



WHEN TP BECOMES VATABLE: KEY LESSONS FROM ARCOMET (C-726/23)

In the realm of international taxation, transfer pricing (TP) and value added tax (VAT) often intersect in complex ways.

The case of Arcomet Towercranes SRL underscoring the intricate complexities surrounding TP and VAT has been decided on 4th September 2025.

The Arcomet case C-726/23 decided by the Court of Justice of the European Union (CJEU) deals with VAT issues related to transfer pricing within corporate groups. Arcomet Towercranes SRL (hereafter “ARO”), a Romanian subsidiary, received invoices from its Belgian parent company, Arcomet Service NV, to align profits according to OECD guidelines. The Romanian tax authorities classified these invoices as payments for services and applied VAT through the reverse charge mechanism, but they denied the subsidiary’s right to deduct this VAT due to a lack of proof of actual services provided.

The parent company of the multinational Arcomet Group seeks suppliers for ARO (as well as for other Group companies) and negotiates contractual terms with these suppliers. The contractual relationship with suppliers and end customers is then entered into by ARO (or other Group companies).

As a result of the comparability analysis conducted within the scope of a transfer pricing study, it was assessed that the affiliated entities should record a specific financial result at market level (operating profit margin). The findings of the study were incorporated into a contract by which the parties assumed the responsibilities and risks for selling/purchasing and renting cranes. The contract provided for an equalization invoice to be issued each year.

The case thus centers on interpreting provisions of the Council Directive 2006/112/EC concerning the common system of VAT on two critical issues:

1. Whether amounts invoiced between affiliated companies to align profits, following OECD Transfer Pricing Guidelines, constitute payments for VAT-taxable services.
2. If tax authorities can mandate additional documentation, beyond invoices, to substantiate VAT deductions related to procured services for the taxable person’s economic activities.

With regards to the first question, the court held that the VAT Directive states that services provided for payment are subject to VAT if **there is a clear exchange between the service provider and the recipient.**

The court then concludes that the payment made by the subsidiary in the underlying judgement does indeed represent a taxable service under VAT laws, as there is a direct link between the services provided and the

payment received, irrespective of the method used to determine such remuneration (here OECD TP guidelines).

For the second question the court held that the VAT Directive outlines that to deduct VAT, a company must meet both formal and substantive conditions, including having a proper invoice.

The Court then decided that **tax authorities can ask for additional documents beyond the invoice to verify the existence and use of services for taxable transactions, as long as this requirement is necessary and reasonable.**

Guidance to navigate the complex interplay between VAT and TP could already previously be found in the VAT Expert Group (VEG) Discussion Paper NO 071 REV2.

Therein the VEG provided some seemingly clear guidance on the VAT treatment of TP adjustments focusing on their nature and link to supplies.

While in the said Paper, contracts defining adjustments to reach guaranteed profit margins are clearly considered as falling outside the scope, the Arcomet case now clarifies that **if such (TP) arrangement leads to a party assuming the responsibilities and risks for supplying a service or goods against remuneration (even if such service agreement effectively was only concluded further to the TP Study) the latter should be viewed as constituting a supply of service and thus fall within the scope of VAT.**

While this decision is in principle following previous jurisprudence, we nonetheless recommend you review your current intra-Group and TP set-up with a view to the services and goods exchanged:

- Are you comfortable that any adjustments currently treated as outside the scope are correctly treated as such?
- Check contracts & invoicing: do you have TP contracts which could be interpreted as stipulating a supply of service or goods against remuneration?
- Ensure supporting documentation is in place to secure your position (correct VAT treatment, contracts in line with nature of services and remuneration, VAT compliant invoicing, etc.)

We are naturally at your disposal to assist you in reviewing your intra-group agreements and TP studies and supporting documents.

OUR TEAM



Olivier Lambert
Partner, Indirect Tax
+352 42 124 7361
olivier.lambert@lu.ey.com



Jacques Verschaffel
Partner, Indirect Tax
+352 42 124 7219
jacques.verschaffel@lu.ey.com



Benjamin Drai
Partner, Indirect Tax
+352 42 124 7404
benjamin.drai@lu.ey.com



Rebecca Obermahr
Partner, Indirect Tax
+352 42 124 7117
rebecca.obermahr@lu.ey.com