Q&A Quick Fixes

Version 11/02/2020

1. What are the "quick fixes"?

In an attempt to modernize and to improve the day-to-day functioning of the current VAT system, the EU Commission has introduced a set of new VAT rules by means of the Council Directive no. 2018/1910 and the Council Implementing Regulation no. 282/2011.

This set of new VAT legislation is referred to as the "quick fixes", because the new measures are considered as a quick fix of some inconsistencies between the VAT systems of different EU Member States, whilst the planned substantial, permanent changes to the VAT system are still pending (i.e. the shift to the so-called "Definitive VAT regime", expected in 2022).

The objective of the quick fixes is to **harmonize and simplify the current VAT rules** related to the intra-Community trade of goods (i.e. trade of goods between the various Member States of the EU). Currently, there can be quite some different interpretations of these rules in the various EU Member States.

More precisely, the quick fixes try to tackle some existing issues in the following areas:

1. Call-off stock arrangements (= stock held abroad in another EU Member State, e.g. through a (long-term) consignment);
2. The proof required to demonstrate transport of goods to another EU Member State in case of so-called "intra-Community supplies";
3. The requirement for a supplier to verify if his client has a valid VAT number in case of so-called "intra-Community supplies";
4. VAT treatment of EU cross-border chain transactions.

2. As of which date do the quick fixes apply?

The four quick fixes have entered into force in all EU Member States as of the **1st of January 2020**. Belgium has implemented the required national legislation in time.

3. Do the quick fixes apply to any trade situation?

The quick fixes all relate to cross-border trade within the EU. The quick fixes will be relevant **for companies performing so-called intra-Community supplies of goods**. This means supplies made by one VAT taxable person to another **VAT taxable person** ("B2B transactions"), whereby the sold goods are transported from one EU Member State to another EU Member State.

They apply to intra-Community supplies of all goods and are hence not diamond-specific. The new rules do not relate to 'local trade' (i.e. trade within the territory of one EU member state), nor to trade with non-EU countries (i.e. supplies whereby goods are transported from a place within the EU to a place outside the EU).

Each company that is involved in cross-border trade within the EU should check to what extent it is impacted by the quick fixes. The impact will depend on the exact activities of each company. This will be clarified for each question below.

QUICK FIX 1: HAVING STOCK ABROAD - CALL-OFF STOCK SIMPLIFICATION REGIME

4. What are the VAT implications if you transport your diamonds to another EU Member State, but you have not sold them (yet) at the moment of transportation?

4.1 Context

Following the **basic principles of the EU VAT legislation**, a taxable person who transports or dispatches his own goods to another EU Member State, would **require a VAT number in that other EU Member State**.

This is because, when a taxable person physically moves his goods to another EU Member State, *without selling them (yet)*, he is deemed to perform a so-called 'transfer of own goods' to the other EU Member State. Such transfer of own goods implies that the taxable person has to report an "intra-Community supply" in the EU Member State of dispatch and an "intra-Community acquisition" in the EU Member State of arrival.

The latter implies that the taxable person will generally need to register for VAT in that EU Member State of arrival.

The underlying reason for this obligation is that the various Tax Authorities in the EU Member States should basically be able to "track" the location of a taxpayers' goods at any given time.

However, please note there are quite some ***exceptions*** to this main rule: in these situations, the taxable person does not require a VAT number in the other EU Member State, although he has physically moved his goods to that Member State. These situations are typically called 'non-transfers'.

Whether you need a local VAT number (main rule) or not (exception), will highly depend on the exact circumstances.

Hereunder, we list 4 different situations that are quite common in the diamond sector. We will give an indication of the potential VAT consequences of each situation. In practice, it is obviously advisable to analyze all situations individually.

Please note that the actual 'quick fix' (i.e. the new VAT legislation) only applies to the 1st scenario.

4.2 Four typical situations

Scenario 1= quick fix 1

This scenario refers to the following situation:

- A taxable person transports goods from EU Member State A to EU Member State B, in order to sell the goods to a customer in EU Member State B at a later time. At the time of physical movement to the other Member State, no transfer of ownership takes place.

- This intended customer was already known at the time the physical movement to the other Member State started.

- The transfer of ownership to the intended customer only takes place at a later time (e.g. at the moment this customer decides to buy the goods or when he has found his own buyer for the

goods). Only at that moment, the supplier will sell the goods to the intended customer and issue an invoice.

