belgium and for VAT - taxpayer identified for purposes. The goods are transported or dispatched directly from A in Member State 1 to the destination of C in Belgium.



**The transport is allocated to the first delivery (AB):**

The first supplier A makes an intra-Community supply with transport that takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) of Directive 2006/112 / EC, the aforementioned, if the conditions are met.

**The broker B makes an intra-Community acquisition that is in principle subject to VAT in the Member State of arrival of the goods (Belgium) (25 *ter*, § 1, first paragraph and 25 *quinquies*, § 2 of the VAT Code). B is in principle obliged to identify himself in advance for VAT purposes in Belgium and to communicate his Belgian VAT identification number to**

A.

B must include the intra-Community acquisition in the periodic VAT return in respect of the return period during which the VAT becomes due and payable.

B then makes a delivery without transport in Belgium to the final customer C (see article 14, § 1 of the VAT Code) which is in principle subject to VAT.

Since B is not established in Belgium and C is a taxable person established in Belgium who is obliged to submit periodic VAT returns (as referred to in Article 53, § 1, first paragraph, 2 ° of the VAT Code), the VAT on the second delivery (BC) shifted to C (see Article 51, § 2, first paragraph, 5 °, of the VAT Code), so that the latter is referred to as the debtor of the VAT.

Should C be a non-taxable legal person or a taxable person who is not obliged to file periodic VAT returns (they belong to the 'group of four'), the deferral of taxation in Article 51, § 2, first paragraph 5 ° of the VAT Code does not apply and B is obliged to issue an invoice with Belgian VAT (which contains all the mentions of Article 5 of Royal Decree No. 1, aforementioned).

In the latter case, B must identify himself for VAT purposes in Belgium and pay the VAT due via the periodic VAT return (transaction in grid 01, 02 or 03 and the VAT due in grid 54) relating to the declaration period within which the VAT has become due and payable (see Articles 51, § 1, 1 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

**The transport is allocated to the second delivery (BC):**

The first supplier A makes a supply without transport which takes place in Member State 1 (see Article 31 of Directive 2006/112 / EC, aforementioned) and which is subject to VAT in Member State 1.

The broker B makes an intra-Community supply with transport that takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) of Directive 2006/112 / EC, the aforementioned, if the conditions are met.

Because of the intra-Community supply he makes in Member State 1, B is obliged to identify himself in advance for VAT purposes.

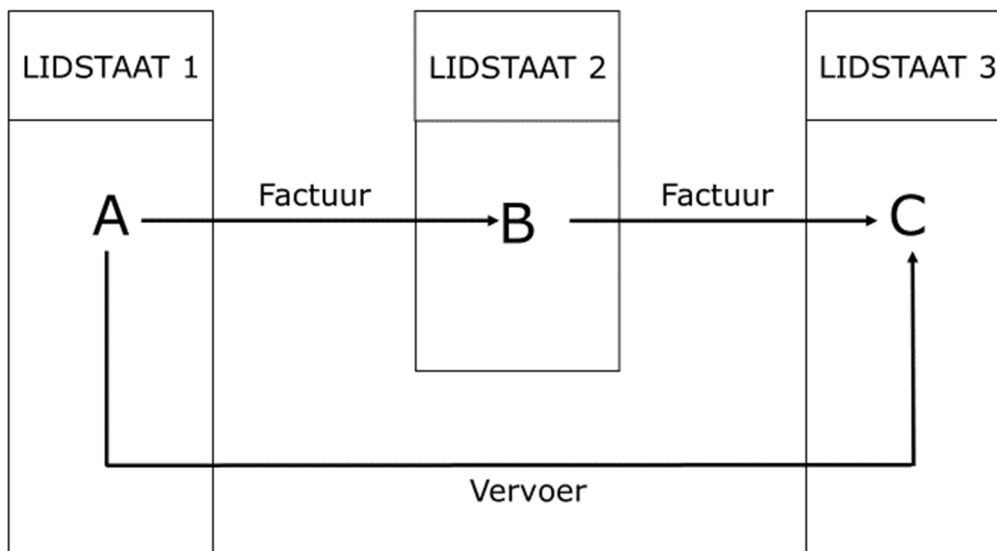
Final customer C makes an intra-Community acquisition that is in principle subject to VAT in the Member State of arrival of the goods (Belgium) **(25 *ter*, § 1, first paragraph and 25 *quinquies*, § 2 of the VAT Code)**. He must include this intra-Community acquisition in the periodic VAT return with regard to the tax return period in which the VAT becomes due and pay the VAT due via that return (see Article 51, § 1, 2 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

If C were a taxable or non-taxable legal person who belongs to the group of four and who is obliged to subject all his intra-Community acquisitions of goods to VAT in Belgium, C would also carry out a taxable intra-Community acquisition of goods (25 *ter*, § 1, first paragraph and 25 *quinquies*, § 2 of the VAT Code). C must then pay the VAT on the intra-Community acquisition of goods via a special VAT return (see Article 53 *ter* of the VAT Code).

If C were a taxable or non-taxable legal person who belongs to the group of four and is not obliged to subject his intra-Community acquisitions of goods other than new means of transport or excise products to VAT, the intra-Community acquisition of the goods would not be taxable (see Article 25 *ter*, § 1, second paragraph, 2 °, of the VAT Code). The intra-Community supply made by the broker (B) would then not be exempted by Article 138 (1) of Directive 2006/112 / EC, referred to above, and would, in principle, be taxed in VAT in Member State 1. If the transport or the goods are shipped by or on behalf of B and the latter would exceed or exceed the Belgian threshold of EUR 35,000 for distance sales in the current or previous calendar year or opted for the system of distance sales, delivery, however, takes place in Belgium and is subject to VAT in Belgium (Article 15, § 1 of the VAT Code).

### 3. Simplification measures for intra-Community triangular traffic

#### A. Simplification measures in the VAT Directive



In the case of intra-Community triangular traffic without simplification, the taxable intermediary B is in principle always obliged to identify himself for VAT purposes in the:

- Member State of departure of the goods (Member State 1) when the transport is allocated to the second delivery (BC), because of the intra-Community delivery he makes there
- Member State of arrival of the goods (Member State 3) when transport is attributed to the first delivery (AB), because of the intra-Community acquisition he carries out there.

In the latter case, where the transport is attributed to the first delivery (AB), the European legislator has, under certain conditions, envisaged simplification measures that prevent B from having to identify himself for VAT purposes in the Member State of arrival of the goods (Member State 3):

- the intra-Community acquisition by B in the Member State of arrival of the goods (Member State 3) is not taxable (see Article 141 of Directive 2006/112 / EC)
- the VAT due on the second delivery (BC) by B in Member State 3 is transferred to the taxable or non-taxable legal person final customer identified in Member State 3 for VAT purposes (see Article 197 of Directive 2006/112 / EC).

#### B. Belgian simplification measures

The simplification measures provided for in the directive 2006/112 / EC, mentioned above, have been converted in the Belgian VAT Code into:

- Article 25 *ter*, § 1, second paragraph, 3<sup>o</sup>
- Article 25 *quinquies*, § 3, third paragraph

- Article 51, § 2, first paragraph, 2 °, of the VAT Code.

**Article 25 ter, § 1, second paragraph, 3 °, of the VAT Code:**

(...)

