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ANALYSIS

Tax

The Court of Justice of the European Union clarifies the impact on VAT of intra-group transfer pricing adjustments

The Court of Justice of the European Union has ruled in the *Stellantis Portugal* case that intra-group transfer pricing adjustments intended to ensure a predetermined profit margin do not in themselves constitute a supply of services for consideration subject to value-added tax.

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The Court of Justice of the European Union, in its Judgment of 13 May 2026 (Case C-603/24, *Stellantis Portugal S.A.*), has once again addressed the value-added tax treatment of intra-group transfer pricing adjustments. This ruling joins other recent decisions by the Court on the same subject, in particular the *Arcomet Towercranes* judgment (C-726/23), discussed in a previous publication.

1. The *Stellantis Portugal S.A.* Judgment

In the case under review, a multinational automotive group operated through a distribution company in Portugal. The latter purchased vehicles from manufacturers within the group itself that were established in the European Union and subsequently sold them to independent dealerships operating in Portugal, which, in turn, resold them to end customers. Where those vehicles were affected by defects resulting from the production process or from anomalies covered by the warranties offered by the manufacturer or were the subject of procedures related to roadside assistance, the dealers performed the repairs and then invoiced the Portuguese company the costs of those repairs, applying the relevant VAT to them. The distributor then reported to the manufacturers the costs incurred for those repairs, in addition to its own operating costs, which included, in particular, staff, electricity and marketing costs. Under an agreement concluded in 2004 between the group companies concerning the fixing of the transfer prices of vehicles within that group, the prices of the vehicles, parts and accessories sold by the the group's manufacturers to the distributor could be adjusted to guarantee the latter a predetermined profit margin. In particular, the transfer prices of those products were determined by deducting from the 'external' sales prices of those vehicles to third parties (dealers) the amount corresponding to the related distribution costs and the predetermined profit margin of the distribution company in question. The initial transfer prices were determined, in respect of each period, by applying a gross margin discount to the expected external sales prices. At the end of each reference period, an adjustment was made to increase or decrease the actual profit margin of the distribution company so that it matched the predetermined profit margin. This adjustment was evidenced by a credit or debit note sent by the group's manufacturers to the distribution company.

The Portuguese tax authorities took the view that the costs of repairs resulting from those defects and anomalies were initially borne by the distributor, which then passed them on to the group's manufacturers through adjustments to the transfer prices of those vehicles. On that basis, it considered that the distributor had provided an independent vehicle repair service within the national territory to the group's manufacturers, which, according to the applicable rules of taxation by place of supply *ratione temporis* (2006), was subject to value-added tax in Portugal. However, in the appellant company's view, those adjustments did not constitute remuneration in respect of services consisting in the repair of those vehicles, but were intended to guarantee it a minimum profit margin.

In this context, the Court of Justice is asked whether the concept of *supply of services effected for consideration* contained in Article 2(1) of Directive 77/388/EEC (hereinafter the "Sixth VAT Directive"),

in the version in force at the time of the facts [now Article 2(1)(c) of Directive 2006/112/EC], includes an adjustment of the sale price of vehicles which is duly provided for and determined in a contract concluded between the parties, in order to achieve a minimum profit margin, and which is documented by means of a credit or debit note issued to the distributor by the European manufacturers of the group.

The Court of Justice notes that, in accordance with settled case law, a supply of services is carried out for consideration within the meaning of Article 2(1) of the Sixth VAT Directive — and is therefore subject to tax — only if there is a direct link between that supply of services and the consideration actually received by the taxable person. Such a direct link is established where: (*a*) there is a legal relationship between the provider of the service and its recipient pursuant to which there is reciprocal performance, and (*b*) the remuneration received by the provider of those services constituting actual consideration for an identifiable service supplied to the recipient.

Applying the foregoing to the case at issue and with regard to the fulfilment of the first requirement, the court notes that the only established legal relationship was the 2004 transfer pricing agreement between the group companies concerning the setting of transfer prices for vehicles, an analysis of which shows that the adjustments to those prices were intended to ensure that the distributor achieved a predetermined profit margin. None of the clauses of the agreement and no other information in the file before the Court supported the conclusion that there was a legal relationship according to which the distributor was under an obligation to repair, in return for remuneration, the vehicles it purchased from the group's manufacturers.

With regard to the second requirement, the Court of Justice emphasizes that the transfer pricing adjustments were not related exclusively to the costs of repairs carried out by independent dealers and invoiced to the distributor, but also to the distributor's operating costs, and that their calculation was intended to ensure the operating margin agreed upon with the distributor. This conclusion is based, as decisive factors, on the one hand, on the fact that the costs relating to the repairs of the vehicles at issue "appear to be only one of the parameters taken into account" for the calculation of the final adjustment; and, on the other hand, on the fact that, depending on the significance of all those costs in relation to the initial transfer prices, those adjustments could give rise not only to credit notes but also to debit notes, sent by the manufacturers to the distributor. In other words, the transfer price initially set could vary upward or downward depending on the evolution of those various parameters.

In that regard, the Court adds that the uncertain nature of 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. Accordingly, in order for such a link to be established, that payment must neither be voluntary nor uncertain nor difficult to quantify.

