The *Arcomet* Case: VAT Implications of TP Adjustments

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On 4 September 2025, the Court of Justice of the European Union (ECJ) issued its decision in *Arcomet Towercranes* (Case C-726/23) following the request for a preliminary ruling from the Romanian *Curtea de Apel Bucureşti* (Court of Appeal, Bucharest) lodged on 28 November 2023. On 3 April 2025, Advocate General (AG) Jean Richard de la Tour gave his opinion in the case.

In the decision, the ECJ establishes two key aspects: (i) that the remuneration for intra-group services, calculated in accordance with a transfer pricing (TP) method, may constitute the consideration for a supply of services that falls within the scope of VAT; and (ii) that in order to prove the deductibility of a transaction, the tax authorities may require the taxpayer to provide evidence other than a mere invoice.

This note offers a brief overview of the facts and is not intended as a full case summary. For a more nuanced case summary, including the details of the reasoning of the ECJ, *see* the ECJ Case Law IBFD collection, available here. In addition to the summary, this note includes a dedicated section with insights and commentary from our VAT and transfer pricing experts, highlighting key practical considerations.

1. Facts and Issue

Arcomet Romania, part of the global Arcomet Group, buys or rents cranes to resell or lease in Romania. The contracts in respect of the activity carried out in Romania are signed directly by Arcomet Romania both with its suppliers and customers, even though Arcomet Belgium handles supplier negotiations for all subsidiaries. According to the contract, an annual settlement invoice was required if Arcomet Romania's operating profit margin exceeded 2.74% (issued by Arcomet Belgium to recover excess profit) or fell below 0.71% (issued by Arcomet Romania to cover excess loss), while no invoice was needed if the margin was between 0.71% and 2.74%. In 2011, 2012 and 2013, Arcomet Romania recorded an operating profit margin greater than the 2.74% and therefore received from Arcomet Belgium invoices containing an amount exclusive of VAT and which indicated "intra-community supplies of goods" as concept. Arcomet Romania considered the first two invoices as intra-Community purchases of services subject to the reverse charge mechanism but deemed the third invoice outside the scope of VAT. The Romanian tax authorities denied the deduction of input VAT and applied interest and

penalties on the grounds that it has not been demonstrated that the invoiced services were actually supplied or necessary for the taxable activities of Arcomet Romania.

The first referred question asks, in essence, whether the remuneration in respect of intra-group services, provided by a parent company to its subsidiary and resulting after TP adjustment in accordance with a method recommended by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) constitutes the consideration for a supply of services falling within the scope of VAT. The ECJ confirmed that such remuneration qualifies as consideration for a taxable supply of services within the scope of VAT.

With its second question, the referring court asks, in essence, whether tax authorities can require a taxable person who seeks the deduction of input VAT paid to submit documents other than the invoice in order to prove the existence of the services and their use for the purposes of the taxed transactions of that taxable person. The ECJ confirmed that tax authorities may indeed require such evidence, provided that its submission is necessary and proportionate for that purpose. The burden of proof is on the taxable person claiming VAT deduction.

The debatable issue in the case is whether a transfer price adjustment calculated under the transactional net margin method (TNMM) qualifies as a taxable service for VAT purposes.

2. VAT Insights

With this decision, it became evident that reviewing intercompany service agreements is not only relevant for direct tax or TP purposes but that, more and more, the VAT implications should be considered from the outset. Also, that documentation is not only important but necessary to back up VAT deductions and prove both the existence of services and their use for taxable transactions.
From a technical VAT perspective, there are two main topics that the ECJ analysed in its decision. One is related to the existence of a supply of services for consideration and that this fact must be established by considering all the circumstances which actually characterize the transaction concerned, including its economic and commercial reality. The other one refers to the right to deduct VAT.

On the first topic, the ECJ started its analysis by providing some guidance on whether the circumstances in the present case gave rise to a supply for consideration within the meaning of article 2(1)(c) of the VAT Directive. This analysis is needed to determine whether the corresponding supply of services is subject to VAT, based on the reciprocal commitments that both parties agreed to, as this only occurs if two conditions are met: (i) there is a legal relationship between the supplier of the service and the recipient of the service; and (ii) the remuneration received by the supplier of the service constitutes an actual consideration for a service that is identifiable. According to the ECJ, both conditions are satisfied in the present case. The first one, as there exists a legal relationship between the supplier of the service and the recipient of the service (reciprocal performance) since Arcomet Belgium undertook the provision of a certain number of commercial services and the burden of economic risks associated with Arcomet Romania's activities, while Arcomet Romania undertook the payment at the end of each year of an amount corresponding to the part of the operating profit margin greater than 2.74% achieved by it. The second one, as the payments made by Arcomet Romania constituted the remuneration in respect of the activities carried out by Arcomet Belgium.

