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VAT, Intra-Group Arrangements and Transfer Pricing Adjustments



Introduction

On 15 January 2026 the Opinion of Advocate-General (AG) Kokott issued in *Stellantis Portugal, S.A. v Autoridade Tributária e Aduaneira* C-603/24, a case concerning VAT and transfer pricing adjustments. In her opinion AG Kokott encouraged the Court of Justice of the European Union (CJEU) to apply a principled approach to an issue that has given rise to much debate. *Stellantis* is the latest in a line of CJEU cases addressing the vexed intersection of VAT, intra-group arrangements and transfer pricing adjustments.

Issues considered in recent CJEU cases include the nature and valuation of intra-group management services, dealt with in *Höggkullen AB v Skatteverket* C808/23; the deductibility of VAT on intra-group services and the conditions for VAT recovery, addressed in *Weatherford Atlas Gip SA* C527/23 and *SC Arcomet Towercranes SRL* C-726/23; and the VAT treatment of transfer pricing adjustments, considered in *Arcomet Towercranes* and now in *Stellantis*.

As alluded to in AG Kokott's opinion in *Stellantis*, VAT and transfer pricing serve

different, distinct purposes. Generally, transfer pricing adjustments are direct-tax measures that seek to ensure that intra-group transactions reflect arm's-length conditions, aligning prices with those that should arise in transactions between independent parties so that group profits may be fairly allocated between group companies. However, VAT is an indirect tax on the consumption of goods and services. VAT generally takes into account the actual amount paid or payable (Article 73 of the EU VAT Directive (Directive 2006/112/EC)), rather than whether the amount paid is an arm's-length amount, although there are certain circumstances in which the VAT Directive allows for the use of open-market value in calculating the VAT chargeable (Articles 72 and 80). The concept of transfer pricing adjustments is not mentioned in the VAT Directive.

Although there has been a recent spate of European cases concerning the topic, taxpayers have long sought assistance in navigating the interaction between VAT and transfer pricing. Before those cases, principal guidance took the form of non-legally binding pronouncements from the EU VAT Committee (an advisory committee established to promote the uniform application of the provisions of the VAT Directive) and the EU VAT Expert Group (a group set up by the European Commission to assist and advise the Commission on VAT matters).

The EU VAT Committee in a February 2017 paper (Working Paper No. 923) considered the possible VAT implications of transfer pricing adjustments and took the position that transfer pricing adjustments (upward or downward) might have VAT implications, such as where the adjustment could be seen as more or less consideration given in exchange for the taxable supply of goods or services already made. The Committee emphasised the need for a case-by-case approach and the requirement for a transfer pricing adjustment to be sufficiently linked to a VAT taxable supply.

The EU VAT Expert Group in an April 2018 paper (VEG No. 071 REV2) opined that transfer

pricing adjustments should be outside the scope of VAT, provided both parties have a full right to deduct VAT. It also stated that transfer pricing adjustments may have VAT implications only if one party lacks full VAT recovery and the adjustment can be directly linked to specific supplies. It further stated that transfer pricing adjustments arising from tax audits should always be treated as outside the scope of VAT, unless the parties expressly agree to revise the consideration for the underlying supplies.

VAT Implications of Transfer Pricing Adjustments

Perhaps the most pressing issue for taxpayers in the area of VAT and transfer pricing is whether transfer pricing adjustments should be regarded as consideration for the supply of services or viewed as outside the scope of VAT.

In September 2025 the CJEU handed down its judgment in *Arcomet Towercranes*, holding that year-end transfer pricing adjustments between group companies, designed to ensure that the pricing under a service agreement was arm's length, constituted consideration for a supply of services within the scope of VAT. The CJEU adopted a case-by-case approach in considering the matter, which very much depends on the contractual arrangement between the parties. However, AG Kokott in her opinion in *Stellantis* has proposed a principled approach to the matter, which, if adopted by the CJEU, would offer taxpayers a more certain ground and construct against which they can assess their arrangements.

Arcomet Towercranes

The Arcomet group operated in the crane rental sector. Under an agreement between a Belgian and a Romanian group company, the parent company, Arcomet Belgium, undertook to assume the majority of the relevant commercial responsibilities, and it bore the main economic risks associated with the activity of Arcomet Romania. Arcomet Romania, for its part, undertook to purchase and hold all of the goods and services necessary for the sale and

rental of those goods and for the provision of services to its customers.

