The CJEU rules on the VAT treatment of transfer pricing adjustments (Judgment of 4 September 2025, in Case C-726/23, Arcomet)

Tax Alert

October 2025

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The CJEU has ruled on the VAT treatment of certain intra-group services remunerated by means of transfer pricing adjustments, stressing the importance of the documentation and justification of the services provided (Judgment of 4 September 2025, Case C-726/23, Arcomet).

The CJEU has ruled that payments between companies of the same group, where they are made in respect of contractual agreements and calculated in accordance with transfer pricing methods recognised by the OECD, may constitute the consideration for a supply of services for consideration, and consequently be subject to VAT. The Court has also confirmed that the tax authorities may request that the taxpayer produce documents in addition to the invoice - always subject to the principles of necessity and proportionality - in order to demonstrate their deductibility.

1. Context and subject matter of the case

The Court of Justice of the European Union (CJEU) has delivered a judgment, in response to two questions referred by a Romanian court for a preliminary ruling, which is of particular relevance for VAT and transfer pricing purposes (Case C-726/23 Arcomet).

The dispute arose a result of a contract between Arcomet Belgium (parent company) and Arcomet Romania (subsidiary), whereby the parent company provided commercial services and assumed certain risks in return for variable remuneration calculated according to the transactional net margin method.

In practice, this meant that at the end of each financial year, Arcomet Romania's operating margin was compared with an established benchmark range. If its margin exceeded the range, Arcomet Belgium issued a rectifying invoice to recover the excess profit from its subsidiary, whereas if the margin fell below the range, the adjustment was made in reverse, to compensate the Romanian subsidiary's losses. If the margin remained within the established range, no adjustments were made.

The Romanian court referred two questions to the CJEU for a preliminary ruling: (1) whether such annual adjustments - upwards or downwards - constituted a payment for a service which was subject to VAT; and (2) if so, whether the authorities were entitled to require additional documentation - aside from the invoice - to substantiate the service before allowing the deduction of input VAT.

2. Intra-group services "for consideration": the CJEU view

The CJEU reminds the taxpayer that, under article 2(1)(c) of Directive 2006/112/EC, a supply of services is subject to VAT only where it is made “for consideration”, i.e. where there is a legal relationship pursuant to which there is reciprocal performance, and the remuneration constitutes the actual consideration for an identifiable service.

On the basis of the facts described by the Romanian court, the CJEU considers that the payments made by Arcomet Romania under the contract satisfy those conditions in that:

- The services were contractually defined and corresponded to actual commercial support activities.
- The remuneration, although variable, was not random, but was determined in advance in the contract and according to specific criteria.
- There was a direct link between the services provided by the parent company and the remuneration received, the latter constituting the effective consideration for the service provided to the recipient.

Consequently, the CJEU's answer to the first question is that the remuneration in respect of intra-group services, provided by a parent company to its subsidiary and contractually detailed, which is calculated in accordance with a method recommended by the OECD Guidelines and corresponds to the part of the operating profit margin greater than the agreed range obtained by the subsidiary, constitutes a supply of services for consideration falling within the scope of VAT.

3. Documentary requirements and right to the deduction

In relation to the second question, the CJEU accepts that the tax authorities may request additional evidence beyond the invoice (e.g. reports, contracts, technical documentation or other evidence of the service) where the invoice contains only a generic description of the adjustment, provided that such

requests are necessary and proportionate for the purposes of demonstrating the existence of the services and their use for the purpose of taxable transactions.

However, the Court specifically notes that non-compliance with the formal invoicing requirements alone cannot be used to justify the rejection of the right to deduct input VAT where the relevant substantive requirements are met.

4. Conclusions and practical implications

The recent CJEU judgment clearly establishes that, at least, where they are applied under the transactional net margin method, annual transfer pricing adjustments are directly linked to supplies of services or goods. This conclusion cannot be invalidated merely by claiming that the sole purpose of such adjustment is to align the operating profit margin with the arm's length principle if it is not accompanied by a specific activity.

From our perspective, this ruling gives taxpayers additional grounds to justify the deductibility of such adjustments, not only in terms of VAT, but also in the context of corporate income tax, a fact that the tax authorities have questioned in recent inspections.

In this context, it should thus be interpreted that these adjustments are subject to VAT.

The Directorate-General for Taxation (DGT) has held, in binding rulings such as *V2211-21 and V0565-24*, that the adjustment of prices to allocate a profitability that reflects the functions, assets and risks assumed by the recipient entity does not generally constitute an adjustment to the price or consideration for a service rendered, and has thus taken the view that it is not subject to VAT.

