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Tax on Air – Der Steuerrecht Podcast von Deloitte
Episode #27: TP meets VAT: The Arcomet Towercranes Case and its implications for companies
Speaker:innen: Dr. Diana Kurtz, Lukas Hechl, Janis Sussick, Catalina Cojocaru

Diana Kurtz: Welcome to Tax on Air, our Deloitte podcast and a new episode on the complex interplay where TP meets VAT in cases of intra-group services within multinational companies. My name is Diana Kurtz, and my guests today are my colleagues Lukas Hechl from the Service Line Indirect Tax and Janis Sussick from the Service Line Transfer Pricing. A very warm welcome also to our special guest of today's episode, Catalina Cojocaru from Deloitte Romania. Many thanks for joining us, Catalina. Can you introduce yourselves quickly, please?

Lukas Hechl: Happy to do so. Thanks for the warm welcome. My name is Lukas. I'm a VAT partner here in Munich and happy to tell you today of the cool interplay of VAT and Transfer Pricing.

Janis Sussick: Thanks Diana and Lukas. Welcome also from my side. I'm Janis, I'm a Transfer Pricing Partner with Deloitte in Munich. And I deal a lot with operational transfer pricing lately, which means implementing transfer pricing policies into my clients' processes and systems. And one question that comes up quite often in these projects is the question on how to correctly handle year-end adjustment invoices. I think that's one of the key topics that we are going to cover today. So, looking forward to today's discussions with you.

Catalina Cojocaru: Hello. First of all, thank you for the invitation. I'm a Senior Manager within the Indirect Tax Department of Deloitte Romania. I have over 10 years of experience on VAT and also published in the news. I was part of the team working on Arcomet case and I had pleasure and opportunity to attend also the order hearing in this court case.

Diana Kurtz: Today, we will focus on the Arcomet case decided by the European Court of Justice on September 4, 2025. A key ruling relating to the interplay between VAT and transfer pricing. Today we want to follow up on our last episode 24 "TP meets VAT" and examine the Arcomet case decided by the Court of Justice in detail, considering the special insights provided by Catalina from Romania. At least since our last podcast, we have some basic understanding of the challenges involved in the interplay between TP and VAT. While income tax law aims to tax the economic performance of individuals and companies and transfer prices are intended to ensure this in an international context. VAT aims to tax final consumption and is quite challenging to reconcile both concepts. Following the Court of Justice rulings, Weatherford Atlas Gib and Högkullen, the Arcomet ruling is the most recent EU judgment in the current series of EU case law, relating to the complex intersection between value-added tax and transfer pricing. The case Stellantis Portugal, marking the last one in this current series, is still pending before the Court of Justice. In the Arcomet case, the Court of Justice was expected to clarify the VAT treatment of year-end profit adjustments, charged by a principal company to an operating company and the documentation requirements for claiming input tax deduction. So, let's start. Janis, can you briefly summarize the facts of the Arcomet case?

Janis Sussick: Yes, let me do that. So Arcomet Group is active in the business of selling and renting out cranes. And part of this group is Arcomet Belgium, which acted as the principal company for this group and also in this case. And this Belgium principal entity, for example, set the overall strategy for the group, controlled key risks and negotiated key agreements with suppliers to this group. A second important entity for this case is Arcomet Romania, which was a

subsidiary of the group, and it sold and rented out cranes to local customers in its Romanian market. And based on a transfer pricing study, Arcomet Romania was classified as a routine entity, and it should therefore earn an operating profit margin within a defined arm's length range and this range was established by a typical TP benchmarking study, using the so-called transactional net margin method, TNMM. And in this particular case, the Romanian entity achieved profits that were higher than the upper quartile of this interquartile range of acceptable margins and it achieved this higher margins in each of the three years that were considered in the court ruling. And hence the Belgium principal entity issued additional invoices to the Romanian entity for each of these years, in order to bring the profitability of the Romanian entity down and into the arm's length range. So, these were the year-end adjustment invoices that were subject to this dispute that was ultimately brought in front of the court. In this case, year-end adjustment invoices that were issued were in line with what was defined in an intercompany agreement between the two parties, so between Belgium and Romania. And this intercompany agreement set out a clear process for calculating and issuing these year-end adjustment invoice amounts. And the agreement also linked these year-end adjustments to certain services that were provided by the principal entity, such as the strategic and planning functions of the Belgium entity, the negotiations of frame agreements, negotiation of financing agreements, corporate finance support, quality and safety management, et cetera.