Example: A Belgian diamond trader sends diamonds to France in order to sell them to an already known client-jeweler. Whilst the diamonds are stored in the shop of the French jeweler, the Belgian diamond trader remains the owner of the goods. Only when the French customer actually decides to buy the diamonds (e.g. because he has found a buyer himself), the Belgian diamond trader will issue an invoice.

For VAT purposes, this situation is referred to as a 'call-off stock'. In practice, businesses might also refer to this situation as a 'consignment stock'.

In this respect, please note that it does not matter which name is given to this situation. The main characteristic of this scenario is that the intended customer is known by the supplier at the moment the goods are transported.

The new VAT legislation applies only to this scenario. The potential VAT consequences of this scenario will be addressed in question no. 5 to 11.

Scenario 2

A Belgian diamond trader sends diamonds to another EU member state to a potential customer, merely in order to give this potential customer the opportunity to inspect or investigate the goods. After his inspection, the potential customer can freely decide whether to buy the goods:

- In case the customer decides to buy the goods, a sale will be made at that moment and the supplier will issue an invoice to the customer;
- In case the customer decides not to buy the goods, no sale will be made and the goods will in principle return to the supplier.

In practice, the intended customer usually needs to decide whether or not to buy the goods within a relatively short timeframe (the supplier and intended customer can agree upon the exact timeframe the customer has to inspect the goods and make a decision).

The Belgian VAT authorities refer to this situation as a 'delivery at sight' ('*zending op zicht*').

The "delivery at sight" is hence a mere sales offer by the supplier.

According to the existing administrative comments of the Belgian VAT authorities, such "delivery at sight" is hence not the same situation as a "call-off stock" (or a "consignment stock"), and should follow its own VAT treatment (*see question no. 12*).

In practice, the difference between "delivery on sight" and "call-off stock" might not always be completely clear. Therefore, it is recommended to carefully consider the wording on your commercial documents. If you intend to dispatch goods to a potential customer who can only view the goods for a brief period of time (for inspection) before deciding upon purchase, it is recommended to mention this as such on your commercial document (e.g. you can include a reference to "delivery at sight" and specify the (short) term within which the goods should either be purchased or sent back to you).[1]

[1] If you use the templates of the AWDC Best practice guide, a suggested wording is included on how this can be referred to on your consignment document.

Scenario 3

A Belgian diamond trader tries to find potential customers for his diamonds in other EU Member States. He might also give the diamonds to a broker who will try to find potential customers for the respective diamonds on behalf of the diamond trader (i.e. the broker does not take ownership of the diamonds). The broker or the diamond trader himself travels to e.g. France and shows the diamonds to a potential customer. After inspection, the potential customer decides to buy the diamonds or not. If he decides not to buy the diamonds, the broker or the diamond trader might travel further to other potential customers. When a potential customer decides to buy the diamonds, a direct sale is conducted between the Belgian diamond trader and the customer. In case a broker was involved, that broker issues an invoice to the Belgian diamond trader for its commission. Diamonds that are not sold return to Belgium.

To a certain extent, this scenario is comparable with scenario 2 (i.e. basically it also concerns a 'delivery at sight'). However, the difference is that a broker might be involved and, probably, the Belgian diamond trader will not always know the potential customers upfront. This might influence the VAT treatment (see question no. 13).

Scenario 4

A Belgian diamond trader sends diamonds to another EU Member State in order to use them on a trade fair. He might only show the diamonds on the fair, or he might try to sell them. Diamonds that are not sold, return to Belgium.

The potential VAT consequences of this scenario will be addressed in question no. 14.

VAT treatment scenario 1

5. What are the VAT implications in scenario 1 ("call-off stock")?

The first quick fix is applicable to this situation. This quick fix attempts to harmonize and simplify the VAT rules which are applicable when a taxable person holds a so-called "call-off stock" in another EU Member State.

Before 01/01/2020, a VAT registration in another Member State was in principle mandatory when holding a call-off stock in that Member State. However, quite some EU Member States already applied certain simplification regimes to avoid a local VAT registration for foreign suppliers in such situations, but the conditions varied between Member States in terms of identification of the consignee, time limits, place of storage, bookkeeping obligations, agreement of the authorities, etc. Obviously, this caused practical issues for businesses.

Therefore, the EU Commission has, **as from 01/01/2020,** introduced 1 harmonized simplification regime that should be equally applicable in all EU Member States. Existing local simplifications should now be abolished.

Based on the new harmonized rules, the supplier should not request a VAT number in the EU Member State where the call-off stock is held, if certain conditions are fulfilled (see question 6). This is referred to as the simplification regime for call-off stocks.

As mentioned above, it does not matter which name the parties involved give to the situation. The notion of "call-off stock" is a term used by the VAT legislation.