With regard to this last point, the Court of Justice refers to its judgment of 4 September 2025 (Case C-726/23, *Arcomet Towercranes*). Unlike the facts underlying

that decision — where the amount of the remuneration agreed upon for the provision of certain commercial services by a parent company to its subsidiary, despite being variable and dependent on the subsidiary's positive operating margin in a given year, was fixed in advance according to precise criteria set forth in the agreement signed between the parties — in the case now under discussion, the costs corresponding to the repairs were merely one of the various costs taken into account within a complex assessment intended to ensure, *ex post,* the obtainment of the profit margin previously agreed upon with the distributor. Furthermore, once that margin was obtained, it does not appear that the distributor was guaranteed that all of those costs, and in particular those incurred for the purpose of repairing those vehicles, would be reimbursed by the group's manufacturers.

Consequently, the link between any repair services that may exist between any repair services for the vehicles at issue— provided by the distributor to the group's manufacturers — and the adjustments of the transfer prices of those vehicles is, at most, only indirect. The court also rejected the argument that the Portuguese distributor acted as an intermediary for services provided by third parties.

However, the Court of Justice does not rule out the possibility that the referring court might consider that the adjustments at issue, although not constituting remuneration in respect of an independent supply of services, amount to a subsequent adjustment of the price paid by the distributor when purchasing those vehicles from the group's manufacturers. In such a case, the Court of Justice states, following the conclusions of Advocate General Kokott, that it would be for the competent national authorities to assess the impact of such an amendment on the determination of the taxable amount of the transaction consisting in the supply of those vehicles in light of Article 11 of the Sixth VAT Directive (Arts. 90 and 73 of the VAT Directive).

Having regard to all the foregoing, the Court of Justice answers the question referred that Article 2(1) of the Sixth VAT Directive must be interpreted as meaning that "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 sent by the selling company to the acquiring company, and

— calculated on the basis, inter alia, of the costs incurred by the acquiring company in connection with the repair by third parties of those vehicles,

does not constitute consideration in respect of a 'supply of services effected for consideration', within the meaning of that provision, unless there is, between those companies, a legal relationship characterised 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 in the form of such an adjustment, establishing

a direct link between the supply of those services and that adjustment".

2. Concluding remarks

The judgment under review is of particular relevance to the operational practices of multinational groups, as it clarifies that, for value-added tax purposes, intra-group transfer pricing adjustments intended to ensure a minimum profit margin do not in themselves constitute a supply of services for consideration subject to tax. Thus, the ruling in question highlights the need to distinguish between financial adjustments resulting from transfer pricing policies designed to ensure a minimum profit margin and genuine services rendered that are subject to tax.

Furthermore, when this judgment is considered in light of the Court of Justice's previous case law on the matter — particularly the *Arcomet* judgment — it underscores the need to conduct a case-by-case analysis of contractual agreements on transfer pricing adjustments entered into by corporate groups when determining whether an intra-group adjustment can constitute the actual consideration for a service rendered. In such an analysis, the identifying elements of a supply of services for consideration subject to value-added tax are the existence of an actual legal relationship with reciprocal obligations, the presence of a specific and identifiable supply of services (with financial and commercial substance), as well as the direct link between the service provided to the recipient and the consideration received (which must neither be voluntary nor uncertain nor difficult to quantify).

If the purpose of the adjustment is to set the final price of an identifiable prior transaction, it may involve an amendment the taxable amount of that transaction

However, the judgment also suggests that, even when transfer pricing adjustments do not correspond to a supply of services for consideration subject to value-added tax, if such adjustments are linked to identifiable prior supplies or services, and their actual function is to set the final price of those transactions, this circumstance could imply an amendment on the determination of the taxable amount of the underlying transaction.

From a practical perspective, the *Stellantis* judgment reinforces the importance of analysing the actual financial substance of intra-group transactions, avoiding automatic reclassifications of offsetting financial adjustments as transactions subject to value-added tax. It also confirms the relevance of the direct link between the service provided and the remuneration received, in accordance with the terms set forth by European case law on indirect taxation.

This ruling may impact the structuring of transfer pricing policies within corporate groups and advises conducting a proper

analysis, supported by the necessary documentation, of the function and nature of intra-group adjustments, as well as their potential impact on value-added tax and the determination of the taxable amount of prior transactions.

The Directorate-General of Taxes has also pronounced itself on the issue addressed by the Court of Justice in the judgment in question on several occasions. Specifically, in its formal binding answer V0565--24 (— as it had previously noted in answers V0745-20 and V2211-21), it stated that "to the extent that adjustments resulting from the application of transfer pricing policies can be equated with price changes in previously carried out transactions subject to tax, the taxable amount must be adjusted for value-added tax purposes". To this end, the Directorate-General added that "there must be a specific, prior, and individualized supply of goods or provision of services for value-added tax purposes, a consideration, and a direct link between the two so that the adjustment resulting from the transfer pricing policy may be considered an upward or downward adjustment of said consideration linked to that prior supply of goods or provision of services subject to tax". However, in the case at hand, the Directorate-General concluded that the amount transferred by the taxpayer to its parent company (or vice versa) as a result of transfer pricing adjustments did not appear to constitute an adjustment to the price or consideration for a service provided by the parent company, but rather a price adjustment to allocate a return commensurate with its functions, assets, and risks; therefore, such a transaction would not be subject to tax.

In closing, and regarding the concept of a *transaction for consideration*, mention should be made of the order allowing to proceed appeal no. 9505/2024, dated 14 January 2026, whose resolution by the Supreme Court could give rise to a relevant judicial test regarding the issue raised therein, consisting of determining "whether, for the purposes of the exception provided for in Article 96 of Value Added Tax 37/1992, which allows for the deduction of input tax, the requirement that the supply of goods or services be made 'for consideration' necessitates the realization of a profit or profit margin by the party re-invoicing such goods or services, or whether the mere existence of consideration subject to tax is sufficient, even if the re-invoiced amount matches the cost".