*By way of derogation from the first paragraph, the following are not subject to the tax: (...)*

*3 ° the intra-Community acquisitions of goods made by a taxable person not established in Belgium but identified for VAT purposes in another Member State, under the following conditions:*

*a) the intra-Community acquisition of goods is carried out with a view to the subsequent delivery of these goods in Belgium by this taxable person;*

*(b) the goods thus acquired by that taxable person are dispatched or transported directly from a Member State other than that in which he is identified for VAT purposes to the person for whom he makes the next supply;*

*c) the person for whom the next delivery is intended is another taxable person or non-taxable legal person, who has been identified for VAT purposes in Belgium;*

*d) the person for whom the next delivery is intended has been designated, in accordance with Article 51, § 2, first paragraph, 2 °, as a person liable for payment of tax on the basis of the delivery made by the taxable person not established in Belgium ;*

(...)'

**Article 25 quinquies, § 3 of the VAT Code:**

(...)

*Without prejudice to the provisions of § 2, however, the place of an intra-Community acquisition of goods as referred to in Article 25ter, § 1, shall be deemed to be located in the territory of the Member State which allocated the VAT identification number under which the customer made the acquisition, insofar as the customer does not demonstrate that the tax on this acquisition has been levied in accordance with § 2.*

*However, if the acquisition is subject to tax in accordance with § 2 in the Member State of arrival of the dispatch or transport of the goods after the tax has been levied on it under paragraph 1, the taxable amount shall be reduced accordingly in the Member State which has allocated the VAT identification number under which the customer made this acquisition.*

*For the purposes of paragraph 1, the intra-Community acquisition of goods is deemed to be subject to tax in accordance with § 2 when:*

*1 ° the intra-Community acquisition of goods has been carried out in another Member State by a taxable person identified for VAT purposes in Belgium;*

*2 ° the intra-Community acquisition of goods is carried out with a view to the subsequent delivery of these goods in that other Member State by this taxable person; 3 ° the goods thus acquired by this taxable person are sent or transported directly from a Member State other than Belgium to the person for whom he makes the next delivery; 4 ° the person for whom the next delivery is intended is another taxable person or non-taxable legal person, who has been identified for VAT purposes in the Member State of destination;*

*5 ° the person for whom the next delivery is intended has been designated by the taxable person identified for VAT purposes in Belgium as a person liable for payment of tax on the basis of the supply made by this taxable person; 6 ° the taxable person identified in Belgium for VAT purposes has complied with the declaration obligations referred to in Article 53sexies, § 1, 2 °, in addition to the obligation stipulated in 5 ° above, for the supply that he performs under the conditions stated above. (...)'*

**Article 51, § 2, first paragraph, 2 °, of the VAT Code:**

(...)

§ 2. Notwithstanding § 1, 1 °, the tax is due:...

2 ° by the contracting partner identified for VAT purposes in accordance with Article 50, in the case of deliveries of goods as referred to in Article 25ter, § 1, second paragraph, 3 °, and to the extent that the provisions in Article 53, § 2, first paragraph, intended invoice contains the information to be determined by the King; (...)'

**C. Operation and conditions of the simplification scheme in Belgium if Belgium is the Member State of arrival of the goods**

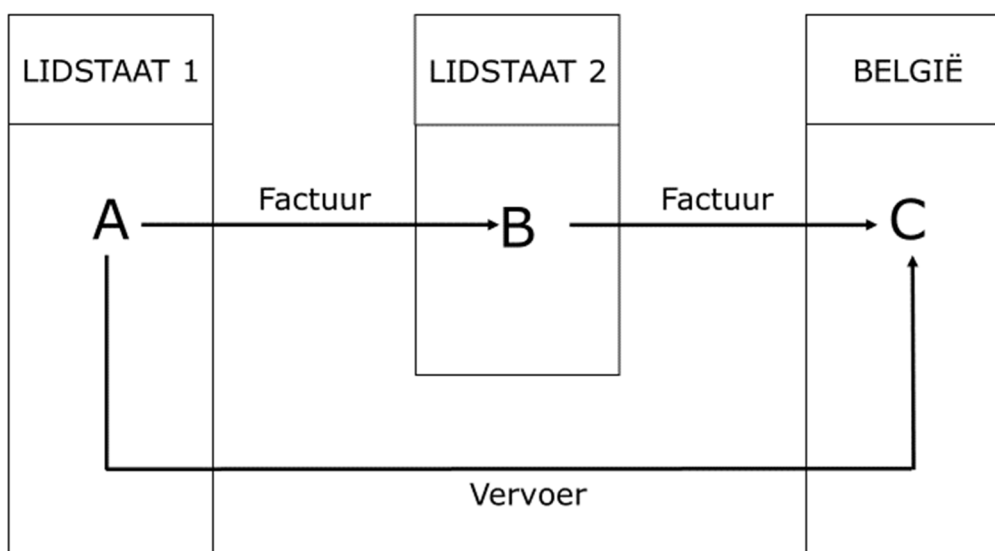
*a. Situation in which the simplification can be applied*

A sells goods to B, who in turn resells the goods to C.

- A is a taxable person identified for VAT purposes in Member State 1.
- B is a taxable person identified for VAT purposes in Member State 2 who is not established in Belgium.
- C is a taxable or non-taxable legal person who is identified in Belgium for VAT purposes (taxable person submitting a petitioner or member of the group of four with a Belgian VAT identification number) and who is or is not obliged to make all his intra-Community acquisitions of goods subject to VAT.

The goods are transported or dispatched directly from A in Member State 1 to the destination of C in Belgium.

The transport of the goods is allocated to the first delivery (AB).





In this situation of intra-Community triangular traffic where the transport of the goods is attributed to the first delivery (AB), B performs in the Member State of arrival of the goods (Belgium):

- A taxable intra-Community acquisition of goods
- and then a delivery without transport to the final customer (see also Title 2, Section C, above).

Consequently, in principle, B must identify himself in Belgium for VAT purposes, communicate his Belgian VAT identification number to A and submit periodic VAT returns.

*b. Operation of the simplification scheme in Belgium*

The simplification scheme ensures that under the conditions mentioned below under subsection c:

- **the intra-Community acquisition of goods that B carries out in Belgium is not taxable (Article 25 *ter*, § 1, second paragraph, 3 °, of the VAT Code)**
- the VAT on the subsequent delivery without transport by B is transferred to the final customer C.

C is therefore designated as the debtor of VAT (Article 51, § 2, first paragraph, 2 °, of the VAT Code) and must pay the VAT due to the Treasury through its Belgian periodic or special VAT declaration.

*c. Requirements*

The simplification scheme applies under the following conditions:

- **The intra-Community acquisition of goods in Belgium is carried out by a taxable person who is not established in Belgium but who is for VAT purposes in another Member State (which is also a Member State other than that from which the goods are transported or dispatched). see article 25 *ter*, § 1, second paragraph, 3 °, first sentence and b), of the VAT Code).**

The broker B is not established in the Member State of arrival of the goods (Belgium), but is identified for VAT purposes in a Member State (Member State 2) other than the Member State of departure (Member State 1) or Member State of arrival (Belgium) goods.