Lukas Hechl: Those three year-end invoices were issued without VAT as subject to the general B2B rules of cross-border services. The first two were under a reverse charger process, so that VAT was declared and paid by Arcomet Romania as beneficiary and invoice recipient. The third one was classified as a lump-sum profit adjustment and considered as out of scope of VAT.

Diana Kurtz: Tax inspection, the Romanian tax authorities refuse the right to deduct input VAT based on two invoices for which the reverse charge mechanism had been applied. In this respect, the Romanian tax authorities argued that the necessity to perform the services for taxable supplies were not justified.

Lukas Hechl: Regarding this third invoice, the Romanian tax authorities take the position that this related also to the purchase of intercompany and therefore intercommunity services from Arcomet Belgium. And under this intercompany agreement, that was also used for the other two invoices. And at the same time, the Romanian tax authorities argued that Arcomet Romania did actually not receive any taxable services. And in this respect, the authorities provide VAT under reverse charge mechanism also on the third invoice, but without granting the right to claim the corresponding input VAT because no supporting documents for the actual provision of the services were provided.

Diana Kurtz: At least, that is the information we have at this point. Catalina, do you have anything to add? Some special insights from Romania?

Catalina Cojocaru: Rather, I would like to highlight two aspects. The first one is that Arcomet Belgium was not involved in the supplies performed by Arcomet Romania. The letter was in charge with establishing and implementing the local sales strategy as well as concluding the contracts with its clients. And the second note is related to the fact that Arcomet Romania did not provide any type of service to Arcomet Belgium.

Diana Kurtz: Okay. So Lukas, which questions were referred to the Court of Justice?

Lukas Hechl: First, the court was asked to confirm that the amount invoice by the principal company to an associated company constitutes the payment for a service within the scope of VAT. So is the payment itself even subject to VAT? The second question relates to the documentation that is required to establish the direct link between the input and the output supply for the requirements of input VAT deduction. Because it was questionable whether or not the tax authorities are entitled to ask for more evidence than just the invoice that was provided to examine whether or not the input VAT can be claimed or not. This includes the question, the existence of the service and the use for the business purposes of the taxable person that wants to claim the input VAT.

Diana Kurtz: Let's stick with the first question. Are there amounts invoiced by Arcomet Belgium to Arcomet Romania to be regarded as consideration for a taxable supply of service? How did the court answer the first question and how did they reach this conclusion?

Janis Sussick: Yeah. So, the court ruled that the payments aimed at adjusting Arcomet Romania's profits were indeed to be seen as remuneration for the intercompany services that were mentioned in the intercompany agreement. And it also ruled that they were therefore subject to the reverse charge VAT treatment in all three years. The court essentially said that these payments were to be seen as remuneration for the services, even though they were calculated based on some mathematical formula and clearly targeted at adjusting Arcomet Romania's profitability. Basically, under this mathematical formula that was in the agreement, the payment between Romania and Belgium could have gone in both directions, and also the magnitude was not really foreseeable in advance. But the formula was clearly defined, and the intercompany agreement made this link to the services and that was sufficient for the court in this case.

Diana Kurtz: Following the general attorney, the court held that the taxable supply of service existed. Does this mean that the contractual relationship established by the taxpayer, meaning the intercompany agreement itself, led to the link between the transfer pricing adjustment and the service?