6. What are the conditions in order to apply the call-off stock simplification regime and avoid a VAT registration in another EU Member State?

In order to be able to apply this **simplification for call-off stock** arrangements, certain conditions have to be fulfilled:

1) **Dispatch/ transport of goods** needs to be done by **the supplier** or on his behalf to another Member State with a view that those goods will, at a later stage and after arrival, be supplied to a customer based on an **existing agreement** between both parties;

   ! If the (potential) buyer is in charge of transport/dispatch of the goods, the simplified regime does *in principle* not apply. In practice, we see that sometimes a supplier 'mandates' its (potential) buyer to perform the transport on his behalf. It is today unclear whether the VAT authorities would indeed follow this argumentation. One has more legal certainty if the supplier takes care of the transport.

   ! *Existing agreement between the parties*: The VAT legislation does not define the type of agreement that is required. Reasonably, it can be assumed that such agreement exists when there is an agreement between parties based on which the intended customer can take specific goods from the supplier's stock for a specific price. A diamond consignment note/agreement can be considered as such agreement, if it meets these conditions.

2) Both the supplier and the customer are **VAT taxable persons**;

   ! If the (potential) buyer is a private person, the simplified regime does not apply.

3) The **supplier is not established** (or does not have a fixed establishment) in the Member State of destination (*also see questions no. 9 and 10*);

4) The **customer** has a **VAT number in the Member State of destination**;

   ! If the goods are shipped to a particular EU Member State and the intended customer has no VAT number in that EU Member State, the simplified regime cannot not apply.

5) The **identity and VAT number of the customer are known** to the supplier prior to the start of the transport;

   ! The customer needs to be specified at the moment of shipment of the goods. If that is not the case (e.g. one sends diamonds to another EU member state to be displayed there but one does not yet know who will buy the diamonds), the simplified regime does not apply.

   It is advisable to clearly mention the name and VAT number of the intended customer in the agreement as mentioned above.

6) Both the supplier and intended customer (or third party stock keeper) record the transport of the stock in a **register**;

! The supplier needs to keep a register which contains a number of mandatory references related to the stock movements *(we refer to question number 7 for the mandatory references)*. This register does not need to be submitted to the authorities, but upon request the taxable person should be able to present this to the authorities.

For example, a register in which all consignment movements are kept by the company or his third party stock keeper (e.g. accounting office) suffices if it contains all required information.

7) The supplier (or his accounting office) mentions the identity and VAT number of the intended customer, at the moment of transport, in his **EU Sales Listing ("Intracommunautaire opgave")**;

! The supplier should mention the VAT number of the intended customer in his EU Sales Listing related to the period (*monthly or quarterly*) in which the goods are transported to the other EU Member State. Please note that at this moment, the supplier should only report the VAT number of the intended customer in the EU Sales Listing (and hence no value of the goods). In Belgium, this reporting should be done in the new "part 2" of the EU Sales Listing (to be filed via "Intervat").

! At the moment of actual sale, the supplier should report the sales transaction in his VAT return (as 'intra-Community' supply) and in its EU Sales Listing based on the existing procedures (i.e. mentioning of VAT number of the customer and sales price of the goods in the EU Sales Listing).

8) The goods are supplied (sold) to the intended customer **within 12 months** after arrival of the goods in the Member State of destination.

! If the goods are not sold to the customer within 12 months and they are still held in stock in that member state, the simplified regime ceases to exist at the moment the period of 12 months is exceeded *(see question no. 8 b)*.

7. Which data needs to be included in the register to be held by the supplier?

Please note that a register should be kept by the supplier. Member States can determine the format and conditions. Belgium does not impose too strict limitations with regards to the format (e.g. this can be paper-based or electronic).

- *Data to be included in the supplier register:*

a) Shipped from country;
b) date of shipment;
c) VAT-identification number of the taxable person to whom the goods are sent;
d) Shipped to country;
e) VAT identification number of the shop keeper, address of the shop and date of arrival of the goods in shop (*if the shop keeper is not the same person as the intended customer*);
f) Value, description and quantity of the goods that arrived in the shop;

g) VAT-identification number of the taxable person *substituting* for the intended customer (*only if applicable*);
h) Taxable base, quantity, description of the goods as well as the date of the actual supply (i.e. the date on which the goods are "called-off");
i) Taxable base, description, quantity of the goods, and the date of occurrence in case of incidental losses and/or the time limit (12 months-period) is no longer fulfilled (*if applicable*);
j) Value, description, quantity of the returned goods and the date on which the goods have been sent back (*if applicable*).

