IFA / IVA WEBINAR REPORT

TRANSFER PRICING ADJUSTMENTS AND VAT: BRIDGING THE GAP BETWEEN DIRECT AND INDIRECT TAXES

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Chair

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Speakers

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1. Introduction

The webinar brought together diverse perspectives to explore the Value Added Tax (VAT) implications of transfer pricing adjustments and to address the need to bridge the gap between direct and indirect tax aspects of transfer pricing. The panel discussions highlighted that while transfer pricing adjustments are traditionally rooted in corporate income taxation, their downstream effects for VAT, customs, and compliance can be significant in practice. The webinar provided the audience with a general overview of VAT legislation relating to transfer pricing adjustments, recent VAT case law of the Court of Justice of the European Union (CJEU), transfer pricing adjustments from the direct tax perspective, and challenges faced by businesses across Europe and Latin America.

2. Main Topics Discussed

2.1. EU VAT Legislation

The webinar started with a general overview of the European Union (EU) VAT legislation and highlighted that Articles 72 and 80 of the Council Directive 2006/112/EC[1] (EU VAT Directive) relate to transfer pricing, referring to the market value and the taxable amount. Accordingly, Article 72 defines the concept of open market value, while Article 80 introduces an anti-avoidance mechanism allowing Member States, in specific circumstances, to adjust the taxable amount to that market value where transactions between related parties may otherwise distort VAT outcomes. Even though these articles constitute the relevant legislation concerning VAT and transfer pricing, it was noted that transfer pricing adjustments may have broader implications beyond the adjustment on the VAT base. Accordingly, a broader analysis from the perspectives of the fundamental principles of VAT needs to be conducted.

[1] Directive - 2006/112 - EN - VAT directive - EUR-Lex

Building on this foundation, the discussion turned to guidance from the VAT Expert Group and the VAT Committee. The VAT Expert Group recommended in VEG No 071 REV2 that for simplification purposes transfer pricing adjustments should be considered outside of the scope of VAT, or business-to-business transactions when both parties involved have a full right to deduct input VAT.

Furthermore, the VAT Committee prepared Working Paper No. 923[2] to address the possible VAT implications of transfer pricing. It was highlighted that the VAT Committee outlined certain conditions to determine whether a transfer pricing adjustment may give rise to VAT implications. Accordingly, in order for Articles 72 and 80 of the EU VAT Directive to be applicable in the case of a transfer pricing adjustment, there should be a supply of goods or services and an actual element that could be identified as extra consideration for the supply already made, as well as a direct link between the supply and such consideration. The overview of EU VAT legislation highlighted the complexity of determining the VAT consequences of transfer pricing adjustments and the need for careful, case-by-case analysis.

2.2. CJEU VAT Case Law

Following the general overview of EU VAT law, two recent CJEU cases were discussed, providing further practical insights into the relationship between transfer pricing adjustments and their VAT implications. First, the judgment of the CJEU of 4 September 2025, Arcomet, C-726/23, EU:C:2025:64[3], addressing the VAT treatment of transfer pricing adjustments made by following the transactional net margin method (TNMM), was analyzed. The Arcomet case illustrated that transfer pricing adjustments can, in certain circumstances, qualify as taxable supplies of services, particularly where they are embedded in a contractual framework, based on reciprocal obligations, and reflect the real value of services

[2] 923 - VAT Implications of Transfer Pricing.pdf.

[3] The judgment of the CJEU of 4 September 2025, Arcomet, C-726/23, EU:C:2025:64, *see* at EUR-Lex - 62023CJ0726 - EN - EUR-Lex.

provided within a group. It was highlighted that, while the *Arcomet* case brought some clarity that, under certain circumstances, transfer pricing adjustments can qualify as a taxable transaction. The key lesson drawn from the discussion of the Arcomet case was the importance of contracts and substantiating when a transaction really exists.