Janis Sussick: Yes, exactly. So the payment itself, as I said, was quite flexible and determined on some kind of formula to adjust the profitability of the Romanian entity. But it was the agreement that made a link between this mechanism and the service provision that happened here in this intercompany context. And the court explicitly referred to this agreement when saying that the payments are to be seen as service charges and also treated as service charges for VAT purposes. And the court also especially said in this regard that these payments are not to be considered as voluntary or highly uncertain because the mechanism how to compute these invoice payments was clearly defined in the intercompany agreement.

Diana Kurtz: The national companies – whose transfer pricing arrangements are based on profit-based method laid down in intercompany agreements – have been eagerly awaiting this decision as there is little official guidance on the VAT treatment of TP adjustments so far. So the decision was expected to provide more legal certainty for international groups with comparable intra-group TP arrangements. That's the decision of a new and significant findings relevant to the interplay between transfer pricing and VAT, Lukas?

Lukas Hechl: To be very honest, from a German VAT perspective, the ruling itself does not provide very valuable input for the ongoing practical challenges, because it cannot be concluded from this Arcomet ruling whether and under what specific conditions a year NTP correction is remuneration for a service and in which other cases it might be classified differently, for example as a change of

the taxable base for previous supplies. It also remains unclear what the VAT consequences would have been if the subsidiary would had made compensation to the parent company in the event of being the margin too low. Because those payments in the opposite direction involving compensation for the losses of a subsidiary are often treated as remuneration in the other direction. This remains unclear. It also remains unclear what VAT consequences would have been if the language of the intercompany agreement would have been different.

Diana Kurtz: Let's take a step back here. From a German VAT perspective, the court has not presented anything new here, right?

Lukas Hechl: Exactly. So, we now know once more that a service provided in the return for a payment is subject to VAT. Okay, so far, so clear. It is also ruled that the authorities are in principle allowed to verify the right to claim input VAT refund that is requested. And this information request can go beyond the provision of an invoice, so contractual relationships and so on and so forth. And also, the proof on the use of these services for the recipient can be proven or must be proven appropriately.

Diana Kurtz: Janis, how do you see it from a transfer pricing perspective?

Janis Sussick: Yeah, I see it a bit differently, to be honest. So, I understand and agree. The core VAT conclusions might not be too surprising, but I think there are a couple of quite important takeaways, so one of which relates to the case itself and two, relate to the court decision. Let me start with the first takeaway from the case itself. One takeaway that is important in my view is: The classification of year-end adjustments, as it is done by multinational groups, is quite important. So, I see a lot of cases where multinational groups want to perform year-end adjustments and in many cases they have to perform year-end adjustments from a transfer pricing view under the TNMM method. And then they have to basically determine, whether these year-end adjustments are classified as services or transfer pricing adjustments to tangible goods transactions, or whether they classify it as lump-sum payments that are outside of the scope of VAT. And in the past, I've sometimes heard the opinion that this classification does not really matter because – at least within the European Union – there is no real cost associated to VAT topics. It's more of a compliance issue to get all the filings correct, but many companies and observers were of the opinion that if a group is entitled to full VAT deduction, based on its business and services, there wouldn't be any real costs associated to not getting this topic right. But I think this case now has shown that indeed the taxpayer that was subject to this case, Arcomet, they faced real costs due to an unclear classification of year-end adjustments. So, this taxpayer here classified it as services in the first two years and then as outside of the VAT scope for the third year. And with both of their classifications they face challenges, ultimately from the Romanian authorities. And they faced actual costs because they were not allowed to deduct the VAT in Romania. So that's one key take away, which I think raises the importance of the overall topic and should be considered. And then there are two takeaways from the court decision itself, which are more helpful than the first one I just described. Firstly, the court explicitly said that even highly flexible remuneration formulas, that we can write in intercompany agreements, they are still specific enough, concrete enough to serve as an acceptable remuneration for VAT purposes. Some companies, some observers I'm aware of, were so far in doubt whether a formula approach is sufficiently clear for VAT purposes, but here the court has given some helpful comments that this can be sufficient in order to classify as a service transaction in this case. And the second one – also helpful from my perspective – Is that the court explicitly referred to the intercompany agreement language in this matter. As I said before, the court classified these payments as intercompany services and made