Note that also the intended customer has to keep a similar register (but this is the full responsibility of the customer).

8. What do I need to do if I don't fulfill the conditions for the simplified "call-off stock" regime but when I do have stock abroad?

If the conditions are not met or no longer met, this will normally trigger a VAT registration obligation for the supplier in the EU Member State where he holds the stock. In such case, we recommend you to get in touch with your tax consultant to check which procedures have to be followed in order to obtain the VAT number.

a) **Conditions** of the simplification regime for call-off stock **are not met**

If any of the requirements is not met, this means that the simplified regime is not applicable.

Example: A Belgian diamond trader has a stock of diamonds in another EU Member State. From this stock, he sells the diamonds to an intended customer. This intended customer is known upfront (i.e. call-off stock). However, the intended customer does not have a valid VAT number in that other EU Member State (see question no. 6 condition no. 4). In this case, the conditions to apply the simplification regime are not fulfilled and hence the Belgian diamond trader should generally obtain a VAT number in the EU Member State where the stock is held.

b) **Conditions** of the simplification regime for call-off stock **are no longer met**

If any of the requirements are no longer met, this means that the simplified regime is no longer applicable.

Please note that all conditions need to continue to be fulfilled for the whole duration while the stock is indeed held abroad. If one of the conditions is no longer fulfilled, the simplified call-off stock regime ceases to exist.

Example: A Belgian diamond trader has a stock of diamonds in another EU Member State, with the intention to sell the diamonds at a later time to a known customer. Let's assume all the conditions to apply the simplification regime are fulfilled. However, after 12 months in the stock it appears that the diamonds are not yet sold. At the moment the 12 month period is exceeded, the simplification regime will in principle cease to exist due to the fact that condition number 8 is no longer fulfilled. At that time, the Belgian diamond trader should in principle obtain a VAT number in the EU Member State where the diamonds are held in stock.

If you expect that the 12 month period will be exceeded, you might consider to return the diamonds to Belgium. In that case, you can avoid the local VAT registration. Please note that you should mention this

return in the register you are obliged to keep. Additionally you should also indicate the return in your EU Sales Listing ("*Intracommunautaire opgave*").

Afterwards, you can consider sending the diamonds back to the intended customer and hence create a new call-off stock. However, please note that in such situation it will be crucial that you can prove that the diamonds have temporarily returned to Belgium. Furthermore, such situations should be analyzed carefully as it cannot be excluded that the tax authorities of the EU Member State of arrival will consider such practice as 'abuse' of the call-off stock simplification. Hence, it should be analyzed on a case-by-case basis what a defendable practice is and if possible be avoided.

9. What if I send goods to a call-off stock in another EU Member State and I have a branch in that specific country? Can I apply the simplification in that case?

A "branch" implies an establishment set up by a head office, to perform the same business operations, at a different location. A branch is not a separate legal entity. It belongs to the same legal entity as the head office.

In the event that you send goods to a call-off stock in another EU Member State where you have a branch, the call-off stock simplification cannot be applicable, as you will be considered to be established in that Member State *(see question no. 6, condition no. 3)*.

This implies that you will have to perform a "transfer of own goods" to that other EU Member State. However, this will in principle not lead to an additional VAT registration obligation as your branch will normally already have a local VAT number.

Example: Belgian Diamond Company X has a stock of diamonds in Italy, with the intention to sell the diamonds later to a known Italian customer Y. Company X also has a branch in Italy. In this situation, Company X will not be able to apply the simplification regime for call-off stocks, as he will be considered to be established in Italy because of the branch.

Company X will hence have to perform a "transfer of own goods". This should in principle not cause any real VAT issues, as the Italian branch will normally have an Italian VAT number.

10. What if I have a subsidiary in the country of arrival of the goods? Can I apply the simplification in that case?

Having a subsidiary or other group company in the country of arrival should *as such* not prevent the application of the simplification regime, because the notion of establishment should *in principle* be considered on legal entity level (i.e. a subsidiary or group company is another legal entity).

Example: Belgian mother company Diamond Company X opens a daughter company (subsidiary) in Italy, called Italy Diamonds. If the Belgian mother company Diamond Company X has a direct call-off stock agreement with an Italian customer, the simplification regime can be applicable if all conditions have been fulfilled. The fact that the Belgian mother company Diamond Company X has a subsidiary in Italy as such does not prevent the application of the simplification regime.

11. What if I have goods which have already been held in another EU Member State for an intended customer quite a while (e.g. in consignment)?