The agreement also provided that Arcomet Belgium's remuneration for services was to be equal to the amount necessary to place Arcomet Romania in a position corresponding to the activities that it carried out and the risks that it assumed. That was calculated using the transactional net margin method (TNMM) laid down in the OECD Transfer Pricing Guidelines. A transfer pricing study set an arm's length profit range for Arcomet Romania, with the agreement between the parties providing for an annual adjustment mechanism requiring Arcomet Belgium to invoice Arcomet Romania if the profit exceeded that range (to recover the excess profit).

In the relevant years Arcomet Romania's profits were above the agreed range, and Arcomet Belgium issued annual adjustment invoices without VAT. Arcomet Romania applied reverse-charge VAT to some of the invoices but treated the adjustment made under one of the invoices as outside the scope of VAT (a position that is sometimes taken for transfer pricing adjustments). The Romanian tax authority disputed this, contending that VAT was due because the invoices related to intra-Community supplies and that VAT recovery should be denied. It contended that Arcomet Romania had not demonstrated that the services had been used for taxable activities.

The CJEU held that the amount of the transfer pricing adjustments invoiced by Arcomet Belgium to Arcomet Romania constituted consideration for a supply of services within the scope of VAT. The court noted that it is a settled principle of EU law that a supply of services for consideration is subject to VAT where there is a direct link between the service provided and the consideration received. It found that such a direct link existed between the service provided and the consideration received in this case. Arcomet Belgium undertook various commercial services and bore the main economic risks of its subsidiary. Arcomet Romania agreed to pay to Arcomet

Belgium, at the year-end, the excess-profits adjustment payment. According to the CJEU, this amounted to the reciprocal performance needed to establish a supply for VAT purposes. The court also considered that the services supplied by Arcomet Belgium affected Arcomet Romania's operating profit, as those services achieved savings and an improvement in the services supplied by Arcomet Romania.

The CJEU held that the fact that the consideration was variable (as it depended on Arcomet Romania's profits or losses in a particular year) and not guaranteed did not necessarily mean that there was no direct link between the service provided and the consideration received. This was bolstered by the fact that the consideration in this case was not uncertain or voluntary but based on detailed rules and was to be calculated according to precise criteria.

Although the CJEU avoided applying a general approach to the matter, the decision indicates that a transfer pricing adjustment should be consideration for the supply of a service for VAT where there is the necessary legal relationship between the parties under which there is the necessary reciprocal performance and a direct link exists between the service and the remuneration.

AG Kokott's Opinion in *Stellantis*: A Principled Approach

The question concerning the VAT treatment of transfer pricing adjustments was raised again in *Stellantis*. However, unlike *Arcomet Towercranes*, this case concerned the VAT treatment of a subsequent adjustment of the price of a supply intended to implement an intra-group allocation of profits.

Stellantis Portugal S.A. operated as a national distributor within the General Motors Group, purchasing vehicles from European original equipment manufacturers (OEMs) and reselling them to independent Portuguese dealers, who sold them to final customers. Where manufacturing defects or warranty issues arose,

the dealers carried out repairs and invoiced Stellantis Portugal, charging VAT on those services. Stellantis Portugal's distribution costs included those repair costs as well as operating costs. The reported costs were taken into account in adjustments to the prices of vehicles sold by the OEMs to Stellantis Portugal, with year-end adjustments ensuring a predetermined level of operating profit for Stellantis Portugal and documented by credit or debit notes.

The Portuguese tax authority took the view that responsibility for repairs lay with the OEMs and that Stellantis Portugal, in passing on after-sales costs, supplied taxable services to the OEMs in Portugal, which should be subject to VAT.

AG Kokott rejected the Portuguese tax authority's contention that the reimbursement payment to Stellantis Portugal was consideration for a service supplied by it. She pointed out that if that approach was to be followed, then in the case where an adjustment resulted in an increase in the purchase price and an additional payment by Stellantis Portugal, it would have paid for the service that it was considered to have provided. In her opinion, in line with settled case law VAT should be levied only where there is a reciprocal legal relationship involving a genuine supply and actual consideration. Mere price adjustments resulting in repayments or additional payments cannot themselves constitute supplies of services.

