Grant Thornton

Intra-Community transactions between related companies and transfer pricing

VAT Alert

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Judgment no. C-726/23 dated 4 September 2025, Arcomet Romania case

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1. Introduction

The case relevant to the tax treatment, particularly for VAT purposes, of transfer prices applied between a parent and a subsidiary company established in another Member State has been analysed in a previous Alert, based on the Opinion of Advocate General delivered on 3 April 2025, within the analysis of the dispute arisen in case no. C-726/23. Following the issue of the final judgment by the EU Court of Justice, it is appropriate to conclude the discussion on this topic by giving due prominence to the final decision of the Court, which, as repeatedly stated by the same, constitute the authentic interpretation of EU regulations.

The case concerned Arcomet Group, operating in the crane rental sector, which, through its parent company Arcomet Belgium, sought suppliers for its subsidiaries and negotiated the contractual terms to be applied to them. The company Arcomet Romania (which is involved in the dispute arisen with the local Tax Authorities) falls within the subsidiaries of the Belgian parent company and operates in the Romanian territory entering into the sales and rental agreements directly with its suppliers and customers.

Based on the Transfer pricing adjustment, resulting from the guidelines adopted pursuant to OECD, the Parent company and its subsidiaries agreed that these should have registered *"an operating profit margin ranging between -0,71% and 2,74%"* in their reference market.

A contract was concluded between the parent company and the Romanian company, providing for *"remuneration in respect of the activities carried out by the parties equal to the amount necessary to place Arcomet Romania in a position corresponding to the activities which it carried out and the risks which it assumed (...), based on the transactional net margin method laid down in the OECD Guidelines"* (point 22 of the judgment). In accordance with such contract, a settlement invoice needed to be issued on a yearly basis, either by the Belgian company or by the Romanian company, depending on the fact that the operating profit margin of Arcomet Romania was higher or lower than the abovementioned range.

Following the dispute arisen in Romania, as better described in the previous Alert, the CJEU analysed two issues, the main of which concerns the tax treatment of settlement invoices of an amount *"equal to the amount necessary to align the operating company's profit with the activities carried out and the risks assumed in accordance with the margin method of [the OECD Guidelines]"*, in particular, if this amount *"constitutes a payment for a service which therefore falls within the scope of VAT"*.

2. The conclusions of the CJEU

On the basis of the comments made by Advocate General, the Court analyses the nature of the remuneration for intercompany services provided by the parent company (calculated according to the method recommended by the OECD), questioning whether this should be qualified as a supply of services for consideration and, therefore, be subject to VAT, provided that all the relevant requirements are met.

Firstly, the remuneration for the supply should be admitted when there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, for which the remuneration received by the provider of the service constitutes *"the actual consideration for an identifiable service supplied to the recipient"*, and this occurs *"w there is a direct link between the service supplied and the consideration received"* (see point 33).

In this regard, the EU Court recognizes that, based on the contract signed by the Belgian parent company and Arcomet Romania, both parties have undertaken mutual commitments, which can be identified in the following activities: i) Arcomet Belgium undertook to provide a certain number of commercial services and to bear the main economic risks associated with the activity of Arcomet Romania (operating company); ii) Arcomet Romania undertook to pay at the end of each year an amount corresponding to the part of the operating profit margin greater than 2.74% achieved by it.

This implies that the payment made by Arcomet Romania constitutes the remuneration in respect of the activities carried out by the parent company, which had an *"effect on Arcomet Romania's operating profit margin through the savings which they enabled it to make and the improvement of the service provided to end customers"*.

It is clear that the relationship between the two companies, due to the way in which it is conducted, suggest the existence of the characteristics pertaining to services being subject to VAT.

Moreover, the CJEU underlines that the activities performed by the parent company cannot be considered as mere participating interests of a holding company into other companies, without interfering, either directly or indirectly, in the management of such other companies, but they are rather activities to be subject to VAT as they are real commercial services provided to the subsidiary.

The fact that the amount of the remuneration has been agreed upon in a contract – even if it is variable, inasmuch as the remuneration presupposes the existence of a positive operating profit margin by the subsidiary in a certain period of time – does not compromise the characteristics of the operation, as the remuneration cannot be defined as gratuitous or aleatory, or difficult to quantify or uncertain. To this purpose, the CJEU, referring to the statement of Advocate General, underlines that *"the detailed rules for that remuneration are laid down in advance in that contract and according to precise criteria, with the result that, as such, that remuneration is not uncertain"* (see point 47 of the judgment and point 46 of the opinion of Advocate General).

Lastly, the CJEU points out that, should the profit realized by Arcomet Romania be lower than the minimum agreed amount, the fact that a remuneration is due by the parent company to the subsidiary does not "break the direct link between the supply of services at issue and the consideration received".