Please note that the new call-off stock regime only applies as of 01/01/2020:

- This means that in case **the transport of the goods to the other EU Member State started on or after 1 January 2020**, the **new rules on the call-off stock simplification are applicable**.

- if the **transport of the goods to the other EU Member State started before 1 January 2020**, the 'new' **call-off stock simplification cannot be applied**, even when the arrival of the goods in the Member State of destination takes place after that date.

This means that for existing stock (i.e. stock present before 01/01/2020), the new rules cannot be applied.

For such stock, you should check the old rules in the relevant EU Member State: as mentioned above, a number of EU Member States did already apply some sort of simplification but some Member States did not apply any simplification at all.

Example: in 2019, a Belgian diamond trader has transported diamond to a stock in Germany, with the intention to sell the diamonds at a later time to a known German customer. However, in Germany there was no legal simplification for such call-off stock arrangements. This means that the Belgian diamond trader should in principle have transferred its own goods from Belgium to Germany. Hence, he should have applied for a German VAT number. Furthermore, if the Belgian diamond trader has sold the goods to his German customer, he should in principle have charged German VAT on his invoice.

Example: in 2019, a Belgian diamond trader has transported diamond to a stock in France, with the intention to sell the diamonds later to a known French customer. France did already apply some kind of simplification regime, allowing a foreign supplier to avoid a local VAT registration. However, one of the specific conditions in France was that the actual sale should occur within 3 months after arrival of the goods in France. If this was not the case, the supplier did have to apply for a local VAT number.

If you had call-off stock in another EU Member State before the entry into force of the new rules, it is advisable to check what the consequences might be and what the best way going forward is, taking into account all relevant facts of your case.

VAT treatment scenario 2

12. What are the VAT implications in scenario 2 ("delivery at sight" to a known customer)?

When a supplier sends goods "at sight" to a potential customer in another EU Member State, the VAT treatment will depend on the exact circumstances. The main question in this respect is, again, whether the supplier should obtain a VAT number in the EU Member State of destination.

Based on the current *Belgian* administrative guidelines, the transport or movement of goods (i.e. diamonds) does not trigger a "transfer of own goods" from a Belgian VAT point of view, when the following conditions are fulfilled:

- The EU Member State of destination of the goods does not qualify the arrival of the goods as an intra-community acquisition;

- The potential customer of the goods in the EU Member State of destination is known at the moment the transport of the goods starts.

In that case, the supplier does not need to obtain a VAT number in the EU Member State of destination. In principle, he does need to report the physical movement of the goods in a so-called "register of non-

transfers" ("*register der niet-overbrengingen*"). At the moment of the sale, a "direct" intra-Community supply takes place. If the customer does not buy the goods, they return to the supplier.

Example: a Belgian diamond trader sends diamonds 'at sight' to an Italian jeweler. The Italian jeweler decides within two days to purchase the diamonds.

The abovementioned example is a clear example of a delivery at sight where the intended customer is known and the supplier does not need to obtain another VAT number in the EU country of arrival (i.e. in the assumption the Italian VAT authorities agree in the specific case at hand).

VAT treatment scenario 3

13. What are the VAT implications in scenario 3 ("delivery at sight" to a potentially unknown customer)

In this scenario, the supplier will probably not always know who the potential customers are at the moment the transport of the goods starts.

Example: a Belgian diamond trader gives diamonds to a broker. The broker, who does not take ownership of the diamonds, tries to find potential customers in Germany for the respective diamonds. The broker travels to Germany and shows the diamonds to a potential customer. After inspection, the potential customer decides to buy the diamonds. At that moment, a direct sale is conducted between the Belgian diamond trader and the customer in Germany. The broker issues an invoice to the Belgian diamond trader for its commission.

In the abovementioned example, the Belgian diamond trader did not know who the potential customer was at the moment the diamonds left Belgium. Therefore, it cannot be fully excluded that VAT authorities consider such situation as a 'transfer of own goods'.

VAT treatment scenario 4

14. What are the VAT implications in scenario 4 (trade fair)

The physical movement of the diamonds from Belgium to another EU Member State, in order to use the diamonds on a trade fair in that other country, as such will not trigger a transfer of own goods.

For Belgian VAT purposes, the respective movement of goods in principle needs to be reported in a register of non-transfers ("register der niet-overbrengingen").

If the Belgian diamond trader merely shows the diamonds at the fair (or if he does not manage to sell them), and they return to Belgium, no VAT number will be required in the EU Member State where the trade fair was held.

