

# Transfer Pricing Adjustments and VAT: The ECJ's Stellantis Ruling Clarifies the Question Without Resolving It

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## I. Introduction

On 13 May 2026, the European Court of Justice (ECJ) delivered its judgment in Case C-603/24, *Stellantis Portugal SA v. Autoridade Tributária e Aduaneira*. The case addresses one of the most persistently contested questions in European indirect tax law: what is the VAT treatment of transfer pricing (TP) adjustments made between affiliated entities within a multinational group?

The judgment is significant in two respects. It formally confirms that a TP adjustment designed to guarantee a target profit margin does not, as a matter of principle, constitute consideration for a taxable supply of services. At the same time, the Court stops deliberately short of resolving the full picture. Whether such an adjustment modifies the taxable base of an earlier supply of goods is a question the ECJ explicitly leaves to the national court. And the door remains open for a different outcome where the contractual framework supports treating the adjustment as service remuneration.

For multinational groups operating within the European Union, the ruling carries clear practical lessons — even where the underlying legal landscape remains incompletely settled.

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## II. Background

### A. The Corporate Structure and Transfer Pricing Mechanism

Stellantis Portugal SA (*Stellantis*), formerly General Motors Portugal (GMP), operates as a national sales company within what was the General Motors group. It acquires motor vehicles from European group manufacturers (OEMs) and distributes them to independent dealers in Portugal, who in turn sell those vehicles to end customers.

When vehicles required repair under warranty or due to manufacturing defects, dealers performed the repairs and invoiced GMP. GMP, in turn, reported these repair costs, alongside broader operating costs such as staff, electricity and marketing expenses, to the OEMs.

Under an intra-group agreement concluded in 2004, the transfer prices for vehicles sold by the OEMs to GMP were subject to retrospective adjustment in order to ensure that GMP achieved a pre-agreed minimum profit margin. That margin was determined on a *resale minus* basis, taking into account actual distribution costs incurred by GMP during the relevant period. The adjustments were documented through credit or debit notes issued by the OEMs to GMP. No VAT was included on those notes, as the parties took the view that the adjustments fell outside the scope of VAT.

### B. The Tax Authority's Position and the Resulting Dispute

Following a tax audit covering the 2006 financial year, the Portuguese tax authorities took a different view. They argued that GMP had supplied repair services to the OEMs, and that the TP adjustments represented the consideration for those services. Supplementary VAT assessments totaling EUR 1,504,215.49 were issued accordingly.

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GMP contested that assessment, arguing that the adjustments were part of a pricing mechanism designed to secure a target profit margin and did not reflect remuneration for any separate supply of services. The case was escalated to the *Supremo Tribunal Administrativo*, which referred the matter to the ECJ for a preliminary ruling.

The question, stated in broad terms, was whether a retrospective adjustment to the sale price of motor vehicles agreed in advance in a contract between related companies for the purpose of ensuring a minimum profit margin, and documented by credit or debit notes, constitutes a "*supply of services for consideration*" within the meaning of Article 2(1) of the Sixth VAT Directive (77/388/EEC).

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### III. The Advocate General's Opinion

On 15 January 2026, the Advocate General delivered her opinion. She concluded that the adjustments did not constitute remuneration for a supply of services, but rather a modification of the taxable base of the earlier supplies of goods.

Her reasoning rested on the bidirectional nature of the adjustment mechanism. Since the TP adjustment could result in either a credit note or a debit note, depending on whether GMP's actual profit margin fell short of, or exceeded, the agreed target, it could not coherently be characterised as payment for a service. In a scenario where the price increased, GMP would be making a payment to the OEM, which would be difficult to reconcile with GMP's alleged role as service provider. The adjustment mechanism, in her view, was anchored in the prior sale of vehicles and affected the taxable amount of those earlier supplies.

The AG also drew a distinction of broader importance: where TP adjustments are imposed unilaterally and retroactively by a tax authority for income tax purposes, they do not, as a general rule, alter the VAT position. But where adjustments are contractually agreed and specifically relate to earlier supplies, they may affect the taxable amount of those supplies — with corresponding VAT consequences for invoicing and reporting.

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### IV. The ECJ's Judgment

#### A. The Direct Link Requirement

The Court began with settled case law. For a payment to constitute consideration for a supply of services subject to VAT, there must be a direct link between the service supplied and the consideration received. That link presupposes a legal relationship between the service provider and its recipient within which reciprocal obligations are exchanged, and where the remuneration received constitutes the actual counterpart for an individualisable service rendered.

Where that direct link is absent, either because the payment is uncertain, aleatory, or tied to factors other than a specific identifiable service, the transaction falls outside the scope of VAT on that characterisation.

#### B. Application to the Facts

Applying that test, the Court found that the 2004 intra-group agreement had one primary purpose: to determine the transfer prices for vehicles sold by the OEMs to GMP and to guarantee GMP a predetermined profit margin. Nothing in the agreement established a separate legal obligation on GMP to provide repair services to the OEMs for remuneration.