Where B is simultaneously established and / or identified for VAT purposes in the Member State of departure of the goods (Member State 1) and in a Member State other than the Member State of departure or arrival of the goods (Member State 2), B may apply the simplified scheme described, provided of course that all conditions are met and the transport is allocated to the first delivery (AB) (see in this respect Court of Justice of the European Union, Judgment *Bühler*, Case C-580/16, 19.04.2018, paragraph 42).

If B is not established in the Member State of arrival of the goods (Member State 3), but is identified for VAT purposes, he has the choice: he may apply the ordinary scheme (as set out above) or he may apply simplification scheme (provided all other relevant conditions are met).

- **The intra-Community acquisition of goods in Belgium is carried out with a view to the subsequent delivery of these goods in Belgium by the broker B**  
(Article 25 *ter*, § 1, second paragraph, 3 °, a), of the VAT Code).

The simplification scheme can therefore only apply where intra-Community transport or intra-Community dispatch of the goods from the first supplier A (Member State 1) to the final customer C in another Member State (Member State 3) is attributed to the first delivery (AB).

This means that the simplification scheme can never apply when the transport or dispatch of the goods is carried out by or on behalf of:

- O the final customer C
- O the broker B, insofar as the transport or dispatch is attributed to the second delivery (BC).

The fact that the second delivery (BC) without transport would concern a delivery with installation or assembly of the goods by or on behalf of B does not in itself preclude the application of the simplification scheme (Circular 2020 / C / 50 of 02.04. 2020 on the VAT system of B2B intra-Community trade in goods (no.

ET 135.109), point 7.4.3.3.2).

- **The goods thus acquired by broker B are imported directly from another Member State (Member State 1) than that in which it is identified for VAT purposes (Member State 2), dispatched or transported to final customer C, for whom he makes B the following delivery (BC) ( Article 25 *ter*, § 1, second paragraph, 3 °, b), of the VAT Code).**

There must be intra-Community triangular traffic, which means that the goods are the subject of two successive deliveries by two different taxable persons (A and B), the goods being transported or dispatched directly from the first supplier A (Member State 1) to the destination of final customer C in another Member State (Member State 3).

- **End customer C is a taxable or non-taxable legal person identified in Belgium for VAT purposes ( Article 25 *ter*, § 1, second paragraph, 3 °, c), of the VAT Code).**

In other words, the final customer C is:

- O a taxable person who is obliged to make periodic VAT returns (as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code) and which has been identified in Belgium for VAT purposes.
- O a taxable or non-taxable legal person who is not obliged to submit periodic VAT returns, but which is identified in Belgium for VAT purposes (for example, a member of the group of four with a Belgian VAT identification number).

For the application of the simplification scheme, it is sufficient that C is a taxable or non-taxable legal person who has a Belgian VAT identification number. It is therefore not in itself required that in Belgium:

- O is located
- O has had a liable representative recognized if he is not established in Belgium
- O is obliged to tax all its intra-Community acquisitions of goods subjects.

The transfer of taxation of Article 51, § 2, first paragraph, 2<sup>o</sup>, of the VAT Code that is provided for in the context of simplified triangular traffic, therefore has a broader effect on this point than the so-called 'generalized' transfer of taxation of Article 51, § 2, first paragraph, 5<sup>o</sup>, of the VAT Code. After all, the latter provision can only apply if the customer is a taxpayer established in Belgium who is obliged to file periodic VAT returns or a taxpayer not established in Belgium who has had a liable representative recognized.

- **The final customer C is designated as the debtor of the VAT on the second delivery (BC) made by the broker B ( Article 25 *ter*, § 1, second paragraph, 3<sup>o</sup>, d), of the VAT Code).**

The broker B must designate the final customer C as the debtor of the VAT on the second delivery (BC) by means of an express statement on the invoice that he must issue to the latter.

*d. VAT treatment if the conditions are met*

The first supplier A makes an intra-Community supply with transport that takes place in Member State 1, namely where the transport of the goods starts (see Article 32, first paragraph, of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) 1 of Directive 2006/112 / EC because:

- the supply is made by a taxable person (A)
- the supply is made for a taxable person (B) who, as such, is acting in another Member State and is required to make all intra-Community acquisitions of goods subject to VAT
- B communicates to A his VAT identification number assigned to him by Member State 2
- the goods are transported to another Member State by the seller, by the customer or on their behalf
- A includes the supply in accordance with the VAT declaration of intra-Community transactions in Member State 1.

The broker B communicates his VAT identification number of Member State 2 to his supplier A and makes an intra-Community acquisition that **is not taxable in the Member State of arrival of the goods (Belgium) (Articles 25 *ter*, § 1, second paragraph, 3<sup>o</sup> and 25 *quinquies*, § 2 of the VAT Code)**. B is not obliged to identify itself for VAT purposes in Belgium, nor is it obliged to include the intra-Community acquisition in a Belgian periodic VAT return.

B then makes a delivery without transport in Belgium to the final customer C (see article 14, § 1 of the VAT Code) which is subject to VAT.

B must designate C as the debtor of the VAT on the second delivery (BC) by means of an express statement on the invoice that he must issue to the latter.

C must pay the VAT on the second delivery (BC) (see Article 51, § 2, first paragraph, 2 °, of the VAT Code) via:

- his periodic VAT return as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code if he is a taxable person who is obliged to file such returns
- are special VAT returns referred to in Article 53 *ter*, of the VAT Code, if he is a taxable person who is not obliged to file periodic VAT returns or a non-taxable legal person.

***D. Operation of the simplification scheme in Belgium if Belgium is not the Member State of departure or arrival of the goods (Member State 2)***

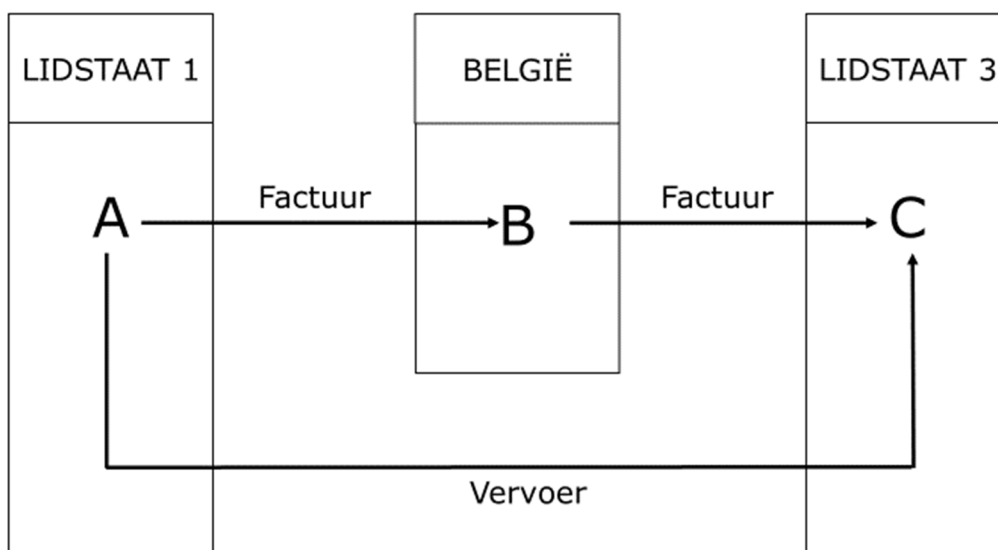
*a. Situation*

A sells goods to B, who in turn resells the goods to C.

