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Transfer pricing adjustment – when are we really talking about Article 11e CIT adjustment and how to combine it with VAT?

Transfer pricing adjustments – general approach

Transfer pricing corrections are a natural part of settlements between related entities. The aim is to ensure that the financial result obtained in intra-group relations complies with the *arm's length principle*. The Polish CIT Act provides for a special regime – Article 11e – concerning the so-called transfer pricing adjustment within the meaning of this article. However, not every correction (adjustment) of the financial result, price or cost allocation is an adjustment under Article 11e, and the settlement consequences may vary for both CIT and VAT.

Conditions for applying the adjustment under Article 11e CIT

In order to apply a transfer pricing adjustment under Article 11e CIT, all of the following conditions must be met:

1. the terms and conditions of controlled transactions are those that would be agreed upon by unrelated entities (ex ante),
2. there has been a change in significant circumstances or actual cost/revenue data has been disclosed requiring the result to be adjusted to market levels (ex post),
3. the taxpayer has confirmation of a parallel adjustment by the related entity (symmetry),
4. there is a legal basis for the exchange of tax information with the country of the related entity.

Not every price correction is an adjustment under Article 11e CIT

Many corrections relate to the ongoing adjustment of the settlement model and do not meet the criteria of Article 11e. In such a case, the general rules apply: Article 12(3j)-(3m) CIT (revenues) or Article 15(4i)-(4k) CIT (costs).

However, caution should be exercised in this case, as not all corrections that do not meet the conditions of Article 11e can be recognized under the general rules, especially if they lead to a reduction in the tax base.

An example of a correction made under general rules is interpretation 0111-KDIB1-1.4010.581.2024.2.MF of December 13, 2024, in which the Director of the National Tax Information ruled that a correction consisting in the adjustment of planned costs and allocation keys during the year, in accordance with the adopted settlement model, is not an adjustment under Article 11e. This is because there was no unforeseeable change in market conditions and the adjustment was not retrospective in nature.

Adjustments and VAT – when are they subject to VAT and when are they neutral?

The current interpretation of the tax authorities indicates that the assessment of VAT effects depends on whether the adjustment results in a change in the remuneration for specific supplies or services.

If the adjustment:

- does not change the remuneration for specific services,
- concerns only an adjustment of the level of profitability,
- does not affect unit prices,

it remains outside the scope of VAT and should be documented with an accounting note. This is confirmed, among others, by interpretation 0111-KDIB3-3.4012.170.2024.4.JSU of July 9, 2024.

However, if the adjustment:

- changes the price of a specific supply or service,
- affects the tax base,
- constitutes part of the remuneration for the service,

it is subject to VAT and requires the issuance of a corrective invoice.

Arcomet case (C-726/23) – CJEU judgment

In the Arcomet case, the CJEU ruled that if the remuneration agreed between related companies corresponds to a portion of the operating margin above a certain level (2.74%), and the method of its calculation is directly derived from the contract and is directly related to the service provided to the related entity, this constitutes a supply of services for consideration subject to VAT. This means that in some profitability adjustment models, if they reflect actual services rendered, the TP adjustment may give rise to VAT on the adjustment.

Stellantis Portugal (C-603/24) – Opinion of the Advocate General

In another case, Stellantis, concerning VAT on TP adjustments, no judgment has yet been handed down. Advocate General Juliane Kokott, in her opinion of January 15, 2026, pointed out that:

- the classification of a TP adjustment for VAT purposes depends on its actual economic content,
- an adjustment may be considered a service if it corresponds to actual intra-group supplies,
- the adjustment may be VAT neutral if it relates solely to the allocation of profits and does not affect the remuneration for specific supplies/services,
- the adjustment may constitute a change in the VAT taxable base if it relates to a variable purchase price.

The opinion is not binding, but it indicates the direction of a possible CJEU ruling.

Summary

In practice, there is no uniform approach to the tax consequences of transfer pricing adjustments. Each price adjustment between related entities requires a separate analysis:

- first, from the perspective of income tax: whether the conditions of Article 11e CIT are met, whether it is an adjustment under general rules,
- secondly, from the VAT perspective: does the adjustment affect the remuneration for specific services, or is it merely an adjustment of the level of profitability.

Conducting a tax impact analysis will ensure correct accounting and tax treatment of adjustments and minimize the risk of disputes with the authorities.

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