The AG considered that the question posed to the CJEU by the Portuguese national court could be answered very quickly, on the basis that the mere adjustment (upward or downward) of a sale price for a supply in principle never itself constitutes a supply for services for VAT. However, she went on to consider on a general-principles basis the matter of the consequences under VAT law of a transfer pricing adjustment. She pointed out that the matter was "not answered exhaustively" by the CJEU in *Arcomet Towercranes* and went as far as to say that she considered "it to be entirely possible and even

necessary to give a principled answer to the question".

The AG considered that the relevance for VAT of a transfer pricing adjustment depends on what it relates to and how it is made. If a profit adjustment is made by means of a separate supply of services, that service may constitute a transaction subject to VAT. A unilateral profit adjustment made by a tax authority for profit reallocation (usually between two tax-levying Member States) is in principle not relevant for VAT – it is fictitious in nature and does not alter the services previously supplied in return for the agreed consideration. If a profit adjustment relates to a variable sales price for a specific supply of goods, that constitutes an adjustment of the consideration in respect of the supply made – it merely modifies the price of that supply and does not constitute a separate taxable supply of services.

It is helpful for taxpayers that the AG has grasped the matter and has set out a reasoned general approach. However, it is not legally binding, and it remains to be seen whether the CJEU will follow the AG's urging to address the matter on a principled basis.

Deductibility of Input VAT on Intra-group Services: Arcomet Towercranes and Weatherford Atlas

Relevant also to taxpayers is the question of whether VAT on intra-group services is recoverable and the substantive requirements for recovery. In *Arcomet Towercranes* the CJEU considered the documentation required to support the right to deduct input VAT incurred on transfer pricing adjustments.

Conditions for VAT recovery: Arcomet Towercranes

In *Arcomet Towercranes* the CJEU considered whether the tax authority could request additional documentation (apart from the invoice) to determine the purchaser's right to deduct VAT. It held that, when assessing entitlement to VAT recovery, a tax authority

may request documentary evidence that services are required for the taxpayer's taxable transactions but the request must be necessary and proportionate.

The court found that it was clear from case law that a tax authority cannot refuse VAT recovery solely on the basis that an invoice does not satisfy formal conditions set out in domestic VAT legislation, if it has the necessary information to determine whether the substantive conditions for VAT recovery are satisfied. To satisfy the substantive conditions, a person must be a taxable person who receives goods or services from another taxable person for use in its own taxable transactions.

Right of deductibility: *Weatherford Atlas*

The question of the right to deduct the VAT paid for the purchase of administrative services provided within the same group of companies was considered by the CJEU in *Weatherford Atlas Gip SA*. In its judgment, delivered in December 2024, the CJEU held that a company is allowed to deduct the input VAT incurred on administrative services that it purchased from a group company. The fact that the services were provided to other companies in the same group and the question of the necessity of the services should be irrelevant, as long as the conditions for deductibility are met.

Weatherford Atlas Gip acquired the Romanian company *Foserco*. *Foserco* purchased general administrative services, such as IT, HR and marketing, from *Weatherford* group companies established outside Romania, accounted for reverse-charge VAT on these services and sought full recovery of the input VAT. The Romanian tax authority denied *Foserco's* VAT deduction, arguing that there was insufficient evidence that the services were linked to *Foserco's* taxable activities, particularly as the services benefited multiple group companies, and it contended that the services were unnecessary.

The key question in this case was whether a taxpayer's right to deduct VAT can be refused solely because the services also benefit other group entities or are considered unnecessary, despite a demonstrated link to the taxpayer's taxable activity. The CJEU held that the right of deduction is an integral part of the VAT scheme and may not in principle be limited. It held that the fact that the services were also provided to other companies in the *Weatherford* group was irrelevant, as long as the costs borne by *Foserco* corresponded to the services that it received. The fact that several companies in a group may receive intra-group services will not automatically deny a VAT deduction, as long as the necessary conditions for VAT deductibility are met. Additionally, the court held that the question of whether the services were necessary or appropriate was also not relevant, as the right to deduct VAT is not subject to a criterion of the economic profitability of the input transaction.