When he sells diamonds at the trade fair, VAT authorities will *generally* consider the situation as a transfer of own goods followed by a local supply in the EU Member State of the trade fair. Hence, in principle,

the Belgian diamond trader should register for VAT purposes in the country where the trade fair is taking place.

However, please note that in practice, certain EU Member States might apply simplification rules with respect to sales on trade fairs performed by non-established suppliers. So in these cases, it is highly advisable to check the local rules and practices in the EU Member State where the trade fair takes place.

Stock outside the EU?

15. What in the event I have stock outside the EU?

The new call off-stock simplification rules only apply on an EU level. These rules are hence not applicable when the goods are located in a non-EU country.

In such cases, it would be necessary to check the local customs and VAT legislation (or Sales tax, GST, …., legislation depending on the tax system) in order to determine whether there are any local compliance obligations for the owner of the goods.

16. What should I take into account when sending goods on consignment to the UK after the Brexit?

Following the UK's elections late 2019, which resulted in a significant majority for the Conservative Party, there is now certainty that the UK will leave the EU on 31 January 2020.

After 31 January 2020 the UK will enter a transitional period which is due to end on 31 December 2020. During the transitional period, the VAT treatment of supplies between the EU and UK should be unaffected and the UK and EU will attempt to agree on a Free Trade Agreement. In theory, this transitional period could be extended until either 31 December 2021 or 31 December 2022. However, the UK Government has indicated it will not extend and is legislating to ensure that it is not able to.

Hence, during this transitional period, the EU rules as described above should still be applicable for consignments to the UK.

After the transitional period, the UK will no longer be considered as a Member State of the EU and therefore the rules and conditions as described above will no longer be applicable.

Therefore, as of that moment, it would be necessary to check the local UK customs and VAT legislation (which applies at that time) in order to determine whether there are any local compliance obligations for the owner of the goods.

QUICK FIX 2: PROOF OF TRANSPORT

17. Which documents should I collect to prove intra-Community shipment ?

One of the substantive conditions for the application of the VAT exemption for intra-Community supplies, is the **underlying proof** regarding the cross-border transport of the goods.

The way in which this proof could be provided (and more specifically, the documents which were required in order to do so) was interpreted differently by Member States across Europe.

As from 01/01/2020, there is a harmonized rule on EU level. Individual EU Member States can however still apply their own rules, to the extent these are "less strict" than the new harmonized EU rules.

In Belgium, there are now basically 3 ways to provide proof of transport.

17.1 The existing Belgian rules: a set of corresponding documents

In Belgium, the cross-border transport has to be supported by "a set of corresponding documents" (e.g. order forms, payment documents, transport documents, etc.). While every piece of evidence is acceptable, *no single piece of evidence in itself is sufficient*.

This was, and still is, the main rule. This rule remains applicable in Belgium, also after 01/01/2020. Businesses will hence still be able to prove cross-border transport based on a set of corresponding documents.

17.2 Proof of transport in the light of the quick fixes as from 1 January 2020

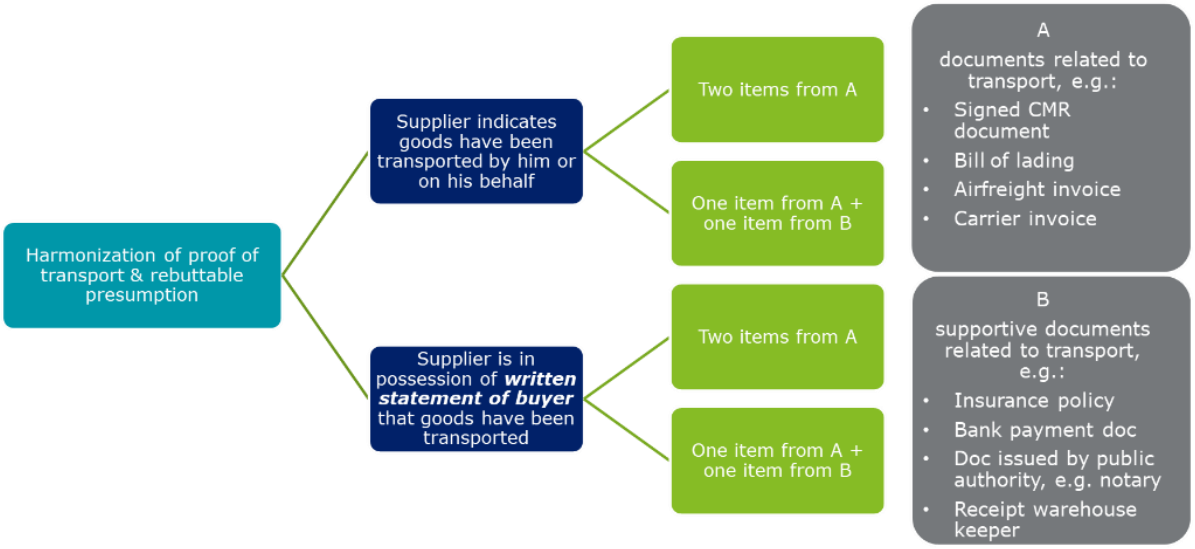
The quick fixes have now provided for a common framework for the supportive documentary evidence which is required in this regard, for all EU Member States.

