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VAT liability and input VAT deduction for transfer price adjustments in connection with provided services

Content

01 VAT liability and input VAT deduction for transfer price adjustments in connection with provided services

Transfer prices between affiliated companies in connection with services for adjusting the profit margin can be classified as consideration for VAT purposes; the variable determination of the payment does not preclude this.

With regard to input VAT deduction, the local tax authority is entitled to request further documentation to verify the actual provision of services and their use for the purposes of the recipient's taxable supplies, but not to verify the appropriateness of the received services.

In case C-726/23 of August 4, 2025, the CJEU had to deal with the question of whether transfer prices between affiliated companies for the purpose of adjusting the profit margin can be qualified as consideration for VAT purposes and whether the local tax authority is entitled, with regard to the input VAT deduction of the payer, to request additional documents, in addition to the invoice, to verify the actual provision of services and their relevance to the recipient's taxable output transactions.

SC Arcomet Towercranes SRL, based in Romania, purchases or leases cranes in order to resell or lease them to its customers in Romania. Arcomet Service NV Belgium is responsible for finding suppliers and negotiating contract terms. In addition, Arcomet Belgium performs tasks such as strategy and planning, negotiating financing agreements, and quality and safety management, and also bears the main economic risks associated with Arcomet Romania's activities.



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According to the transfer pricing study, an operating profit margin of between -0.71% and 2.74% is envisaged at the level of Arcomet Romania. In the event of a profit exceeding 2.74%, Arcomet Belgium must issue an annual compensation invoice to Arcomet Romania; in the event of a loss exceeding -0.71%, an annual compensation invoice must be issued by Arcomet Romania to Arcomet Belgium. However, if the operating profit margin is between -0.71% and 2.74%, no compensation is due.

The Romanian tax authorities assessed the annual compensation invoice from Arcomet Belgium to Arcomet Romania as a supply subject to VAT but denied the right to deduct input VAT on the grounds that Arcomet Romania had not proven either the provision of the invoiced services or their necessity for the purposes of its taxable transactions.

According to the CJEU ruling of August 4, 2025, remuneration aimed at adjusting the subsidiary's profit margin in accordance with the OECD guidelines may be the actual consideration for a service rendered and thus subject to VAT, as insofar there is a direct link between the service rendered and the amounts paid. Although the remuneration is variable, it is neither uncertain nor dependent on chance nor difficult to quantify. This direct link is also not negated by the fact that if a certain negative profit margin is not reached, a payment in the opposite direction would have to be made.

In the view of the CJEU, the local tax authority may request additional documents and evidence in addition to the invoice in order to verify the actual provision of services and their use for the purposes of the recipient's taxable supplies. However, the evidence requested must be necessary and proportionate for the assessment of the input VAT deduction. On the other hand, proof of the necessity and appropriateness of services purchased for taxable supplies may not be requested, as the input VAT deduction does not depend on the economic profitability of the input transaction.

On the question of whether an inter-company service exists, there are overlaps with the "benefits test" concept developed in the OECD Transfer Pricing Guidelines. According to this concept, the question of whether an inter-company service is provided depends on whether the activity provides the recipient with an economic or commercial advantage that strengthens or secures its business position. The decisive factor here is whether an independent company would have been prepared to pay for the service or provide it itself under comparable circumstances. Accordingly, careful documentation of inter-company services for transfer pricing purposes can also support the provision of evidence for input VAT deduction purposes.

The CJEU has thus clarified that transfer pricing adjustments that relate directly to services actually provided are subject to VAT. Affected groups should review the terms of their transfer pricing adjustments on a case-by-case basis. The following aspects must be taken into account:

- In the case decided by the CJEU, the services to be provided by the parties to each other were specified in detail in the contract. A connection between transfer pricing adjustments and specific services must be clarified individually on the basis of the respective contractual agreements and the economic substance of the service relationship. This connection is also decisive for the right to deduct input VAT.
- In the proceedings in question, no uncertainty regarding remuneration was assumed.
- The CJEU did not address how payments in the opposite direction would be treated in the event of a corresponding negative profit margin.

The present decision does not contain any statements regarding transfer pricing adjustments for supply of goods.

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