- A is a taxable person identified for VAT purposes in Member State 1
- B is a taxable person identified for VAT purposes in Belgium who is not established in Member State 3
- C is a taxable or non-taxable legal person identified for VAT purposes in Member State 3

The goods are transported or dispatched directly from A in Member State 1 to the destination of C in Member State 3.

The transport of the goods is allocated to the first delivery (AB).



*b. Operation of the simplification scheme in Belgium*

If the conditions are met, the simplification scheme in the Member State of arrival of the goods (Member State 3) will mean that the broker B does not have to identify himself for VAT purposes.

When applying the simplification scheme, B will communicate its valid Belgian VAT identification number to its supplier A.

Using the Belgian VAT identification number provided by B, A can apply the exemption for intra-Community supplies (see Article 138 (1) of Directive 2006/112 / EC, aforementioned) in the Member State of departure of the goods (Member State 1), provided that all other conditions are also met. Indeed, for the application of the exemption for intra-Community supplies, it is not necessary for the VAT identification number communicated by the customer to be assigned by the Member State of arrival of the goods.

If a taxable person carries out an intra - Community acquisition in another Member State under his Belgian VAT identification number, **the safety provision**

(Article 25 *quinquies*, § 3, first paragraph, of the VAT Code) Belgium, in principle, to subject this intra-Community acquisition to VAT, even if the goods are not transported or shipped to Belgium. Only if the taxable person can demonstrate that the intra-Community acquisition is subject to VAT in the Member State of arrival of the goods, can he obtain a refund of the Belgian VAT (see Court of Justice of the European Union, Judgment *Facet*, Joined Cases C-536/08 and C-539/08, 22.04.2010) (see 'Book I: Taxation and Taxable Transactions, Chapter 5: Intra-Community Acquisitions, Section 6, Title 1, Section B').

Article 25 *quinquies*, § 3, third paragraph, however, prevents the application of the safety provision in the case of simplified triangular traffic.

*c. Conditions for the safety provision not to apply*

- **The intra-Community acquisition of goods has been carried out in another Member State (Member State 3) by a taxable person B who has been identified for VAT purposes in Belgium ( Article 25 *quinquies*, § 3, third paragraph, 1 °, of the VAT Code).**

Belgium is not the Member State of departure of the goods, nor the Member State of arrival of the goods.

The broker makes the intra-Community acquisition in the Member State of arrival of the goods (Member State 3) under his Belgian VAT identification number.

- **The intra-Community acquisition of goods is effected with a view to the subsequent delivery of those goods in that other Member State (Member State 3) by the broker B ( Article 25 *quinquies*, § 3, third paragraph, 2 °, of the VAT Code).**

The simplification scheme can therefore only apply where intra-Community transport or intra-Community dispatch of the goods from the first supplier A (Member State 1) to the final customer C in another Member State (Member State 3) is attributed to the first delivery (AB).

This means that the simplification scheme can never apply when the transport or dispatch of the goods is carried out by or on behalf of:

- the final customer C
- the broker B, insofar as the transport or dispatch is attributed to the second delivery (BC) (see Title 2, Section B).

- **The goods acquired by broker B are dispatched directly from a Member State (Member State 1) other than Belgium or transported to the final customer (C) (in Member State 3) ( Article 25 *quinquies*, § 3, third paragraph, 3 °, of the VAT Code).**

There must be intra-Community triangular traffic, which means that the goods are the subject of two successive deliveries by two different taxable persons (A and B), the goods being transported or dispatched directly from the first supplier A (Member State 1) to the destination of final customer C in another Member State (Member State 3).

- **Final customer C is another taxable person or non-taxable legal person identified for VAT purposes in the Member State of destination (Member State 3) ( Article 25 *quinquies*, § 3, third paragraph, 4 °, of the VAT Code).**

For the application of the simplification scheme, it is sufficient that the final customer C is a taxable or non-taxable legal person who has a VAT identification number assigned to him by the Member State of arrival of the goods (Member State 3).

- **The final customer C has been designated by the broker B as the debtor of the VAT on the delivery (BC) made by B ( Article 25 *quinquies*, § 3, third paragraph, 5 °, of the VAT Code).**

The broker B must designate the final customer C as the debtor of the VAT on the second delivery (BC) by means of an express statement on the invoice that he must issue to the latter.

- **The broker B has complied with the declaration obligations referred to in Article 53sexies, § 1, 2 ° for the delivery he makes (BC) ( Article 25 *quinquies*, § 3, third paragraph, 6 °, of the VAT Code).**

The broker B must include the delivery (BC) to the final customer C in his Belgian VAT declaration of the intra-Community transactions, stating code 'T'.

Article 25 *quinquies*, § 3, third paragraph, 6 °, of the VAT Code specifies how proof of taxation must be provided in the Member State of destination of intra-Community transport or intra-Community dispatch, by referring to the specific obligations that the customer must comply when submitting the VAT declaration of the intra-Community transactions. Such obligations should be considered formal conditions.

In accordance with the principle of fiscal neutrality, where a taxable person fails to comply with the formal condition laid down in Article 25 *quinquies*, § 3, third paragraph, 6 °, of the VAT Code, this does not result in the application of Article 25 *quinquies*, § 3, third paragraph, of the VAT Code is endangered if the material conditions of Article 25 are otherwise satisfied *quinquies*, § 3, third paragraph, 1 ° to 5 °, of the VAT Code (see in this context Court of Justice of the European Union, Judgment *Bühler*, Case C-580/16, of 19.04.2018, points 44 et seq.).

Nevertheless, two cases of non-compliance with a formal condition can justify that the safety provision is not disabled by Article 25 *quinquies*, § 3, third paragraph, of the VAT Code. This is so when:

O the taxpayer is guilty of tax fraud and so the good one

jeopardized the functioning of the common VAT system (Court of Justice of the European Union, Judgment *Bühler*, case C-580/16, of 19.04.2018, paragraph 56). After all, he cannot invoke the principle of fiscal neutrality in order to obtain an exemption from VAT. The same applies:

- in case of abuse (Court of Justice of the European Union, *Maks Pen*, case C-18/13, 13.02.2014, paragraph 26)
- when the taxable person knew or should have known that his purchase took part in an act that is part of VAT fraud (Court of Justice of the European Union, Judgment *Bonik*, Case C-285/11, 06.12.2012, paragraphs 38 and 39, Judgment

*Maks Pen*, C-18/13, 13.02.2014, paragraph 27, Judgment *PPUH*, Case C-277/14, of 22.10.2015, point 48).

O the violation of the formal requirement to provide certain evidence to the

material conditions have been met, has prevented (Court of Justice of the European Union, Judgment *Euro Tire*, Case C-21/16, 09.02.2017, paragraphs 38, 39, 42, Judgment *Bühler*, case C580 / 16, 19.04.2018, point 59).

*d. VAT treatment if the conditions are met*

The first supplier A makes an intra-Community supply with transport which takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

The broker B communicates his Belgian VAT identification number to his supplier A and makes an intra-Community acquisition that is not subject to VAT under his Belgian VAT identification number in the Member State of arrival of the goods (Member State 3) (see Article 141 of Directive 2006/112 / EC, aforementioned).

B then makes a supply without transport in the Member State of arrival of the goods (Member State 3) to final customer C (see Article 31 of Directive 2006/112 / EC, aforementioned) who is subject to VAT.

