



Meijburg & Co
Tax & Legal

Transfer Pricing and Indirect Taxes

Best
practices for
an integrated
approach



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01. Why this matters now


Transfer pricing (TP), VAT and Customs are often managed separately, but in practice they are deeply interconnected. Once TP adjustments are made, they can trigger VAT consequences and affect customs valuation. That means TP decisions do not only influence CIT outcomes, but can also create indirect tax risk, compliance burdens and cash leakage.

The treatment of TP adjustments for indirect tax purposes is currently a key focus area in European policy and case law of the Court of Justice of the European Union (“CJEU”). European tax and customs authorities now closely scrutinize TP-related flows. Key risks include:

- Additional VAT assessments, interest and penalties.
- Denial of VAT recovery.
- Post-clearance customs duty assessments or denied customs duty refund claims, rejection of customs valuation method applies, interest and penalties.

For multinationals, TP can no longer be designed and managed in isolation. The way prices are set, adjusted and settled should be aligned across CIT, VAT and Customs and consistently reflected in (legal) contracts, invoices and ERP systems. Pursuant to recent landmark case law at the intersection of TP, VAT and customs, businesses can no longer justify inaction by pointing to a lack of clarity.

Hereafter, we will briefly discuss the key risks, the potential consequences and the best practices for an integrated approach to mitigate risks and create opportunities.



The risks are real, but so are the opportunities for businesses that take an integrated approach early. Meijburg & Co’s integrated tax and legal services can help you assess your current position, identify priority areas in terms of risks and opportunities and define next steps.

Recent relevant case law includes

Customs

CJEU judgement in Hamamatsu (C-529/16)

Residual profit split TP adjustment after importation of goods

The CJEU held that where imported goods are declared using a provisional price and later subject to a retrospective flat-rate residual profit adjustment, that provisional price cannot serve as the customs value if, at the time of importation, it is not yet known whether that adjustment will be upward or downward.

This landmark ruling triggered significant debate within the customs community regarding the compatibility of retrospective TP adjustments with the transaction value method and the appropriate mechanism for reporting retrospective customs valuation adjustments. It also underscores the importance of assessing the customs implications of TP adjustments upfront to avoid customs underpayments and overpayments.

CJEU judgement in Tauritus (C-782/23)

Ex-post variable price-adjustments after importation of goods between third parties

The CJEU appears to limit the scope of Hamamatsu, holding that the transaction value method may still be used where provisional prices apply, provided that the final price is determined on the basis of objective criteria agreed in advance between the buyer and the seller.

In such cases, a simplified customs declaration procedure may need to be used to reflect post-clearance price adjustments. Although the Tauritus ruling does not directly concern transfer pricing adjustments, it offers valuable insights into the broader interaction between transfer pricing and customs valuation.

VAT

CJEU judgement in Arcomet Towercranes (C-726/23)

Profit based TNMM adjustment from head office to operation company

TP-based conditional and variable adjustments can constitute VAT taxable consideration if they are directly linked to a supply of goods or services, especially if there is an underlying agreement that indicates that the adjustment is a consideration for a specific supply.

Businesses should assess whether TP-based fees reflect identifiable services or functions performed within the group and ensure that the contractual and invoicing framework is aligned with the actual supplies and charges are made to the actual users of the supplies within the group to avoid denial of VAT recovery and cash leakage.

CJEU judgement in Stellantis Portugal (C-603/24)

Profit based TP adjustments considering costs for car warranty services incurred by a sales entity

Transfer pricing adjustments under an agreement that merely ensures a fixed profit margin for the purchaser and does not contain any clauses that point to a legal relationship between the parties, do not in themselves constitute VAT taxable consideration for an identifiable supply.

Such TP adjustments may be treated as ex-post price adjustments of previous supplies for VAT purposes which can lead to VAT corrections (upwards or downwards). This has implications for credit/debit notes, VAT reporting and cash flow.

In the same case the Advocate General ('AG') distinguishes three categories of TP adjustments: (1) TP adjustments unilaterally made by the tax authority when determining taxable profit, (2) TP adjustments resulting from actually agreed and supplied services between group companies, and (3) TP adjustments intended to definitively determine the (variable) price of previous supplies, each of which is subject to a different VAT treatment. The CJEU did not go into this any further. However, these considerations of the AG remain helpful.