The Stellantis case was addressed as an opportunity to eliminate uncertainties in the *Arcomet* case. While there had not been an issued CJEU decision on this case yet, the Opinion of Advocate-General Kokott of 15 January 2026, Stellantis, C-603/24, EU: C:2026:21 was considered as a step to provide clearer analytical tools, distinguishing between, on the one hand, retrospective price adjustments to existing transactions, services or goods and a separate and remunerated service from an underlying contract (in the scope of VAT), and, on the other hand, mere profit allocations with no impact on the price of transactions or unilateral profit adjustments by the tax authorities (outside of the scope of VAT)[4]. If this position were upheld by the CJEU, it would represent a simpler and more practical outcome.[5]

The panel concluded the CJEU VAT case law section by stressing the importance of (1) contracts for intra-group arrangements and (2) drafting the transfer pricing documentation, also considering the VAT perspective, as the transfer pricing characterizations may diverge from the VAT treatment applied within the group.

[4] The Opinion of Advocate-General Kokott of 15 January 2026, Stellantis, C-603/24, EU: C:2026:21, *see* at EUR-Lex - 62024CC0603 - EN - EUR-Lex.

[5] The Judgment of the CJEU of 13 May 2026, Stellantis, C-603/24, EU:C:2026:404 ruled that the transfer pricing adjustment does not constitute a supply of services effected for consideration and therefore not subject to VAT. While the judgment did not directly consider all transfer price-related adjustments out of the scope of the VAT, it provides greater clarity in situations where an adjustment constitutes a retrospective correction of the price for profit allocation purposes, rather than consideration for a separate supply. *See* the judgement at EUR-Lex - 62024CJ0603 - EN - EUR-Lex.

2.3. Direct Tax Aspects of Transfer Pricing Adjustments

The direct tax expert on the panel began by inquiring into the nature of the arm's length principle. It was noted that while the arm's length principle is not transactional in theory, it necessarily becomes transactional in practice. Transfer prices must be tested on a pre-tax basis for specific dealings between associated enterprises. In this case, the same transaction may be viewed differently by VAT and transfer pricing specialists, even though both analyses relate to the same underlying supply.

The discussion then again turned to the importance of the contracts in the case of transfer pricing adjustments. From the perspective of the direct tax aspect of transfer pricing adjustments, it was noted that contracts play an important role, but, in contrast to the VAT perspective presented, only serve as a starting point. What ultimately matters is the accurate delineation of the transaction by analyzing the economically relevant characteristics (contract terms, characteristics of what is supplied, economic circumstances, business strategies, functions performed, assets used, and risks assumed. An analytical framework related to risk assumption is laid down in the OECD TP Guidance, serving as a threshold test to be honored provided actual conduct does not derogate materially.

From a direct tax perspective, it was concluded that neither the TNMM as such nor year-end true-ups are inherently problematic. What matters is how adjustments are framed and linked to the underlying transactions, as unclear contractual arrangements may lead to divergent qualifications, particularly where VAT is concerned. The discussion underlined the need for greater awareness of VAT considerations within transfer pricing analysis and also the other way around. A clear delineation of the transaction covering the nature of the supply, functions, risks, decision-making, and true-up mechanics is essential to ensure coherence between transfer pricing outcomes and indirect tax treatment.

2.4. Transfer Pricing and VAT Challenges from a Business Perspective

2.4.1. Europe

From a European business perspective, the panel highlighted that transfer pricing adjustments made for a bundle of products supplied may appear acceptable at any entity level. However, from the perspective of VAT, it often creates significant challenges. In practice, VAT requires that where transfer pricing adjustments relate to sales of goods, they must be reflected per product, per transaction, and per ship-from and ship-to relationship. Aggregating adjustments at the entity level or focusing only on a limited number of high-value products may therefore lead to distortions, including negative prices.

Furthermore, it was noted that e-invoicing within the scope of the EU norm under EN 16931 requires that a correction document must make reference to the corrected invoices.[6] This documentation, then, will need to be reported under the VAT in the Digital Age (VIDA) package digital reporting requirements, which will be effective from 1 July 2030. The VIDA will lead to a union-wide information exchange system for the purposes of VAT investigations. Nevertheless, the panel noted that it cannot be excluded that the collected data may also be used for direct tax audit purposes, such as transfer pricing-related concerns.