In practice, this means that businesses should be able to prove the cross-border transport in all EU Member States (so including Belgium) when they can present the following documents:

- *In case the goods are transported by (or on behalf of) the supplier*: two items of non-conflicting evidence (either 2 different transport documents *(cf. 'list A' in the figure below)* or a transport document combined with another official, supportive document *(cf. 'list B' in the figure below)*) issued by two different parties, which are not only independent of each other, but also of the supplier and of the customer.

- *In case the goods are transported by (or on behalf of) the customer*: additionally (i.e. on top of the 2 non-contradictory and independent items of evidence), a written statement of the customer is required, certifying the arrival of the goods.

Please find below a schematic overview of the documents required:



If a company can present the documents as mentioned above, VAT authorities should accept these as proof of the cross-border transport, unless the authorities can prove themselves that these documents are not correct.

Likely, the above proof is feasible in case a transport company performs the transport of the goods on behalf of the supplier (e.g. a combination of the invoice issued by the transport company and the proof of payment for the transport should be sufficient to prove transport).

However, the above proof might be difficult to obtain in practice, in case the goods are transported on behalf of the client.

Furthermore, if the supplier or the customer performs the transport using their own means of transport (personal transport), it is basically impossible to provide this proof (as the requirement, stating that the documents should be issued by parties that are independent of the supplier and of the customer, can never be fulfilled).

17.3 Alternative proof: destination document ("bestemmingsdocument")

As a rule of simplification, Belgium also allows taxable persons to prove cross-border transport based on a *so-called destination document* ("bestemmingsdocument").

This rule already existed in practice, but is as of 01/01/2020 also included in the law (Royal Decree no. 52).

The destination document should contain a minimum set of requirements regarding the details of the contracting parties, the goods supplied and the arrival of the goods - *see the AWDC Best Practice Guide for a template destination document in Annex*.

The customer should sign this destination document for receipt. The supplier should make sure that he receives back the signed destination document within 3 months after the period to which the destination document relates.

Such destination document can be made for all individual supplies. However, it is also possible to make one global destination document for all supplies made to one specific customer during a time range which cannot be longer than 3 consecutive calendar months.

If it contains all mandatory references and is correctly signed, the destination document in itself should in principle be sufficient to prove transport, unless the Belgian VAT authorities can demonstrate that the document is not correct.

Using this destination document is probably the most feasible way to prove cross-border transport of diamonds in case of personal transport (by supplier or customer) or in case the transport is performed on behalf of the customer.

QUICK FIX 3: VALID VAT NUMBER OF YOUR CUSTOMER

18. Which scrutiny do I need to do vis-à-vis my counterparty for VAT purposes

The third "quick fix" relates to extra conditions that must be met in order to exempt an intra-Community supply from VAT.

It is now mentioned in the law that the customer must be identified for VAT purposes in an EU Member State "other than that where the dispatch of the goods begins". Also, he will have to indicate that VAT number to the supplier.

Before 01/01/2020, this was not mentioned as such in the law. So the disposal of a valid foreign EU VAT number has now become a 'material condition' to apply the VAT exemption for intra-Community supplies.

This means that you, as a Belgian company, can only apply the VAT exemption for intra-Community supplies from Belgium to another EU Member State if your customer has communicated his valid VAT number (other than a BE VAT number) to you, before you issue your invoice.

If this is not the case, you cannot apply the exemption and hence you should in principle charge local VAT to your customer (e.g. when he provides a VAT number of another EU Member State but it is not valid, or he does not provide a VAT number of another EU member state at all).

Example: A Belgian diamond trader supplies diamonds to a customer established In Spain. The diamonds will be transported from Belgium to Spain. However, the Spanish customer informs the Belgian supplier that he is in the process of obtaining a VAT number in Spain but that he will not have the VAT number yet at the moment the supplier has to issue the invoice.

