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By PwC Deutschland | 01 September 2026

Update: ECJ - Adjustments of intra-group sale price to ensure target profit margins not subject to VAT

In a most current judgment, the European Court of Justice held in favor of the applicant, namely that adjustments of the transfer prices of motor vehicles between manufacturers and distributors based on the warranty costs and operating costs incurred by the purchaser are not consideration for a supply of services subject to VAT. However, with one caveat: The situation would be different if the parties concluded a service agreement to that effect.

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Dispute in the main proceedings

Stellantis Portugal S.A., as legal successor of formerly General Motors Portugal (in the following referred to as ‘GMP’) is a company operating in the motor vehicle trade and, in 2006 (the year at issue) was part (more precisely: its legal predecessor was part) of the General Motors Group which manufactures and distributes vehicles and parts and accessories.

In the event of manufacturing defects, the final customer went to the dealer to have them repaired by the dealer in its own facilities. The Portuguese dealers then charged the applicant for the costs they incurred in repairing the vehicles, charging the relevant amount of VAT in respect of that supply of services.

Depending on the costs declared, an adjustment was then made in respect of the price of the vehicles sold to the applicant by the European manufacturers of the General Motors Group. That adjustment was made on the basis of a contract concluded in 2004 between the companies of the General Motors Group to determine the prices of the vehicles transferred.

GMP claims that the adjustments of the transfer prices of the vehicles, parts and accessories provided by the original equipment manufacturers’ (‘OEMs’) to GMP **did not constitute remuneration** in respect of taxable services consisting in the repair of those vehicles.

Decision

An adjustment of a transfer price of motor vehicles which is

duly set out in an agreement concluded between the companies belonging to the same group intended to guarantee that the company acquiring such vehicles obtains a previously determined profit margin on the resale of those vehicles, evidenced by a credit or debit note, and calculated on the basis, inter alia, of the costs incurred by the acquiring company, **does not constitute consideration for a ‘supply of services** effected for consideration’, **unless** there is, a legal relationship characterized by reciprocal commitments relating to the supply by the acquiring company of services to the selling company and the payment by the selling company of remuneration in respect of those services which establishes a direct link between the supply of those services and that adjustment.

Regarding the aforementioned constraint („unless“…) the ECJ has the following to add:

First: Should the referring court – based on other evidence - conclude, that **there is a legal relationship** between GMP and the OEMs it will still be for that court to establish whether the adjustments at issue constitute actual consideration for identifiable services, namely whether those adjustments constitute GMP’s remuneration in respect of the provision of repair services for the vehicles at issue. It should be recalled that the

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uncertain nature of the provision of any payment is such as to break the direct link between the service provided to the recipient and any payment which may be received (judgment of 4 September 2025, *Arcomet Towercranes*, C?726/23, paragraph 46). Accordingly, in order for such a link to be established, that payment must be neither voluntary nor uncertain nor difficult to quantify.

Second: Should the referring court consider that the adjustments at issue **do not constitute the remuneration in respect of a supply of repair services** for vehicles by GMP to the OEMs concerned but rather a subsequent amendment of the price paid by GMP when purchasing those vehicles from those OEMs, it will be for the competent national authorities to assess the effect of such an amendment on the determination of the taxable amount of the transaction consisting in the supply of those vehicles.

Note: Unlike the case in *Arcomet Towercranes*, (see **blog post of 5 September 2025**) the present case concerns a subsequent adjustment of the price of a supply intended to implement an intra-group allocation of profits. The *Acromet Towercranes* case, however, did not concern the adjustment of the transfer price but rather whether a service was provided for consideration if the profit was too high or too low. In that case, the ECJ held in effect only that a service is provided for consideration if the parties have contractually agreed to a service for consideration and assuming the service was provided.

Update (1 September 2026)

Summary (free translation from the German Online-Newsletter Transfer Pricing Perspectives DACH of August 2026)

Unfortunately, the ECJ did not address Advocate General Kokott's insightful and practically relevant considerations regarding the distinction between transfer pricing adjustments that are relevant for VAT purposes and those that are not. Nor does the ECJ explicitly address the referring question as rephrased by Advocate General Kokott.

The CJEU suggests that the transfer pricing adjustment could constitute a change in the tax base for the supply of the vehicles, but does not elaborate on this point, as it was not part of the question referred.

This decision represents another important milestone in the discussion of transfer pricing and value-added tax in the case law of the CJEU. The final assessment rests with the referring Portuguese court.

The case law of the ECJ makes it clear that a case-by-case assessment is necessary, particularly when there are doubts as to whether a transfer pricing adjustment qualifies as consideration for an independent service.

Source: ECJ judgment of 12 May 2026 **C?603/24** *Stellantis Portugal*.

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Keywords

price adjustment, supply of services, transfer pricing