Furthermore, as regards Article 80 of the EU VAT Directive, which is a targeted anti-avoidance rule, this provision is relatively recent, and historical national derogations, particularly in older EU Member States, have led to divergent practices. For instance, Germany has long applied minimum tax base rules between related parties, irrespective of input VAT deductibility, and hence without anti-avoidance restrictions. This approach was only recently abandoned following

[6] EN 16931 is a European standard for e-invoicing. *See* https://ec.europa.eu/digital-building-blocks/sites/spaces/DIGITAL/pages/467108661/European+Standard+and+Specifications.

a ruling of the German Federal Tax Court, confirming that Article 80 EU VAT Directive must now be applied in line with its EU law conditions.

The challenges of transfer pricing adjustments from the perspectives of trade and customs were also highlighted. Especially, it was noted that adjustments may affect preferential origin calculations under free trade agreements, which often depend on value-added thresholds. Changes to the value composition of goods caused by transfer pricing adjustments may therefore result in the loss of preferential origin status, preventing businesses from certifying origin to customers and potentially jeopardizing commercial relationships.

2.4.2. Latin America (LATAM)

The discussions further continued with the LATAM business perspective, noting that most of the challenges raised from a European perspective are also valid for LATAM, with certain region-specific additional concerns. It was noted that transfer pricing adjustments often become a significant business risk, not because of the adjustment as such, but because of the wide range of consequences that follow. In practice, such adjustments frequently affect not only corporate income tax, but also VAT, customs duties, enterprise resource planning (ERP) systems, cross-border documentation requirements and cash flow.

The discussion highlighted a structural tension between transfer pricing and VAT perspectives. While transfer pricing operates on a market value, analyzing functions and risks with a focus on annual outcomes, VAT is transaction-based and linked to individual supplies of goods or services and their consideration. Special attention was drawn to exporters, who are particularly common in LATAM. Although exports are often zero-rated for VAT purposes, transfer pricing adjustments that modify export prices can affect VAT declarations, VAT refunds and ultimately cash flow.

Customs risks were identified as even more pronounced in the LATAM context. Unlike the EU, the region lacks harmonized VAT and customs rules, and coordination between tax and customs authorities is often limited. Custom duties are generally assessed based on the price paid at the time of import, meaning that post-import transfer pricing adjustments may trigger amended customs declarations, additional duties, penalties and interest. Businesses are therefore faced with the challenge of identifying alternative mechanisms that allow them to manage transfer pricing adjustments without creating disproportionate customs exposure.

Beyond compliance, transfer pricing adjustments increasingly give rise to operational challenges, requiring coordination across finance, legal, logistics and tax teams. Against this background, it was stressed that the real challenge is not how to make an adjustment, but how to design a transfer pricing policy that avoids unnecessary VAT and customs risks in the first place.

Looking ahead, several forward-looking solutions were discussed. These included the use of data analytics and AI-driven tools to monitor results more frequently and reduce year-end true-ups; the creation of internal decision matrices before booking adjustments; and, in the longer term, the development of fully integrated tax and customs systems. The panel concluded that transfer pricing adjustments should be viewed as a governance issue rather than a purely technical exercise, requiring close alignment between transfer pricing, VAT and customs valuation logic.

3. Conclusions and Key Takeaways

The panel discussion highlighted that transfer pricing, VAT, and customs are closely interconnected and should not be treated in isolation. Transfer pricing adjustments were repeatedly described as a governance issue rather than a purely technical exercise, with potential impacts across VAT treatment, customs valuation, cash flow and compliance. In an environment of increasing audits, case law, and digital reporting, stronger coordination between direct and indirect tax functions and greater alignment of methodologies, contracts, and operational practices were identified as essential to managing risk effectively.

The differences in characterization between transfer pricing, VAT, and customs have been highlighted as a major source of risk for businesses operating cross-border transactions. Although these tax areas often assess the same facts, they apply different concepts and rules, which can lead to inconsistent outcomes and cascading consequences.

In conclusion, the panel noted that the interaction between transfer pricing, VAT and customs is likely to intensify rather than diminish in the near future, especially in the current geopolitical context and for countries where there is not horizontal integration of all the tax procedures affecting the same transaction. Addressing these challenges requires not only technical expertise but also integrated governance, cooperation, and a shared understanding between all stakeholders.