B must designate C as the debtor of the VAT on the second delivery (BC) by means of an express statement on the invoice that he must issue to the latter.

C must pay the VAT on the second delivery (BC) (see Article 197 of Directive 2006/112 / EC).

B must also:

- include the transaction in his Belgian periodic VAT return referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code:
  - o incoming transaction: taxable amount in schedule 81, 82 or 83 and schedule 86, no VAT due is stated in schedule 55
  - O outgoing transaction: schedule 46 (7)
- include the outgoing transaction in the VAT declaration of the intra-Community transactions referred to in Article 53 *sexies*, § 1 of the VAT Code, stating code 'T' in the column 'Code'.

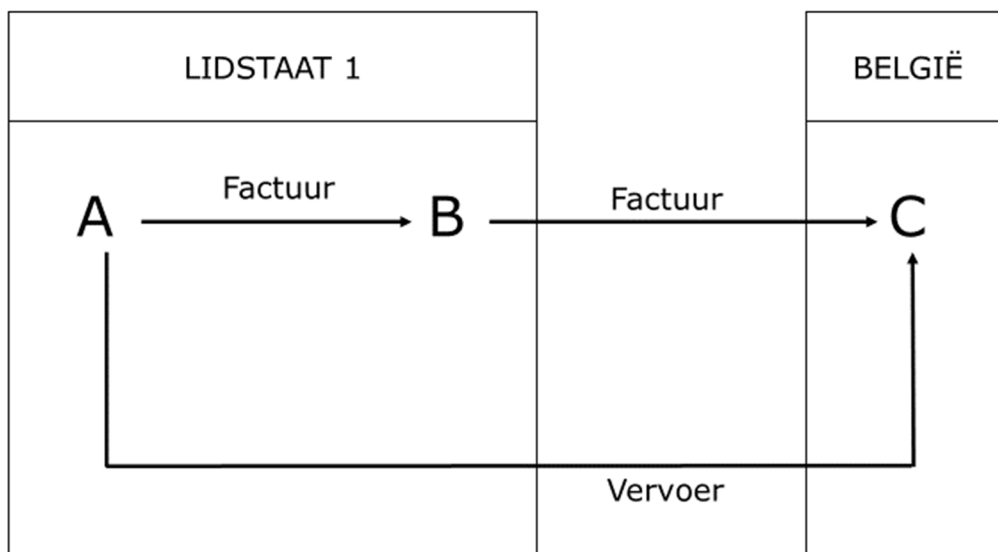
*(7) For those transactions, the chargeability of the tax (which determines in which declaration the transaction should be included) should in principle be determined in accordance with the legislation of the Member State in which the supply takes place. However, it is permissible to apply the same rules as those governing intra-Community supplies of goods.*

#### 4. False triangular traffic

##### **A. The broker B is established in the Member State of departure of the goods**

Situation:

A, a taxable person established in Member State 1 and identified for VAT purposes, sells goods to B, a taxable person established in Member State 1 and identified for VAT purposes, who in turn resells the goods to C, a company established in Belgium and for VAT - taxpayer identified for purposes. The goods are transported or dispatched directly from A in Member State 1 to the destination of C in Belgium.



*a. The transport or shipment is attributed to the first delivery (AB)*

The rules determining the delivery to which the transport is allocated are discussed under Title 2, section B.

The first supplier A makes an intra-Community supply with transport which takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) 1 of Directive 2006/112 / EC, aforementioned, insofar as the conditions are met. The broker B makes an intra-Community acquisition that is **in principle subject to VAT in the Member State of arrival of the goods (Belgium) (25 ter, § 1, first paragraph, and 25 quinquies, § 2 of the VAT Code)**. B is in principle obliged to identify himself in advance for VAT purposes in Belgium.

B must include the intra-Community acquisition in the periodic VAT return in respect of the return period during which the VAT becomes due and payable.

B then makes a delivery without transport in Belgium to the final customer C (see article 14, § 1 of the VAT Code) which is in principle subject to VAT.



Since B is not established in Belgium and C is a taxable person established in Belgium who is obliged to submit periodic VAT returns (as referred to in Article 53, § 1, first paragraph, 2 ° of the VAT Code), the VAT on the second delivery (BC) shifted to C (see Article 51, § 2, first paragraph, 5 °, of the VAT Code).

If C is a non-taxable legal person or a taxable person who is not obliged to file periodic VAT returns (for example, a member of the group of four), the charge is waived in accordance with Article 51, § 2, first paragraph, 5 °, of the VAT Code not applicable.

In the latter case, the B, who in principle has already been identified for VAT purposes in Belgium because of the intra-Community acquisition that he carries out there, must pay the VAT due via the periodic VAT return relating to the declaration period within which VAT has become due and payable (see Articles 51, § 1, 1 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

### **Simplification scheme.**

If B has been identified for VAT purposes in a Member State other than Belgium or in Member State 1, he can apply the simplification scheme (see Title 3, section C, above) if all conditions are met.

The fact that B is also established in Member State 1 does not prevent the application of the simplification scheme. This means, among other things, that he carries out the transaction under his VAT identification number of that other Member State and that he communicates the VAT identification number to A and that he issues an invoice expressly designating C as the debtor of the VAT on the second delivery (delivery BC).

For the sake of completeness, it is also noted that it is sufficient for the application of the simplification scheme that C is a taxable or non-taxable legal person identified in Belgium for VAT purposes. It is therefore not in itself required that in Belgium:

- is established or has a liable representative in Belgium
- is obliged to subject all intra-Community acquisitions of goods to VAT.

#### *b. The transport is allocated to the second delivery (BC)*

The rules determining the delivery to which the transport is allocated are discussed under Title 2, section B.

The first supplier A makes a supply without transport which takes place in Member State 1 (see Article 31 of Directive 2006/112 / EC, aforementioned) and which is subject to VAT in Member State 1.

The broker B makes an intra-Community supply with transport that takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) of Directive 2006/112 / EC, aforementioned, if all the conditions are met.

Final customer C makes an intra-Community acquisition that is in principle subject to VAT in the Member State of arrival of the goods (Belgium) **(25 ter, § 1, first paragraph and 25 quinquies, § 2 of the VAT Code). He must include this intra-Community acquisition in the periodic VAT return** with regard to the declaration period in which the VAT becomes due and pay the VAT due via that return (see Articles 51, § 1, 2 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

