Tax controversy series

Court of Justice of the European Union – Arcomet case

On 4 September 2025, the Court of Justice of the European Union[1] (*Cour de Justice de l'Union Européenne)* (the "CJEU") held that year-end transfer pricing ("TP") adjustments increasing profits to align results with the arm's-length principle may, in certain circumstances, constitute consideration for value-added tax ("VAT") purposes – notably in instances where the services in question as well as payment terms were agreed in advance. The CJEU also ruled that any documentation requirements imposed to support the deduction of input VAT should remain necessary and proportionate and should not obligate taxpayers to demonstrate the economic necessity or suitability of the services provided.

Summary of the case

Arcomet Romania ("**RomCo**"), part of the global Arcomet tower-crane rental group, sources and deploys cranes for the Romanian market. While its Belgian parent company ("**BelCo**"), negotiates contractual terms with suppliers on behalf of all group entities, RomCo enters into the actual purchase, leasing, and client-facing contracts relevant to its local activity.

A 2010 TP study established an arm's-length profitability corridor for RomCo, setting its operating margin between –0.71% and 2.74%. To operationalize this result, BelCo and RomCo signed a 2012 agreement instituting an annual adjustment mechanism based on the OECD transactional net margin method ("**TNMM**"). The mechanism required BelCo to invoice RomCo whenever RomCo's margin exceeded the upper threshold and, conversely, required RomCo to invoice BelCo if its profitability dropped below the lower limit.

During the years that followed, RomCo's margin remained above the top of the range, hence leading BelCo to issue year-end adjustment invoices. While RomCo initially applied the reverse-charge mechanism, it later took the view that at least one of these adjustments fell outside of the scope of VAT. The Romanian tax authorities disagreed, disallowing input VAT on the basis that RomCo had not demonstrated the existence or necessity of the services allegedly provided by BelCo.

Unsatisfied with such outcome, RomCo brought an action before the Romanian Regional Court. The ensuing litigation escalated and eventually led the Bucharest Court of Appeal to ultimately refer the case to the CJEU. The main questions to be dealt with in the context of the preliminary ruling were:
1. Do TP "true-up" payments within a group constitute consideration for a taxable service under Article 2(1)(c) of the Directive 2006/112/EC[2] (the "**VAT Directive**") – or are they merely accounting adjustments with no underlying service?
2. If deemed taxable services, may tax authorities condition the right to input VAT deduction on documents beyond the invoice itself (e.g. activity reports), or must the deduction rely solely on the direct link between the purchase and the taxable activity?

In this respect, the Advocate General ("**AG**") published his Opinion on 3 April 2025 and stressed that the VAT implications of TP adjustments depend on the underlying economic reality. In this case, he considered that the profit adjustments reflected contractual arrangements connected to identifiable functions performed by BelCo – such as strategic oversight and negotiation – which meant that the payments constituted the consideration for taxable supplies. The AG also referred to the 2016 VAT Committee report distinguishing tax authority-driven adjustments (outside the Directive's scope) from adjustments agreed between related parties and noted that Member States enjoy discretion regarding VAT treatment of past-supply or cost-variance adjustments, with only one having opted for non-taxation when both parties benefit from a full input VAT recovery.

Decision of the CJEU

The first question addressed whether remuneration for intragroup services, contractually defined and calculated under the OECD Guidelines, corresponding to the portion of the subsidiary's operating margin above 2.74%, constitutes consideration for a supply of services subject to VAT under Article 2(1)(c) of the VAT Directive. The CJEU followed the AG's opinion, confirming that a service is supplied "for consideration" only if there is a legal relationship between provider and recipient involving reciprocal performance, and the payment constitutes the actual consideration for an identifiable service. In the case at hand, the CJEU observed that BelCo undertook operational and commercial functions and bore economic risks, while RomCo paid an amount linked to its profit margin above 2.74%. This arrangement satisfied the direct link requirement between the services performed and the amounts paid. The CJEU emphasized that the use of a TP method, such as the TNMM, and the fact that payments varied with results, did not affect their VAT treatment, as the terms were contractually agreed in advance and certain.

