Shape the future with confidence

January 2026

Indirect Tax Alert

Transfer Pricing Adjustments and VAT - Advocate General's Opinion in the Stellantis Case (C-603/24)

The better the question. The better the answer. The better the world works.

On 15 January 2025, the Opinion of Advocate General Juliane Kokott was published in the highly anticipated case C-603/24, Stellantis Portugal, which concerns the VAT treatment of transfer pricing adjustments made for income tax purposes.

The Opinion provides useful interpretative guidance on the interaction between transfer pricing and VAT rules, an area characterized by significant uncertainty and inconsistent treatment across the Member States of the European Union.

Specifically:

I. Factual background

- Stellantis Portugal ("Stellantis") purchases vehicles from European manufacturers within the General Motors Group, to which it belongs, and resells them to local dealers, who in turn sell them to end customers.
- In the event of a manufacturing defect, the dealer repairs the vehicle and charges / invoices Stellantis for the associated costs, such as recalls, warranties, and roadside assistance.
- Stellantis then reports these operational costs to the European manufacturers to ensure a minimum profit margin.

- In this respect, the European manufacturers issue credit or debit notes to adjust the previously invoiced vehicle prices at the end of each year.
- The above-mentioned adjustment is made on the basis of a contract concluded between the companies of the General Motors Group to determine the prices of the vehicles transferred.
- For the critical year 2006, and as a result of the expenses incurred by Stellantis under the agreement, the initial sale price of the vehicles had to be reduced, so the European manufacturers issued credit notes to Stellantis.
- The tax authority, however, held that Stellantis had provided repair services to the European manufacturers within Portugal and therefore assessed the corresponding VAT against Stellantis.

II. The preliminary question

- The preliminary question referred to the Court of Justice of the European Union (CJEU) by the Supreme Court of Portugal was whether Article 2 of the VAT Directive (as in force at that time) should be interpreted such that the concept of a "supply of services for consideration" contained in that provision includes an adjustment of the sale price of vehicles which is duly provided for and determined in a contract concluded between the parties, in order to achieve a minimum profit margin, and which is documented by means of a credit or debit note issued to the applicant (Stellantis) by the European manufacturers of the General Motors Group.

III. Advocate General 's Opinion

- According to Advocate General Kokott, a mere upward or downward adjustment of the sale price in the supply of goods does not, in principle, constitute a supply of services for consideration under Article 2 of the VAT Directive.
- Furthermore, after reformulating the question referred by the Supreme Court of Portugal, the Advocate General expresses the following opinions:
- Articles 2, 73 and 90 of the VAT Directive must be interpreted as meaning that the relevance, for the purposes of VAT law, of an adjustment of profits made for reasons of income tax law depends on what it relates to and how it is made.
- When the adjustment is made by means of separate supplies of services for consideration and there are not only fictitious supplies of services, those separate supplies of services for consideration, constitute taxable supplies for VAT purposes.
- Where an adjustment is made unilaterally and subsequently by the tax authority, solely to ensure the correct allocation of profits for income tax purposes between two different states, such an adjustment falls outside the scope of VAT.
- Where, as in the Stellantis case, a profit adjustment is made through a sale price specifically provided for that purpose and agreed to be variable, and is linked to a specific supply of goods, such an adjustment constitutes a reduction of, or an additional element forming part of, the taxable amount in respect of the goods already supplied.
- Since the change in the taxable amount of a supply relates solely to the consideration, it cannot itself constitute a "supply of services for consideration" within the meaning of Article 2 of the VAT Directive.

In light of the above:

- Advocate General Kokott's Opinion provides, for the first time, a comprehensive approach to the VAT treatment of transfer pricing adjustments. As the Opinion is not binding on the Court, the final decision of the CJEU is eagerly awaited.
- It is recalled that, earlier in September 2025, the CJEU issued its decision in Case C-726/23, Arcomet Towercranes, holding that a charge effected through the issuance of an invoice, intended to ensure that the recipient achieves profitability within a specified range in accordance with the Transactional Net Margin Method, constitutes consideration for a supply of services, pursuant to the terms of the intra-group agreement between the related parties.
- In view of the forthcoming CJEU judgment in the Stellantis case, businesses are advised to closely monitor further developments and to consider a comprehensive reassessment, and where necessary an amendment, of their existing intra-group agreements and commercial arrangements, in order to support the VAT treatment of transfer pricing adjustments vis-à-vis the tax authorities.

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multi-disciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

About EY's Indirect Tax services

Indirect taxes affect the supply chain and the financial system. Our network of dedicated indirect tax professionals combines technical knowledge with industry understanding and access to technologically advanced tools and methodologies. We identify risk areas and sustainable planning opportunities for indirect taxes throughout the tax life cycle, helping you and meet your compliance obligations and your business goals around the world. Our globally integrated teams give you the perspective and support you need to manage indirect taxes effectively. It's how EY makes a difference.

For more information, please contact:

Nikoletta Merkouri
Partner, Indirect Tax – EY Greece
Tel: +30 210 2886 572
email: nikoleta.merkouri@gr.ey.com

Fotini Stefopoulou
Senior Manager, Indirect Tax – EY Greece
Tel: +30 210 6171 845
email: fotini.stefopoulou@gr.ey.com

ey.com