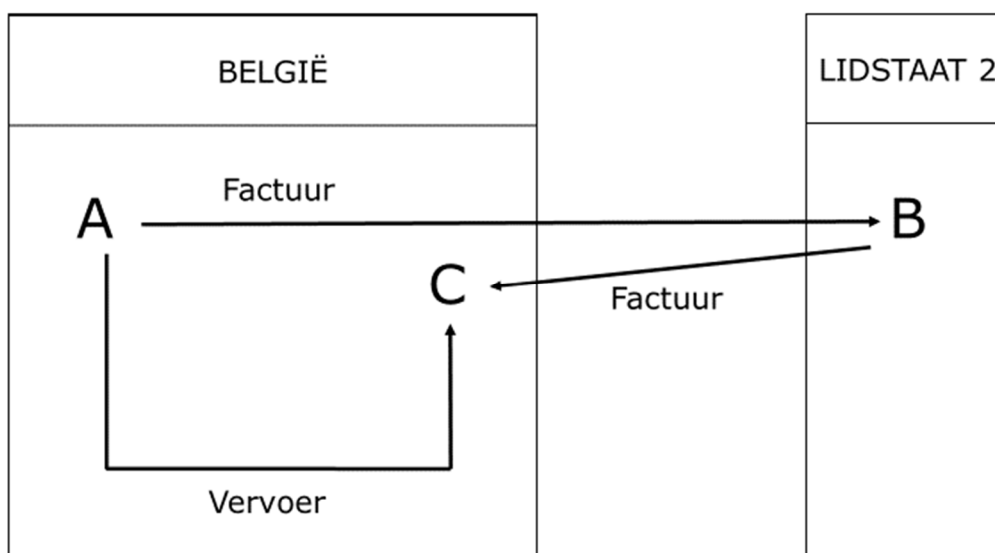
If C were a taxable person who does not have to submit periodic VAT returns or a non-taxable legal person, who is obliged to subject all his intra-Community acquisitions of goods to VAT in Belgium, C would also carry out a taxable intra-Community acquisition of goods (see articles **25 ter, § 1, first paragraph and 25 quinquies, § 2 of the VAT Code**). **C must then pay the VAT on the intra-Community acquisition of goods via a special VAT return (see Article 53 ter of the VAT Code).**

If C were a taxable or non-taxable legal person who belongs to the group of four and is not obliged to subject his intra-Community acquisitions of goods other than new means of transport or excise products to VAT, the intra-Community acquisition of the goods would not be taxable (see **Article 25 ter, § 1, second paragraph, 2 °, of the VAT Code**). **The intra-Community supply made by B would then not be exempted by Article 138 (1) of Directive 2006/112 / EC, referred to above, and would, in principle, be taxed in Member States on VAT 1.** If the transport or dispatch of the goods are supplied by or on behalf of B and the latter would exceed or have exceeded the Belgian threshold of EUR 35,000 for distance sales in the current or previous calendar year or opted for the distance selling system, the delivery will however take place in Belgium and is subject to VAT in Belgium (Article 15, § 1 of the VAT Code).

### ***B. The goods remain in the Member State of purchase***

Situation:

A, a taxable person established in Belgium and identified for VAT purposes, sells goods to B, a taxable person established in Member State 2 and identified for VAT purposes, who in turn resells the goods to C, a company established in Belgium and for VAT purposes. purposes of the taxpayer identified. The goods are transported or dispatched directly from A in Belgium to the destination of C in Belgium.



In this situation there is no question of intra-Community transport, since the goods do not leave Belgium. Irrespective of which delivery in this chain sale the transport is attributed (8), both deliveries will take place in Belgium and will be subject to VAT in Belgium.

*(8) When transport is carried out by or on behalf of broker B, the rules of Article 14, § 5 of the VAT Code do not apply (see Title 2, section B) since there is no intra-Community transport. However, this is not a problem because both deliveries are made in Belgium.*

Since the broker B is not established in Belgium and the final customer C is a taxable person established in Belgium who is obliged to submit periodic VAT returns (as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code), the VAT on the second delivery (BC) is shifted C (see Article 51, § 2, first paragraph, 5 °, of the VAT Code), so that the latter is referred to as the debtor of the VAT.

If C is a non-taxable legal person or a taxable person who is not obliged to file periodic VAT returns, then the deferment of the article

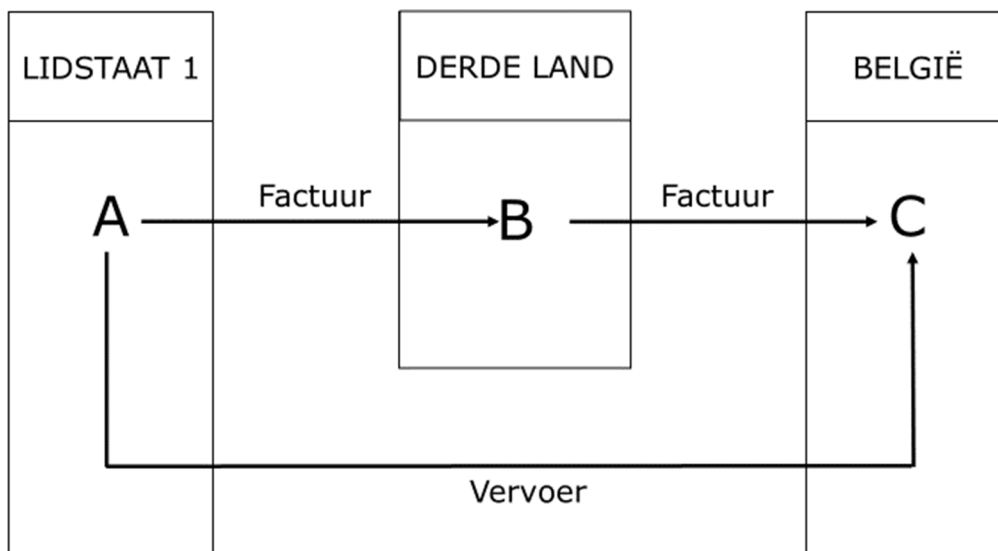
51, § 2, first paragraph, 5 °, of the VAT Code does not apply.

In the latter case, B must identify himself for VAT purposes in Belgium and pay the VAT due through the periodic VAT return relating to the declaration period within which the VAT has become due and payable (see articles 51, § 1, 1 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

### **C. The broker is established in a third country**

Situation:

A, a taxable person established in Member State 1 and identified for VAT purposes, sells goods to B, a taxable person established in a third country, who in turn resells the goods to C, a taxable person established in Belgium and identified for VAT purposes. The goods are transported or dispatched directly from A in Member State 1 to the destination of C in Belgium.



*a. The transport or shipment is attributed to the first delivery (AB)*

**Principle.**

The rules determining the delivery to which the transport is allocated are discussed under Title 2, section B.

The first supplier A makes an intra-Community supply with transport that takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) of Directive 2006/112 / EC, aforementioned, when the conditions are met.

The broker B makes an intra-Community acquisition that is in principle subject to VAT in the Member State of arrival of the goods (Belgium) **(25 ter, § 1, first paragraph, and 25 quinquies, § 2 of the VAT Code)**. In principle, it is required to identify itself in advance for VAT purposes in Belgium.

B must include the intra-Community acquisition in the periodic VAT return in respect of the return period during which the VAT becomes due and payable.

B then makes a delivery without transport in Belgium to C (see Article 14, § 1, of the VAT Code), which is in principle subject to VAT in that Member State.

Since B is not established in Belgium and C is a taxable person established in Belgium who is obliged to submit periodic VAT returns (as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code), the VAT on the second delivery (BC) is shifted to C (see Article 51, § 2, first paragraph, 5 °, of the VAT Code), so that the latter is referred to as the debtor of the VAT.

If C is a non-taxable legal person or a taxable person who is not obliged to file periodic VAT returns, then the deferment of the article

51, § 2, first paragraph, 5 °, of the VAT Code does not apply.

In the latter case, B, who has in principle already been identified for VAT purposes in Belgium because of the intra-Community acquisition that he carries out there, must pay the VAT due through the periodic VAT return relating to the declaration period within which the VAT has become due and payable (see Articles 51, § 1, 1 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

#### **Simplification scheme.**

However, if B has been identified for VAT purposes in a Member State other than Belgium or Member State 1, he can apply the simplification scheme (see Title 3, section C above) if all conditions are met.