a clear link to the wording in the intercompany agreement. That can mean that the taxpayer does have some influence on how payments are classified by putting the appropriate language into the intercompany agreement. So, in the transfer pricing world – where I'm typically working in – we have a lot of OECD definitions which go in the direction substance over form, reclassification of transactions, checking whether the actual conduct is fully in line with intercompany agreements, and one could get the impression that the language in intercompany agreements is getting less and less important over time. But here the court has made a clear reference to the language in the agreement, which in my view is helpful, because it means that once a taxpayer has determined the amount for a year-end adjustment, they can think about the classification, link it to an existing transaction type that actually takes place in practice, and then also include the relevant wording in the intercompany agreement. And would then have a consistent picture that would hopefully be helpful in similar cases.

Diana Kurtz: Okay, so maybe in one sentence from a transfer pricing perspective, the ruling is so decisive because?

Janis Sussick: Because in practice, a lot of multinational groups are faced with the situation where they basically want to adjust profits of their subsidiaries and where they have to do so under TP logics. And in many cases, only in the second step, they need to then characterize the invoice or the payment. Either as a goods transaction, adjustment or service fee or a lump-sum agreement, as I mentioned before. And now we have some additional guidance here on what can be acceptable and how the language and intercompany agreements plays a role for the classification.

Diana Kurtz: Catalina, what about the implications of the case from a Romanian perspective?

Catalina Cojocaru: So, the Romanian legislation is in line with the VAT directive and same implications should arise also in Romania. From a practical perspective, my concern is that the conclusion in this judgment might be separated in some cases by the tax authority, even if the court highlighted that the VAT treatment should be analyzed on a case-by-case basis.

Diana Kurtz: Overall, the case triggered mixed reactions in the EU member states. Some viewed the decision as a landmark ruling, while others assured what just said Lukas, that it does not include any new VAT findings. Why is that?

Lukas Hechl: First, you have to know that the different EU member states also have different approaches to VAT. So, while in some restrictions it would be highly unusual to see tax authorities collecting VAT under the reverse charge mechanism, at the same time deny the corresponding input VAT deduction on the same transaction. Because this was the case here in Romania. In Germany, in principle unthinkable. There is considerable uncertainty in this respect. And second, when it comes to year-end adjustment in the European Union, companies cannot assume that everything is all right because there are no customs issues and like Janis said, VAT is only a matter of compliance involving the compliance obligations, preliminary and possible NL VAT returns and EC sales lists. So, this is the key takeaway from this case from a VAT perspective.

Diana Kurtz: Catalina, can you add to this? Is this something you see more often in Romania?

Catalina Cojocaru: Indeed, there are numerous such cases in Romania. Usually, the tax authority agrees that the service has been provided, otherwise no supply, no VAT, one may say. But they argue that the taxpayer did not prove that the services have been actually supplied for business

purposes. As Lucas mentioned, this was also Arcomet's case. Coming back to the ECJ case, the court noted that the tax authority could require Arcomet Romania to establish that the input services concerned have been actually provided and that Arcomet Romania has actually used them for its own taxables transaction. Here, one interesting thing is that the court also shared its own opinion somehow in this respect, mentioning that the services that Arcomet Belgium has provided, had an effect on Arcomet Romania, operating profit margin through the settings which they enabled it to make, and the improvement of the service provided to end customers. So, I do agree that this decision on VAT comes with limited, or let's say not specifically new arguments, but still there are some takeaways. The transfer pricing price can constitute an actual consideration. Arcomet Belgium was actively involved and was not acting as a pure holding company. The existence of the direct link cannot be put into question by the remuneration arrangement. As also Janis and Lukas mentioned earlier, remuneration is neither voluntary nor uncertain, nor difficult to quantify in the court's view. And what's also interesting is that they've confirmed again that the direct link is not broken, even if Arcomet Romania would have ended up in a lost position. For me, this remains a question mark. What would that transaction be qualified as? An adjustment or financing service? Can we change the nature of a service, depending on the financial results of the operating company?