02. TP adjustments and VAT

The key VAT question in relation to TP adjustments is whether the adjustment (1) falls outside the scope of VAT, (2) constitutes consideration for a separate service, or (3) represents a correction of the VAT taxable amount relating to previously supplied goods/services.

Recent CJEU case law provides guidance on how profit-based adjustments can be analyzed for VAT purposes. There is no one-size-fits-all answer: each adjustment must be assessed in light of relevant facts and circumstances, including the TP documentation, intercompany agreements and other (legal) supporting documentation.

Based on this assessment, potential outcomes can be:

Out of scope for VAT

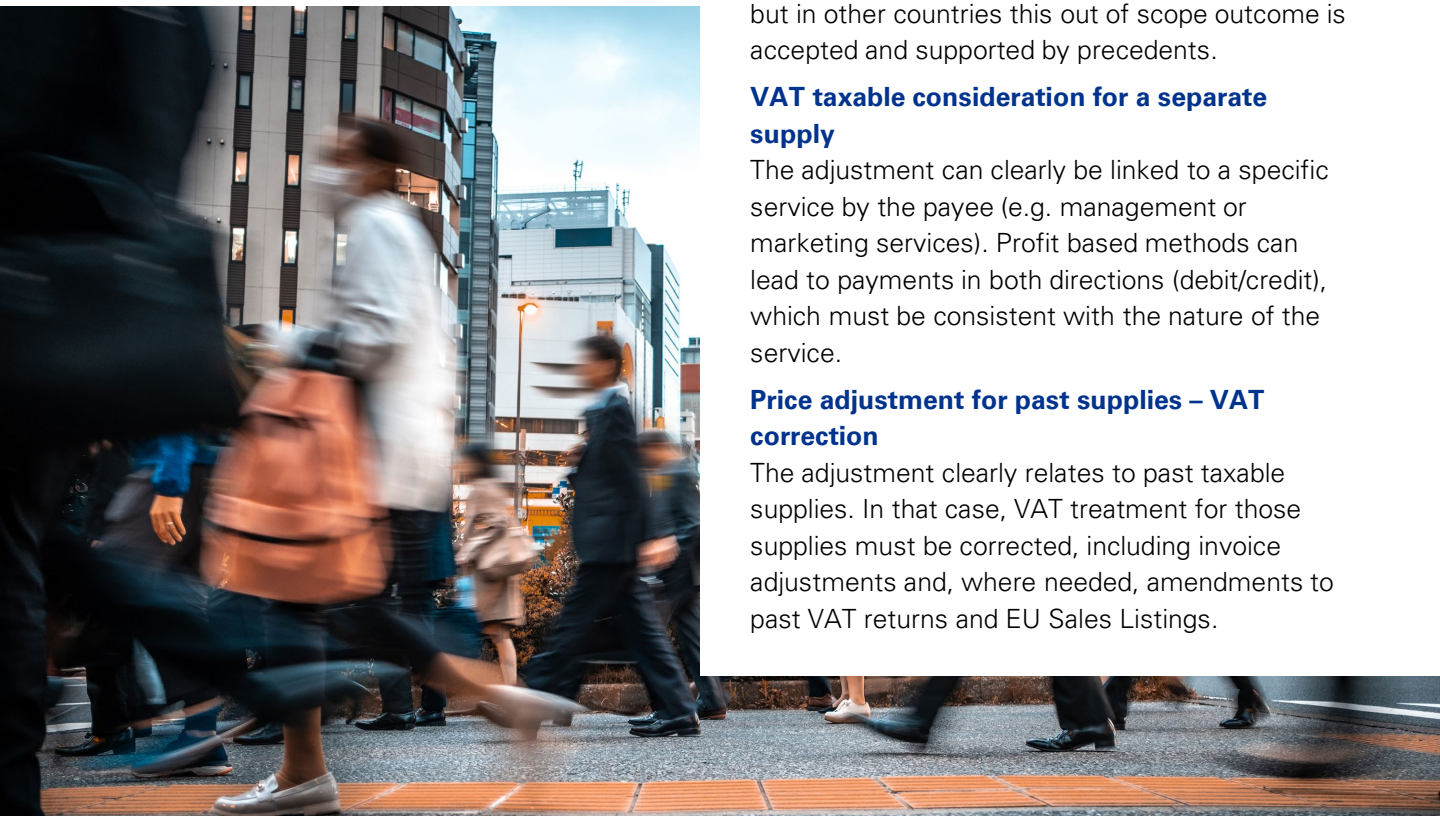
The adjustment is mainly CIT driven and cannot be linked to specific supplies. It is a general business-level correction. Some tax authorities are critical, and case law shows a trend towards VAT taxation, but in other countries this out of scope outcome is accepted and supported by precedents.