This means, among other things, that he carries out the transaction under his VAT identification number of that other Member State and that he communicates VAT identification number to A and that he issues an invoice expressly designating C as the debtor of the VAT on the second delivery (delivery BC ).

For the sake of completeness, it is also noted that it is sufficient for the application of the simplification scheme that C is a taxable or non-taxable legal person identified in Belgium for VAT purposes. It is therefore not in itself required that in Belgium:

- is established or has a liable representative in Belgium
- is obliged to subject all intra-Community acquisitions of goods to VAT.

*b. Transport or shipment is attributed to the second delivery (BC)*

The rules determining the delivery to which the transport is allocated are discussed under Title 2, section B.

The first supplier A makes a supply without transport which takes place in Member State 1 (see Article 31 of Directive 2006/112 / EC, aforementioned) and which is subject to VAT in Member State 1.

The broker B makes an intra-Community supply with transport that takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) of Directive 2006/112 / EC, aforementioned, when the conditions are met.

Because of the intra-Community supply he makes in Member State 1, B is obliged to identify himself in advance for VAT purposes.

Final customer C makes an intra-Community acquisition that is in principle subject to VAT in the Member State of arrival of the goods (Belgium) **(25 *ter*, § 1, first paragraph and 25 *quinquies*, § 2 of the VAT Code)**. He must include this intra-Community acquisition in the periodic VAT return with regard to the tax return period in which the VAT becomes due and pay the VAT due via that return (see Article 51, § 1, 2 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

If C were a taxable person who does not have to submit periodic VAT returns or a non-taxable legal person, who is obliged to subject all his intra-Community acquisitions of goods to VAT in Belgium, C would also carry out a taxable intra-Community acquisition of goods (Articles 25 *ter*, § 1, first paragraph, and 25 *quinquies*, § 2 of the VAT Code). C must then pay the VAT on the intra-Community acquisition of goods via a special VAT return (see Article 53 *ter* of the VAT Code).

If C were a taxable or non-taxable legal person who belongs to the group of four and is not obliged to subject his intra-Community acquisitions of goods other than new means of transport or excise products to VAT, the intra-Community acquisition of the goods would not be taxable (see **Article 25 *ter*, § 1, second paragraph, 2 °, of the VAT Code**). The intra-Community supply made by B would then not be exempted by Article 138 (1) of Directive 2006/112 / EC, referred to above, and would, in principle, be taxed in VAT in Member State 1. Where the transport or dispatch of the goods is carried out by or on behalf of B and the latter would exceed the Belgian threshold of EUR 35,000 for distance sales or would have exceeded it in the current or previous calendar year or opted for the system of distance sales, the delivery will however take place in Belgium and is subject to VAT in Belgium (Article 15, § 1 of the VAT Code).

## **5. Simplified triangular traffic in a chain transaction with more than three parties**

Where goods are the subject of a chain sale between more than 3 parties, all of which are identified for VAT purposes in different Member States and the goods are transported directly from the first supplier in the Member State of departure to the last customer in the Member State of arrival by or on behalf of one of the parties (except the last customer), the question arises whether a triangular simplification scheme can be applied for two consecutive deliveries (the first of those two deliveries being transported) between 3 parties in the chain .

The tax administrations of the Member State of departure and of the Member State of destination sovereignly determine the obligations to which the respective operators who carry out taxable transactions are subject.

In addition, the tax authority of the Member State of arrival of the goods determines whether the simplification scheme for triangular traffic described in Title 3 can be applied to three operators.

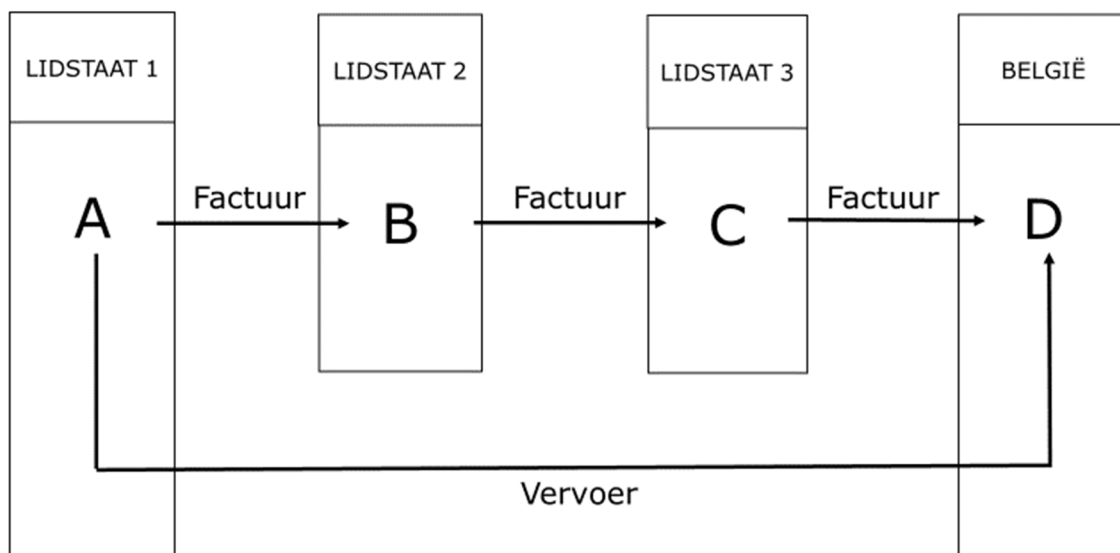
According to the guidelines of the 113th VAT Committee of 03.06.2019, it appears that most Member States accept such application insofar as all the conditions of the triangular simplification scheme apply.

Belgium accepts in its territory (9) the application of the simplification scheme for triangular traffic for two consecutive deliveries (between 3 parties) that are part of a longer intra-Community chain transaction, provided, of course, that all conditions are met (see Title 3, section C). This is illustrated by the following simplified example:

*(9) In other words, when Belgium is the Member State of arrival of the transport or dispatch of the goods.*

Situation:

A, a taxable person established and identified for VAT purposes in Member State 1, sells goods to B, a taxable person established in Member State 2 and identified for VAT purposes, who resells the goods to C, a taxable person established in Member State 3 and identified for VAT purposes, which finally resells the goods to D, a taxable person established in Belgium and identified for VAT purposes. The goods are transported directly from A in Member State 1 or sent to D in Belgium.



## **A. The transport or shipment is attributed to the first delivery (AB)**

### *a. Principle*

The rules determining the delivery to which the transport is allocated are discussed under Title 2, Section B.

A makes an intra-Community supply with transport which takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) of Directive 2006/112 / EC, aforementioned, provided the conditions are met.

**B makes an intra-Community acquisition that is in principle subject to VAT in the Member State of arrival of the goods (Belgium) (25 *ter*, § 1, first paragraph and 25 *quinquies*, § 2 of the VAT Code). B is in principle obliged to identify himself in advance for VAT purposes in Belgium.**

B must include the intra-Community acquisition in the periodic VAT return in respect of the return period during which the VAT becomes due and payable.