Diana Kurtz: Okay, let's deep dive into the second key issue of the Arcomet case, relating to the documentation requirements for input tax deduction now. Under the premise that intra-group services are taxable: What kind of evidence is a service receiving entity required to deliver to be entitled to deduct input tax? Certainly, holding an invoice is required, but are the tax authorities entitled to request more, Lukas?

Lukas Hechl: For claiming the input VAT, beneficiary must first prove that the received supply of goods or services made by another taxpayer is used for the recipient's business activity. In the Arcomet case at hand, the Romanian authorities denied the right of input VAT deduction on that reason, that Arcomet Romania had not demonstrated that the services purchased were actually provided. The Romanian authorities also invoked that the Romanian entity failed to prove the link between services received and its own output sales.

Diana Kurtz: A substance over form concept. The tax authorities are not allowed to deny input tax deduction if they already had sufficient other information to assess the substantive input tax deduction requirements. In other words, input tax deduction must be granted if the substantive requirements are met, even if the taxable person has not fulfilled certain formal conditions. Conversely, the Arcomet case, the Romanian tax authorities argued that the Arcomet Romania failed to adduce the required proof or the service and its usage for taxable output supplies.

Catalina Cojocaru: Additionally, the Romanian government argued that the invoices were too imprecise, as they did not indicate the nature and quantity of the services, the hour spent on the services, the resources used and the method of calculating the rate.

Diana Kurtz: This court's answer in this respect. Can the tax authorities ask for more documents than just invoices to verify the material input tax requirements to assess if services had been rendered and used for taxable output supplies? Meaning for business purposes of the taxable person claiming input tax deduction?

Catalina Cojocaru: Yes, but evidence required must be necessary and proportionate for the purpose of assessing whether the substantive conditions for the right of deduction are satisfied.

Lukas Hechl: The tax authorities are not limited to examining the invoice itself, but are also entitled to demand further documentation to enable the authorities to assess whether the right to claim the input VAT is to be granted or not.

Diana Kurtz: Surprisingly, Romanian tax authorities also denied input tax deduction on the grounds that acclimate Romania did not evidence the need and appropriateness of the input service for taxable output supplies. This argument seems not in line with the principle of neutrality.

Lukas Hechl: The common system of VAT ensures the neutrality of taxation of all economic activities, whatever on their purpose or result, as long as the transaction itself is subject to VAT. And as already outlined in previous rulings, the profitability of the input supply is irrelevant. So in this respect, the Arcomet ruling is consistent with previous Court of Justice judgments.

Catalina Cojocaru: This means that comprehensive detailed documentation, clearly indicating that the service was provided and used for taxable output transaction, is key for input tax deduction, as the burden of proof is on the taxable person who claims the right to deduct input tax. There is the question that remains is: How can practitioners manage the transaction level granularity service documentation that seems to be required, especially with remuneration on transaction net margin method?

Diana Kurtz: We will see if the Court of Justice will provide further practically useful clarification in the next case, currently pending before the Court of Justice, relating to the interplay between transfer pricing and value-added taxes: Stellantis Portugal, on the question of whether retrospective transfer pricing adjustments to achieve a minimum profit margin constituted taxable service, if the adjustment has been documented by means of a credit or debit note. A big thank you to all of you for your input and your time. See you soon.

Lukas Hechl: Thanks everybody. Talk to you soon.

Janis Sussick: Thank you. Bye-bye.

Catalina Cojocaru: Thank you.