In light of the foregoing, the CJEU concludes that ***"the remuneration in respect of intra-group services, provided by a parent company to its subsidiary and contractually detailed, which is calculated in accordance with a method recommended by the OECD Guidelines and corresponds to the part of the operating profit margin greater than 2.74% achieved by that subsidiary, constitutes the consideration for a supply of services for consideration falling within the scope of VAT"*** (point 49 of the judgment).

It is reminded that the second question analysed by the Court concerned the possibility for the Tax Authorities of a Member state to request a taxpayer to show other documentation in addition to the invoices produced to further support the proposed right to deduction.

On this point, the Court recognized that Directive 2006/112/EC (specifically, articles 168 and 178) does not preclude the tax authority from requiring further documentation to prove the existence of the rights referred to in the invoice and that entitles the taxable person to obtain deduction, provided that ***"the submission of that evidence is necessary and proportionate for that purpose"*** (point 61 of the judgment).

In the Italian system, it is worth considering in particular **the reply to ruling no. 214 dated 19 August 2025**, which does not appear to be in contrast with the conclusion of the judgement above as it faces quite a different topic though also related to a TP adjustment system and which refers exclusively to subsequent adjustments to prices relevant to intercompany transactions.
In fact, as recognised by the same Advocate General in the conclusions relevant to case C-726/23, but also on the basis of the VAT Committee papers (i.e. Working paper 923) and of VEG document no. 071, it does not seem possible to reach a single solution, but it is necessary to proceed on a case-by-case basis, paying particular attention to the actual intentions of the parties.
In the abovementioned reply to the ruling, the need is indeed underlined for a direct connection to exist between the adjustment and the original transactions, on which the adjustment is made.
In the reply to ruling no. 214/2025, the Italian Revenue Office analysed in depth the original intention of the parties, which attributed a provisional value to the initial transaction compared to what should have been its final price, calculated following price adjustments resulting also from an assessment of the economic advantages to be attributed to the purchasing company in order to grant it an appropriate remuneration (and economic advantage), although based on principles similar to OECD transfer pricing ones.
The case at hand is that of a multinational group involved in the "*manufacturing and global distribution of a significant range of electrical and electro-optical devices, interconnection systems, assembly connectors and wireless products*" with an Italian entity carrying out distribution activities of items bought from a foreign entity of the group which manages the product portfolio, the marketing/distribution network and the development of new product technologies, besides intervening in negotiations with third-party clients.
Based on a distribution agreement in force between the Italian entity and the foreign managing entity, a ***"provisional"*** selling price was initially established for the goods, which at a later stage and according to a TP adjustment policy based on the application of the Transactional Net Margin Method (TNMM) implied variations on the initial price to grant the Italian entity an "*arm's length margin*". In order to get to this result, the parties involved determine the products' sale prices between themselves only afterwards.

Indeed, the applicant's opinion was that the contractual basis method used to reach such goal was based essentially on an "adjustment" of the initial price, strictly related to the price of the single transactions and, as such, a result of the provisional setting of the initial price. To this end, as already observed by the Revenue Office (see the reply to ruling no. 60 of 2 November 2018), the following conditions need to be met: i) existence of a close connection between the transactions carried out and the payment of an additional consideration relevant to those transactions; ii) qualification of the additional payment as additional consideration; iii) identification of the single transactions to which the increase in value refers.

According to the Revenue Office, it is necessary to recognise that the TP adjustment system essentially pertains to the income tax system and as such would not be subject to VAT. On the other hand, for VAT purposes, the relevance of the transactions originates, as mentioned, from the existence of a close relationship between the original transaction and the final one (redetermined). In particular, it is necessary for the parties to have agreed that what changes is the price of each transaction, which only upon final settlement is the element allowing the parties to determine the actual consideration to be paid. This must therefore be *"an increase or decrease of the taxable base of the transfers of goods originally completed between the parties"* originating from the *"existence of a direct connection between the amounts and the transactions"*.

This implies that, although price adjustments occur from time to time, the initial price adjustments will be implemented through the issuance of appropriate notes indicating *"increases or decreases in the taxable base of the transfers of goods originally concluded between the parties"* and will result from the existence of an appropriate original agreement to this effect, requiring the specific identification of the individual transactions and the related invoices to be subject to modification, with a detailed indication of each adjustment.

In this context, variations can be considered to be referred to each individual transaction to be adjusted and, as such, to be subject to VAT according to the rules of the original transaction.

In conclusions, only when these specific connections with the transactions carried out are missing, i.e when *"such predetermination and consequently the direct connections are not specified, the adjustments are considered as simple allocations of profits with the sole purpose of adjusting profit margins to the values envisaged by the arm's length principle and are therefore out of scope of VAT"*.

Our experts are at your disposal for a more detailed overview of the topics briefly discussed above.

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