VAT treatment of transfer pricing adjustments: new guidance from the CJEU

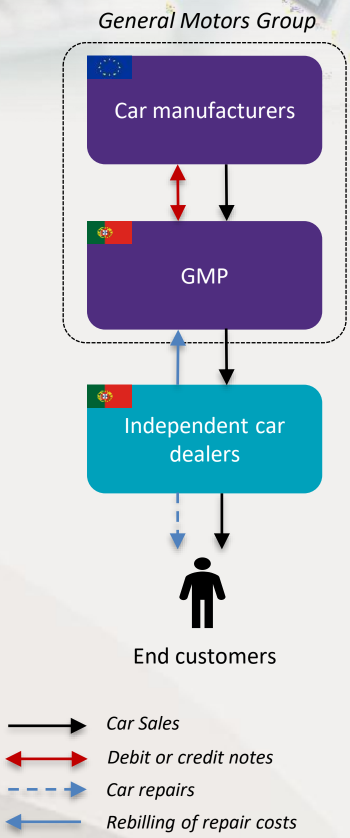
In a decision of 13 May 2026 (Stellantis Portugal, C-603/24), the CJEU ruled again on the connection between transfer pricing adjustments and VAT.

The facts: Stellantis Portugal (ex General Motors Portugal) purchased vehicles from affiliated car manufacturers and resold them to independent dealers, while managing after-sales activities, notably including reimbursing dealers for costs related to warranty repairs.

In accordance with the Group's TP policy, year-end adjustments were made to the initial selling prices of the vehicles (through credit or debit notes) so GMP would achieve a pre-agreed operating-profit margin. The calculation of the adjustments considered, among other factors, the costs associated with vehicle repairs.

The Portuguese Tax Authorities considered that these adjustments constituted consideration for a VAT-taxable separate supply of repair services provided by GMP to the manufacturers.

Relevance of the Case: this decision forms part of the continuing debate on the VAT treatment of TP adjustments, and more broadly the interaction between VAT and TP. In the absence of harmonized guidance at EU level, this issue had previously been largely left to litigation and the interpretation of national courts.



<u>Decision of the CJEU</u>:

- The Court reaffirmed a key principle: **a TP adjustment does not automatically constitute consideration for a VAT-taxable service**. It is necessary to demonstrate that there is a legal relationship involving reciprocal obligations and a '**direct link**' between an identifiable service and the payment in question.

- In this Case, the TP adjustments were only intended to guarantee a targeted operating margin to the distributor. They were not linked to any identifiable supply of services, nor did they correspond to the reimbursement of specific costs: **the CJEU therefore considers that the TP adjustments fall outside the scope of VAT**. The judgment nevertheless leaves the door open to another possible characterization: namely, the treatment of such adjustments as a correction of the taxable basis relating to previous transactions, in line with the approach proposed by Advocate General Kokott in her conclusions.

- The outcome differs from the **Arcomet Towercranes Case** (*CJEU, 4 September 2025, Case No. C-726/23*) in which the TP adjustments at issue, contractually defined in advance according to specific criteria based on a transactional net margin method (TNMM), had been considered by the Court to be consideration for a supply of services subject to VAT.

Key takeaway: The assessment of the VAT treatment of TP adjustments must be based on a very factual analysis.

Some TP adjustments may still result in a risk of VAT liability

Some adjustments may also be considered as price adjustments affecting the taxable basis of the initial transaction

The drafting of the TP documentation and intra-group contracts, as well as monitoring their implementation, remain essential

Key points:

In this regard, businesses should in particular:

- assess the VAT implications of their TP policies and adjustment mechanisms;
- Review intra-group agreements, invoicing practices and transfer pricing documentation to determine whether the adjustments in question fall within the scope of VAT, are excluded from it, or should be treated as mere price adjustments;
- retain evidence demonstrating that the underlying services are used for taxable business activities; and
- maintain documentation supporting the VAT treatment adopted, ensuring consistency between contracts, remuneration mechanisms and invoicing practices.

Our VAT & Transfer Pricing teams remain at your disposal to assist you.

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