In the opinion of the DGT, it should exist:

(i) a specific, previous and identifiable supply of goods or services for VAT purposes;

(ii) consideration, and;

(iii) a direct link between the two so that the transfer pricing adjustment can be considered an upward or downward adjustment of the consideration linked to the previous supply of goods or services subject to VAT.

The view taken by the DGT to date could therefore be considered more restrictive than the one taken in the recent CJEU Judgment, which may lead to an increase in the number of scenarios in which such adjustments might be subject to VAT in the future.

This calls for a detailed review of contracts and agreements documenting transfer pricing adjustments, as regards to both the applicability of VAT and any supporting documentation in addition to the invoice. This review may be particularly relevant in the case of groups of entities with limited VAT recovery (per the pro-rata system) such as financial, healthcare, real estate or education groups. However, entities fully entitled to deduct VAT are also advised to review supporting documentation other than invoices that permits the appropriate traceability of payments for pricing adjustments linked to supplies of services.

In this respect, we would stress the importance of having up-to-date transfer pricing documentation for the purpose of justifying any transfer pricing adjustments made and substantiating their direct link to the supplies of goods or services.

Contacts

Natalia Pastor
Partner
KPMG Abogados
Tel.: 91 456 34 92
npastor@kpmg.es

Miguel Ferrández
Partner
KPMG Abogados
Tel.: 91 456 59 99
mferrandez@kpmg.es

Maite Vilardebó
Partner
KPMG Abogados
Tel.: 93 253 29 62
mvilardebo@kpmg.es

Montserrat Montoya
Partner
KPMG Abogados
Tel.: 93 253 29 32
montserratmontoya@kpmg.es

Mar Barreno Asensio
Partner
KPMG Abogados
Mobile + 34 682 62 93 58
mbarreno@kpmg.es

Teresa Quiñones
Partner
KPMG Abogados
Mobile +34 696 72 28 79
tquinones@kpmg.es

KPMG offices in Spain

A Coruña

Calle de la Fama, 1
15001 A Coruña
Tel.: 981 21 82 41
Fax: 981 20 02 03

Alicante

Muelle de Levante, 8
Planta Alta
03001 Alicante
Tel.: 965 92 07 22
Fax: 965 22 75 00

Barcelona

Torre Realia
Plaça de Europa, 41
08908 L'Hospitalet de Llobregat
Barcelona
Tel.: 932 53 29 00
Fax: 932 80 49 16

Bilbao

Torre Iberdrola
Plaza Euskadi, 5
48009 Bilbao
Tel.: 944 79 73 00
Fax: 944 15 29 67

Girona

Edifici Sèquia
Sèquia, 11
17001 Girona
Tel.: 972 22 01 20
Fax: 972 22 22 45

Las Palmas de Gran Canaria

Bravo Murillo, 22
35003 Las Palmas de Gran Canaria
Tel.: 928 32 32 38
Fax: 928 31 91 92

Madrid

Torre de Cristal
Paseo de la Castellana, 259 C
28046 Madrid
Tel.: 91 456 34 00
Fax: 91 456 59 39

Malaga

Marqués de Larios, 3
29005 Málaga
Tel.: 952 61 14 60
Fax: 952 30 53 42

Oviedo

Ventura Rodríguez, 2
33004 Oviedo
Tel.: 985 27 69 28
Fax: 985 27 49 54

Palma de Mallorca

Edificio Reina Constanza
Calle de Porto Pi, 8
07015 Palma de Mallorca
Tel.: 971 72 16 01
Fax: 971 72 58 09

Pamplona

Edificio Iruña Park
Arcadio M. Larraona, 1
31008 Pamplona
Tel.: 948 17 14 08
Fax: 948 17 35 31

San Sebastián

Avenida de la Libertad, 17-19
20004 San Sebastián
Tel.: 943 42 22 50
Fax: 943 42 42 62

Seville

Avda. de la Palmera, 28
41012 Sevilla
Tel.: 954 93 46 46
Fax: 954 64 70 78

Valencia

Edificio Mapfre
Paseo de la Almeda, 35, planta 2
46023 Valencia
Tel.: 963 53 40 92
Fax: 963 51 27 29

Vigo

Plaza Compostela, 20
36201, Vigo
Tel.: 986 22 85 05
Fax: 986 43 85 65

Zaragoza

Centro Empresarial de Aragón
Avda. Gómez Laguna, 25
50009 Zaragoza
Tel.: 976 45 81 33
Fax: 976 75 48 96