The CJEU rejected the view that these payments were merely arm's-length adjustments under TP rules without an underlying supply, emphasizing that the economic and commercial reality of the transaction must be considered, and that remuneration at arm's-length can still constitute actual consideration if tied to identifiable services. Unlike a passive holding company, BelCo was actively involved in managing the subsidiary, and was therefore performing services that went beyond mere shareholding.

Finally, the CJEU clarified that the variable nature of the payments – dependent on the subsidiary's profit – did not undermine the direct link, as the remuneration was neither voluntary nor uncertain, and the calculation method was clearly defined in advance.

The second question concerned whether Articles 168[3] and 178[4] of the VAT Directive prevent tax authorities from requiring a taxable person to submit evidence beyond the invoice to claim input VAT deduction.

The CJEU confirmed that the right to deduct VAT is subject to substantive and formal conditions:
- Formally, the invoice must comply with the rules under the Directive, but authorities cannot deny deduction solely because an invoice lacks certain details if sufficient information exists to verify the substantive conditions.
- Substantively, deduction is only allowed if the services were actually supplied and used for the taxable person's own taxable transactions; economic necessity or appropriateness of the services should not be a requirement.

Finally, the CJEU clarified the burden of proof: the taxable person must demonstrate that the conditions for deduction are met, while tax authorities may request necessary and proportionate additional evidence to verify the supply and its use for taxable transactions. This may include documents from the service provider, but the evidence must remain proportionate to the purpose of confirming the right of deduction.

Key takeaways

The Arcomet ruling is particularly interesting yet should be considered in context. The mere fact that remuneration is calculated using a TP method such as the TNMM does not automatically bring it within or outside the scope of VAT. In this case, the judges confirmed that VAT applied because there was a clear contractual arrangement under which identifiable services were provided in exchange for consideration. It is this factual link between actual services rendered and remuneration paid – not simply the application of a TP method – that determines VAT treatment.

From a TP perspective, the judgment underscores that the strength of an intragroup arrangement depends not only on achieving an arm's-length result but also on the clarity and structure of the underlying contractual and commercial framework. The CJEU highlighted that the agreement between the Belgian parent and its Romanian subsidiary clearly allocated responsibilities and functions, with the remuneration mechanism tied directly to those roles. In other words, it is not enough to demonstrate that a profit margin falls within an arm's-length range; the arrangement itself must be carefully documented and economically coherent.

Methods such as the TNMM, particularly when combined with year-end adjustments, require meticulous design and thorough explanation. Where such adjustments correspond to identifiable services, VAT implications naturally arise, as with any intragroup service. At the same time, they provide a potential focal point for tax authorities to assess whether the arrangement reflects the underlying economic reality.

For taxpayers, the lessons are clear: intragroup agreements and TP documentation must not only justify the pricing methodology but also tell the commercial story behind the numbers. Proper documentation strengthens compliance, mitigates audit risk, and provides a robust defense in the event of scrutiny by tax authorities.

Overall, the decision should be seen as clarifying rather than revolutionary. It does not signal a broad expansion of VAT to all TP adjustments. The CJEU applied long-standing VAT principles and confirmed that VAT applies where a clearly identifiable service is provided for remuneration. Contrary to this, adjustments without an underlying service should remain outside the VAT scope.

In practice, the ruling offers both legal certainty and practical guidance, helping to reduce the risk of divergent interpretations across Member States and reinforcing the importance of careful contractual and operational design in intragroup arrangements.

Emilien LEBAS,
Partner, Head of International Tax, Tax controversy & dispute resolution leader, KPMG Luxembourg

Quentin WARSCOTTE,
Partner, Indirect Tax, KPMG Luxembourg

Valentine PLATEAU,
Manager, International Tax, KPMG Luxembourg

1) *Cour de Justice de l'Union Européenne - 4 septembre 2025, Arcomet C-726/23*
2) Article 2(1)(c) of the Directive 2006/112/EC: "*1. The following transactions shall be subject to VAT: [...] c)* the supply of services for consideration within the territory of a Member State by a taxable person acting as such"
3) Article 168 a) of the Directive 2006/112/EC: "*In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay: a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person.*"
4) Article 178 a) and f) of the Directive 2006/112/EC: "*In order to exercise the right of deduction, a taxable person must meet the following conditions: a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240; [...] f) when required to pay VAT as a customer where Articles 194 to 197 or Article 199 apply, he must comply with the formalities as laid down by each Member State.*"