Several features of the arrangement supported that conclusion. The adjustments were calculated on the basis of a range of costs; repair costs & operating costs such as staff, electricity and marketing, with the

purpose of arriving at a target margin, not of reimbursing specific services. The adjustment could result in either a credit or a debit, meaning that its financial direction was not predetermined. And even where repair costs were incurred, GMP was not assured of their full reimbursement: once the profit margin target was satisfied, the adjustment mechanism operated regardless of the actual cost level. The link between any repair services provided by GMP and the TP adjustment was, at most, indirect.

The Court also rejected the Portuguese government's argument that GMP had acted as an intermediary, procuring repair services from dealers on behalf of the OEMs. No evidence supported that characterisation.

### **C. The Opening Left Unanswered**

Having ruled that the TP adjustments did not constitute service consideration, the Court expressly noted that it was for the national court to assess whether the adjustments might instead qualify as a subsequent modification of the price paid by GMP for the vehicles. That characterisation would engage Article 11 of the Sixth VAT Directive — *now Article 90 of Directive 2006/112/EC* — which governs adjustments to the taxable amount of an earlier supply. The practical consequences of that route, including any obligation to issue corrective invoices and revise prior VAT returns, were not resolved by the ECJ and remain open.

### **D. The Court's Ruling in Summary**

A TP adjustment structured as in Stellantis grounded in a profit margin guarantee, documented by credit or debit notes, and calculated on the basis of various distribution costs, does not constitute consideration for a supply of services, unless a separate legal relationship exists under which the acquiring company is explicitly obligated to render individualisable services to the selling company in exchange for a corresponding remuneration.

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## **V. Practical Implications**

### **A. The Contractual Framework Is Decisive**

The most important lesson of the judgment is that the VAT treatment of a TP adjustment depends principally on what the underlying agreement actually provides. Where that agreement operates as a profit margin guarantee, as was the case in this judgement, the adjustment will generally not be treated as service consideration. Where the agreement instead creates an explicit obligation on one party to render defined services to another, and ties the TP adjustment directly to those services, a different outcome remains possible.

Multinational groups should therefore review the legal structure of their intra-group TP arrangements carefully. The wording of the agreement, the nature of the obligations it creates, the methodology used to calculate the adjustment, and the consistency between TP documentation and VAT reporting all bear directly on the analysis.

### **B. Three VAT Treatments Remain on the Table**

The judgment confirms albeit rather implicitly, that TP adjustments relating to supplies of goods may attract one of three VAT treatments: they may fall outside the scope of VAT; they may constitute a modification of the taxable base of the earlier supply, with corresponding invoicing and adjustment obligations; or, in the right contractual context, they may be consideration for a separate taxable supply of services. None of those outcomes has been definitively excluded for all fact patterns. The appropriate treatment continues to require a case-by-case assessment, and the grey area the ECJ identified has not been eliminated by this ruling.

### C. Compliance Risks

Where TP adjustments are reclassified as price adjustments for goods or as service consideration, the compliance consequences can be significant. Reclassification as a price adjustment would typically require corrective credit or debit notes and revisions to VAT returns for the period of the original supply. Reclassification as service consideration would require the issuance of VAT invoices and may generate additional tax exposure.

Groups operating in sectors where input VAT recovery is partially or fully restricted (like financial services, insurance, healthcare, and real estate, among others) should be particularly attentive. For such groups, an unexpected VAT cost arising from a TP adjustment may not be recoverable and could translate into a real cash cost.

### D. Consistency Between TP and VAT Documentation

The ruling also underlines the importance of aligning a group's TP documentation with its VAT position. Where the TP documentation characterises a payment as a service fee or cost contribution, that characterisation will have VAT consequences. Groups whose transfer pricing and indirect tax functions operate in isolation should consider whether their documentation accurately and consistently reflects the legal and commercial substance of the arrangement, both as a matter of internal governance and in preparation for potential scrutiny by tax authorities.

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## VI. Conclusion

The ECJ's judgment in *Stellantis* is a welcome, if partial, clarification. It confirms that a TP adjustment structured around a profit margin guarantee does not automatically become consideration for a taxable supply of services. In that respect, it offers meaningful protection to groups whose intra-group arrangements follow a comparable model.

What the judgment does not do is resolve the VAT treatment of the adjustment in full. The question of whether the adjustment modifies the taxable base of the earlier supply of goods remains expressly open, and the Court has preserved the possibility of a different outcome where the contractual framework differs from the one before it. The overall VAT treatment of TP adjustments in goods scenarios continues to depend on the specific facts of each arrangement, and the law in this area will continue to develop on a case-by-case basis.

For multinational groups, the ruling is a prompt to revisit their intra-group arrangements and ensure that the contractual structure, the TP methodology and the VAT documentation are mutually consistent and properly reflect the commercial reality of the transaction. In a landscape where the stakes are high and the legal framework is still evolving, there is no substitute for a careful, fact-specific analysis.

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