At that moment, the supplier cannot apply the VAT exemption for intra-Community supplies since all legal conditions are not fulfilled. So he should in principle charge Belgian VAT on the invoice. Once the customer obtains the VAT identification number, the supplier can correct his invoice, assuming that the customer can prove that he was a taxable person acting as such at the moment of the supply and there is no indication of fraud or abuse.

Based on the above, you need to assure that you know whether or not your customer has a valid VAT number at the moment of your supply. Therefore, it is highly advisable to check the validity of the VAT number of your counterparty.

This can be checked manually through the VIES[2] website (a VAT number can be inserted and the system tells you whether this is indeed a valid VAT number) or certain software systems or tools can be used for this to run these checks automatically. In certain bookkeeping software systems, this can be integrated automatically, e.g. as soon as a new invoice or consignment note is drafted for a certain counterparty,

[2] http://ec.europa.eu/taxation_customs/vies/?locale=nl

the system will run a check to see whether this is indeed a valid VAT number and store the relevant information.

It is important for you as a trader to be able to demonstrate that you (or your bookkeeper) have indeed checked the validity of the VAT number of the counterparty. In principle, you should do this check for all supplies. In practice, it is advisable to perform the check at least on a regular basis (e.g. monthly). This means that either you should take screenshots of the VIES website or that you can use a system which automates these processes for you. We recommend you to get in touch with VAT experts / your bookkeeper to get clarity on how to implement this for your company.

QUICK FIX 4: ALLOCATION OF TRANSPORT IN CHAIN TRANSACTIONS

19. What should I take into account when I am a party involved in an EU cross-border chain transaction?

Firstly, it has to be clarified what an EU cross-border chain transaction actually means.

This notion refers to the following situation:

- The goods must be supplied successively at the same time. This means at least 3 taxable persons are involved in the chain transaction;
- The goods are transported from one EU Member State to another EU Member State (imports and exports are excluded);
- The goods must be transported directly from the first supplier to the last customer in the chain.

Example: Company A, a Belgian diamond trader sells diamonds to a French company B. At the same time, the French company B sells the diamonds to a Spanish company C. The diamonds are transported directly from Belgium to Spain.

In such chain supplies, only one supply can be the "intra-Community supply". Hence, only this supply can be eligible for the VAT exemption for intra-Community supplies. The other supply is to be considered as a local supply (following the local rules).

In practice, it is not always easy for the parties involved to determine which supply is the intra-Community supply. This is certainly the case when the "middleman" (party B) takes care of the transport of the goods. There can be different views on this topic in the various EU Member States, leading to practical issues for businesses.

The quick fixes attempt to bring some harmonization in this area.

The new rules state that the supply to the so-called intermediary operator (i.e. the first supply), is the intra-Community supply. This is hence the (only) supply which is eligible for the VAT exemption for intra-Community supplies.

This is not the case if the intermediary operator communicates his valid VAT number from the EU Member State of departure to his supplier. In that case, the transport is allocated to the supply **made by** the intermediary operator (i.e. the second supply). Hence, only this supply is eligible for the VAT exemption for intra-Community supplies.

The "intermediary operator" is defined as the supplier in the chain – other than the first supplier or the final customer – who dispatches or transports the goods himself or by a third party on his behalf.

Example (same as above): Company B takes care of the transport from Belgium to Spain and communicates its French VAT number to company A. The supply from company A to company B will be eligible for the VAT exemption for intra-Community supplies.

However, if company B would communicate a Belgian VAT number to company A, the supply by company B to company C would be eligible for the VAT exemption for intra-Community supplies. The supply of company A to company B is in that case a local supply in Belgium.

For you as a diamond business, it is important to know whether you are involved in a EU cross-border chain transaction. If you are involved in such chain transaction, it is important to know who is performing the transport and which VAT number your client has communicated to you, as these elements will determine the VAT treatment of your supply.

20. Which sanctions do I face in case of non-compliance with the (new) VAT rules?

Various sanctions can apply in case of non-compliance with the (new) VAT rules. The exact sanctions will depend on the factual circumstances.

From a Belgian VAT point of view, the authorities can assess 21% VAT in some cases of non-compliance (e.g. in case a business cannot prove cross-border transport).

On top of the assessment of 21% VAT, the authorities can impose penalties of 10% or 20% of the VAT amount. Potentially, also late payment interests (9,6% per year) can be imposed.

Furthermore, depending on the facts, non-compliance can also lead to sanctions in another EU Member State (e.g. when a company should register for VAT in another Member State, but did not). The exact sanctions will in that case depend on the applicable local rules.