Nature of Intra-Group Management Services: *Höggkullen*

The CJEU decision in *Höggkullen AB v Skatteverket*, handed down in July 2025, provides some clarification for taxpayers in respect of the VAT treatment of intra-group management services. The case focussed on the nature and valuation of intra-group services provided by a parent company to various subsidiary companies.

The case concerned a Swedish holding company of a real estate group that provided various Swedish subsidiaries with company management, financing, real estate management, IT and personnel management services. There was no VAT group. The parent actively managed its subsidiaries and so, in line with CJEU case law, was a taxable person and entitled to recover input VAT. It charged its subsidiaries VAT on the management services that it supplied to them. The subsidiaries did not have full VAT recovery.

The arrangement would be VAT advantageous for the group as a whole where the VAT

charged by the parent to the subsidiaries was less than the VAT recovered by the parent. The VAT charged by the parent was arrived at using the cost-plus method under the OECD Transfer Pricing Guidelines. It took into account a particular percentage of the parent's costs for management, premises, telephone systems, information technology, corporate hospitality and travel. It did not take into account certain "shareholder costs", being annual accounting, audit and capital-raising costs and costs connected with a planned share issuance and listing. The parent recovered all of the input VAT relating to the costs that it had incurred, including the VAT charged on the "shareholder costs".

The Swedish tax authority challenged the arrangement using its powers under the Swedish provisions implementing Article 80(1)(a) of the VAT Directive. That article provides for an exception to the general rule that the amount on which VAT is charged is the consideration agreed between the parties. Article 80(1)(a) allows, in certain circumstances, for VAT to be charged on the open-market value (OMV) instead.

OMV is defined in Article 72 of the VAT Directive, which provides that it is the amount that a customer would pay to a supplier at arm's length and under conditions of fair competition for comparable goods and services. It further provides that where there is no comparable supply, the OMV is to be an amount that is not less than the full cost to the taxable person providing the service.

As noted above, the Swedish tax authority contended that the services supplied by the parent comprised a single, unique supply, with comparables. It viewed the supply to have been made at a price lower than OMV, and as there were no comparable services freely available on the market, the amount on which VAT was chargeable should have been determined by the total amount of costs borne by the parent, which included the "shareholder costs", even though they did not directly relate to the output transactions.

The CJEU decision ruled in favour of the parent. It held that the services provided by the parent should not be regarded as constituting a single supply. The court referred to the AG's opinion, which considered that the services, even though provided together, had their own character and are separately identifiable. Additionally, it was held that the fact that a single price was paid by a subsidiary for all of the services provided by the parent does not determine the treatment of intra-group supplies, as otherwise the group would itself be able to influence the VAT treatment of the supplies by way of the particular intra-group pricing agreements.

The CJEU decision therefore requires a case-by-case analysis when considering intra-group management services. The particular nature and independence of the services provided need to be identified and considered.

It should follow from the CJEU decision that, depending on the facts of the particular case, it is possible that components of intra-group management services may be separately treated as discrete, identifiable services, such that comparable services may be identified to determine the OMV.

Valuation of Intra-Group Management Services: Högkullen

As this determination addressed the case before it, the CJEU did not answer the second question posed by the Swedish national court, on how the OMV is to be calculated. However, this issue was touched on in the Opinion of AG Kokott. As mentioned in paragraph 69 of the Opinion of AG Kokott, she was of the view that the OMV must be calculated separately for each separately identified service and it was not correct to take into account costs relating to expenditure that bore no relation to the service provided to the subsidiary.

Conclusion

The judgments of the CJEU provide helpful guidance on the factors that must be considered by a group in addressing VAT

on intra-group arrangements and transfer pricing adjustments. It is hoped that the principled approach proposed by AG Kokott will be adopted by the CJEU in its decision in *Stellantis*, which should be handed down shortly. The cases also highlight the importance for a group of considering the potential VAT

implications of its transfer pricing at the outset when drafting inter-company agreements, particularly where VAT-exempt activities are carried on by the group. Depending on the facts of the case, there remain many instances where transfer pricing adjustments should not come within the scope of VAT.