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By PwC Deutschland | 05 September 2025

ECJ: VAT treatment of intra group transfer pricing adjustments

In a preliminary request from Romania the European Court of Justice was asked, i. a., whether the amounts invoiced by a parent company to a subsidiary established in another Member State using the transactional net margin method (a method recommended by the OECD Guidelines) may constitute a consideration for a supply of services for consideration which falls within the scope of the VAT Directive. In its judgment the ECJ answered in the affirmative.

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Background

The case concerns the VAT treatment of transfer pricing adjustments between related companies, specifically transactions between a Romanian group entity (Arcomet Romania) and Arcomet Service NV Belgium (Arcomet Belgium), where the transfer price was calculated according to the transactional net margin method, one of the Organisation for Economic Co-operation and Development (OECD)-recommended transfer pricing methods.

The transfer pricing rules were formulated for the purposes of direct taxation. The question therefore arises whether or not they should be taken into account in indirect taxation matters, such as VAT.

In the underlying case, a contract was concluded between Arcomet Belgium and Arcomet Romania under which, first, Arcomet Romania was guaranteed an operating profit margin in the range between -0.71% and 2.74% and, second, an annual equalization invoice was to be issued by Arcomet Belgium in the case of a surplus profit above 2.74% or by Arcomet Romania in the case of a surplus loss below -0.71%.

The referring court wishes to know, in essence, whether the amounts invoiced by a parent company to a subsidiary established in another Member State using the transactional net margin method may constitute the consideration for a supply of services for consideration which falls within the scope of the VAT Directive and if the tax authorities are entitled to require, in addition to the invoice, documents (for example, activity reports, [works] progress reports, and so forth) justifying the use of the services purchased for the purposes of the taxable person’s taxable transactions,

In his **Opinion**, the Advocate General (AG) suggested that the assessment whether the transfer price is subject to VAT must be made on a case-by-case basis and that, in the present case, the transaction be subject to VAT. He also proposed that the Court further give clarification that, in order to prove that the transaction is eligible for deduction of the VAT, the tax administration may request the taxpayer to produce documents other than the invoice alone and in compliance with the principle of proportionality.

Decision

The ECJ confirmed the view of the AG and held that the remuneration in respect of intra-group services, provided by a parent company to its subsidiary which is calculated in accordance with a method recommended by the OECD Transfer Pricing Guidelines constitutes the consideration for a supply of services falling within the scope of value added tax. Furthermore, the tax authority may require a taxable person who seeks the deduction of input VAT to submit additional documents in order to prove the existence of the services referred to in the invoice provided that the submission of that evidence is necessary and proportionate for that purpose.

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Source:

ECJ judgment of 4 September 2025 **C-726/23** *Arcomet Towercranes*.

Keywords

service costs, transfer pricing