The ECJ highlighted that even if a transfer price between two companies within the same group has been set to comply with the arm's length principle for direct taxation purposes, that transfer price may constitute the actual consideration for a service supplied. The ECJ also clarified that the existence of a direct link between the services and the consideration received for those services cannot be affected by the remuneration arrangements laid down.

The second topic analysed by the ECJ refers to the right to deduct VAT and whether tax authorities may require the submission of documents other than the invoice to prove the existence of the services referred to in that invoice and their use for the purposes of the taxable transactions of a taxable person. The ECJ examined both the substantive and the formal conditions to exercise the referred right to deduct VAT and concluded that despite the fact that the invoices did not comply with formalities under Romanian law, the tax authorities cannot refuse the right to deduct VAT solely based on this, especially if they have all the information to determine whether the substantive conditions are met. In respect of these latter conditions, the person must be a taxable person for VAT purposes, and the services must be used for taxable transactions. The ECJ pointed out that the tax authority did not call into question the taxable person status of Arcomet Belgium or of Arcomet Romania but that they refused Arcomet Romania's right to deduct input VAT based on the company's failure to submit evidence that proved the services had actually been supplied and that they were necessary for the purposes of its taxable activities. This was mainly because tax authorities must not be limited to examine only the invoices but all the documents that prove that a taxable person has acquired certain services (Arcomet Romania in this case) in respect of which it paid the corresponding VAT. The ECJ also highlighted the necessary and proportionate qualities that these documents must have to assess whether the substantive conditions for the right to deduct are met or not.

3. TP Insights

When looking at the *Arcomet* case through the TP lens, it involved intra-group services, where Arcomet Belgium, as the entrepreneurial principal, oversaw strategic decision-making, financial management, commercial activities and undertook the overall risk, while Arcomet Romania handled the day-to-day sales and leasing of tower cranes to third-party customers. Under the TP arrangement, Arcomet Romania received a guaranteed operating margin under the TNMM, with a year-end TP adjustment to align actual results with the agreed margin. This ensured that Arcomet Belgium, bearing the entrepreneurial risks, was allocated the residual profit or absorbed the residual loss, while Romania realized a stable, routine margin.

The ruling highlights a key structural challenge for profit-based TP methods. Under traditional transactional methods such as CUP (comparable uncontrolled price), it is a relatively straightforward exercise to link TP adjustments to specific goods or services. However, profit-based methods such as TNMM or profit split produce aggregate-level adjustments that are not inherently linked to individual invoices. This creates segmentation challenges for tax administrations as well as businesses that require transaction-level allocation for VAT or customs purposes. The issue is magnified when there are bundled services with intangible assets. In practice, residual profits often relate to intangible assets, intellectual property or brand value, which are inherently difficult to assign precisely to individual transactions.

Addressing this requires robust documentation linking residual profits to relevant goods, services or bundled contributions, a process that is both complex and resource-intensive. Ultimately, Arcomet illustrates that profit-based TP adjustments can create practical and legal friction in transaction-driven indirect tax systems. The case underscores the importance of coordinated TP and VAT compliance and highlights the need for clear EU guidance on the treatment of profit-based TP adjustments, particularly when bundled services or intangibles are involved.

IBFD References:

- EU tax law developments are reported daily on the IBFD Tax News Service page.
- For IBFD summaries of ECJ judgments, see the ECJ Case Law IBFD collection.
- Domestic tax legislation is described in IBFD Country Tax Guides.

- *See* H. Bitar & A.Z. Quenette, *Indirect Tax Impacts of Transfer Pricing Adjustments: EU and US Approaches when the Price Evolves To Make It "Right"*, 35 Intl. VAT Monitor 4 (2024), Journal Articles & Opinion Pieces IBFD, https://doi.org/10.59403/hbt0gw