B then makes a delivery without transport in Belgium to C (see Article 14, § 1, of the VAT Code), which is in principle subject to VAT. B as a debtor, must pay the VAT on this delivery to the Treasury (Article 51, § 1, 1 ° of the VAT Code) through his periodic VAT return (see Article 53, § 1, first paragraph, 2 ° and 3 ° of the VAT Code). The transfer of taxation of Article 51, § 2, first paragraph, 5 °, of the VAT Code does not apply since C is not established in Belgium or has a liable representative as referred to in Article 55, §§ 1 or 2, of the VAT Code.

Finally, C makes a delivery without transport in Belgium to D (see Article 14, § 1, of the VAT Code), which is in principle subject to VAT in Belgium.

Since C is not established in Belgium and D is a taxable person established in Belgium who is obliged to submit periodic VAT returns (as referred to in Article 53, § 1, first paragraph, 2 ° of the VAT Code), the VAT on the third delivery (CD) shifted to the D (see Article 51, § 2, first paragraph, 5 °, of the VAT Code), so that the latter is referred to as the debtor of the VAT.

If the D is a non-taxable legal person or a taxable person who is not obliged to file periodic VAT returns, the deferral of Article

51, § 2, first paragraph, 5 °, of the VAT Code does not apply.

In the latter case, C must identify himself for VAT purposes in Belgium and pay the VAT due through the periodic VAT return relating to the declaration period within which the VAT has become due and payable (see articles 51, § 1, 1 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

### *b. Simplification scheme*

However, if C has been identified for VAT purposes in Belgium, it is accepted that the simplification scheme (see Title 3, section C, above) will be applied between the first three operators (ABC) if all conditions are met.

In that case, B must not identify himself for VAT purposes in Belgium. This means, among other things, that he carries out the transaction under his VAT identification number of Member State 2 and that he communicates VAT identification number to A.

B must designate C as the debtor of the VAT on the second delivery (BC) by means of an express statement on the invoice that he must issue to the latter.

### ***B. The transport or shipment is attributed to the second delivery (BC)***

#### *a. Principle*

The rules determining the delivery to which the transport is allocated are discussed under Title 2, Section B.

A makes a supply without transport which takes place in Member State 1 (see Article 31 of Directive 2006/112 / EC, aforementioned) and is subject to VAT there.

B makes an intra-Community supply with transport which takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) of Directive 2006/112 / EC, aforementioned, provided the conditions are met.

Because of the intra-Community supply he makes in Member State 1, B is obliged to identify himself in advance for VAT purposes.

C carries out an intra-Community acquisition which is in principle subject to VAT in the Member State of arrival of the goods (Belgium) (Articles **25 ter, § 1, first paragraph and 25 quinquies, § 2 of the VAT Code**). **In principle, it is required to identify itself in advance for VAT purposes in Belgium.** He must include this intra-Community acquisition in the periodic VAT return with regard to the declaration period in which the VAT becomes due and pay the VAT due via that return (see Articles 51, § 1, 2 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

Finally, C makes a delivery without transport in Belgium to D (see Article 14, § 1, of the VAT Code), which is in principle subject to VAT in Belgium.

Since C is not established in Belgium and D is a taxable person established in Belgium who is obliged to submit periodic VAT returns (as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code), the VAT on the third delivery (CD) is shifted to D (see Article 51, § 2, first paragraph, 5 °, of the VAT Code), so that the latter is referred to as the debtor of the VAT.

If D is a non-taxable legal person or a taxable person who is not obliged to file periodic VAT returns, the deferment of the levy in Article

51, § 2, first paragraph, 5 °, of the VAT Code does not apply.

In the latter case, C must identify himself for VAT purposes in Belgium and pay the Belgium VAT due via the periodic VAT return that relates to the declaration period within which the VAT has become due and payable (see articles 51, § 1, 1 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).

#### *b. Simplification scheme*

However, if B is identified for VAT purposes in the Member State of departure of the goods (Member State 1), the simplification scheme (see Title 3, section C, above) can be applied between the last three operators (BCD) if all conditions are met to be.

C therefore does not have to identify himself in Belgium for VAT purposes. This means, among other things, that he carries out the transaction under his VAT identification number of Member State 3 and that VAT identification number is communicated to B.



C must designate D as the debtor of the VAT on the third delivery (CD) by means of an express statement on the invoice that he must issue to the latter.

For the sake of completeness, it is also noted that for the application of the simplification scheme it suffices that D is a taxable or non-taxable legal person identified in Belgium for VAT purposes. It is therefore not in itself required that in Belgium:

- is established or has a liable representative in Belgium
- is obliged to subject all intra-Community acquisitions of goods to VAT.

### ***C. The transport or shipment is attributed to the third delivery (CD)***

#### *a. Principle*

The rules determining the delivery to which the transport is allocated are discussed under Title 2, Section B.

A makes a supply without transport which takes place in Member State 1 (see Article 31 of Directive 2006/112 / EC, aforementioned) and is subject to VAT there.

B then makes a supply without transport which takes place in Member State 1 (see Article 31 of Directive 2006/112 / EC, aforementioned) and is subject to VAT there.

C finally makes an intra-Community supply with transport which takes place in Member State 1, namely where the transport of the goods starts (see the first paragraph of Article 32 of Directive 2006/112 / EC).

This supply can benefit from the exemption for intra-Community supplies under Article 138 (1) 1 of Directive 2006/112 / EC, aforementioned, provided the conditions are met.

Because of the intra-Community supply he makes in Member State 1, C is obliged to identify himself in advance for VAT purposes.

**D makes an intra-Community acquisition which is in principle subject to VAT in the Member State of arrival of the goods (Belgium) (25 *ter*, § 1, first paragraph and 25 *quinquies*, § 2 of the VAT Code). He must include this intra-Community acquisition in the periodic VAT return with regard to the tax return period in which the VAT becomes due and pay the VAT due via that return (see Article 51, § 1, 2 °, and 53, § 1, first paragraph, 2 ° and 3 °, of the VAT Code).**

If D were a taxable person who does not have to submit periodic VAT returns or a non-taxable legal person, who is obliged to subject all his intra-Community acquisitions of goods to VAT in Belgium, D would also carry out a taxable intra-Community acquisition of goods (see articles 25 *ter*, § 1, first paragraph and 25 *quinquies*, § 2, of the VAT Code). **D must then pay the VAT on the intra-Community acquisition of goods via a special VAT return (see Article 53 *ter* of the VAT Code).**

If D were a taxable or non-taxable legal person belonging to the group of four and not obliged to subject his intra-Community acquisitions of goods other than new means of transport or excise products to VAT, the intra-Community acquisition of the goods would not be taxable (see Article 25 *ter*, § 1, second paragraph, 2 °, of the VAT Code).

The intra-Community supply made by C would then not be exempted by Article 138 (1) of Directive 2006/112 / EC, referred to above, and would, in principle, be taxed in VAT in Member State 1. If the transport or dispatch of the goods are supplied by or on behalf of B and the latter would exceed or have exceeded the Belgian threshold of EUR 35,000 for distance sales in the current or previous calendar year or if they opted for the distance selling system, the delivery will take place in Belgium and is subject to VAT in Belgium (Article 15, § 1 of the VAT Code).

*b. No possibility to apply the simplification scheme*

The simplification scheme on intra-Community triangular traffic (see Title 3 above) cannot be applied by either B or C, since the transport or dispatch of the goods is attributed to the last delivery (CD).