VAT taxable consideration for a separate supply

The adjustment can clearly be linked to a specific service by the payee (e.g. management or marketing services). Profit based methods can lead to payments in both directions (debit/credit), which must be consistent with the nature of the service.

Price adjustment for past supplies – VAT correction

The adjustment clearly relates to past taxable supplies. In that case, VAT treatment for those supplies must be corrected, including invoice adjustments and, where needed, amendments to past VAT returns and EU Sales Listings.



[Title]

LOW VAT UNCERTAINTY

Unilateral/CIT-only adjustments

- Adjustments imposed by Tax Authorities; or
- Adjustments solely reflected in CIT return
- No 'real-world' settlement

Generally speaking, no consideration acknowledged for VAT purposes

Out of scope for VAT

MEDIUM VAT UNCERTAINTY

Fixed, transaction-based TP charges

- Charges based on cost-plus or CUP methods
- Payments can be linked to actual supplies of goods or services
- Commercially reflected in accounts

Generally speaking, VAT taxable consideration for supply. Recovery depends on use by customer

VAT taxable – documentation critical

HIGH VAT UNCERTAINTY

Profit-based TP adjustments

- Adjustments based on TNMM / (residual) profit split methods
- Often period-based / retrospective
- Upwards or downwards

Can these payments be linked to actual supplies (either past supplies or a separate one)? Recovery of any VAT depends on use by customer

Case-by-case analysis – documentation critical

← Tax reality

Economic reality

Tax/economic reality →

VAT recovery

If VAT is due on a TP charge or adjustment, a separate question is whether the recipient of the supply is entitled to recovery of that VAT. Authorities increasingly require that:

The recipient (the payer of the TP adjustment) actually uses the supply for its own taxable activities.

Where only certain "entrepreneur" entities bear TP charges, it should be documented why they can be regarded as the economic users of the services to protect VAT recovery.

Clear and consistent TP documentation and intercompany agreements are critical to support VAT recovery. Without clear, documented alignment between the charge and the actual use, VAT recovery may be challenged.

E invoicing and compliance

Correct VAT determination is becoming even more important as e-invoicing and digital reporting requirements expand across jurisdictions. Invoices must be issued and reported correctly within very short timelines, in some cases in near real time. Increasingly, tax departments do not have the time to decide on the treatment after the fact and tax authorities have more information than ever and can more easily identify potential areas of dispute. Especially if TP adjustments qualify as ex-post price adjustments, correcting previously issued invoices and reporting can become complex, time-consuming and costly. Without a clear, documented VAT position, TP adjustments can lead to heavy compliance burdens and higher audit risk.

03. TP adjustments and Customs

Where TP is applied to intercompany transactions involving imported goods, it is important to assess the potential impact on customs valuation. Businesses should assess whether the transfer price may be used as the basis for customs valuation of imported goods and, where applicable, consider how post-clearance TP adjustments could impact the customs value originally declared.

Even if a TP adjustment is not directly linked to a specific intercompany transactions involving imported goods, such correction may still be the trigger for the customs authorities to challenge the customs value and methodology used, forcing economic operators to apply alternative and usually more cumbersome customs valuation methods.

An effective approach involves:

I.

Determining the valuation basis: assess whether the transaction value as primary method can be applied to the transfer price; if not, identify an alternative method.

II.

Assessing post clearance adjustments: determine whether TP adjustments affect the originally declared customs value; distinguish goods from services and allocate adjustments across product categories and Harmonized System (HS) codes where relevant.

III.

Implementation and procedures: choose appropriate adjustment procedures per Member State and consider customs valuations rulings. This may involve considering Centralised Clearance for Import (CCI) scheme for a uniform approach across Member States.

IV.

In the case of downward profit-based adjustments, businesses may benefit from linking the adjustment to specific import transactions in order to support refund claims. However, that approach must be balanced against possible adverse consequences for CIT and VAT, where a less explicit link to individual transactions may often be preferred. Within the group, the right balance should therefore be determined for each TP arrangement and supported by precise documentation.

04. Towards an integrated framework

To manage risk and optimize your tax position, the TP, VAT, Customs and Legal perspectives should be aligned from the outset. The design of TP policies, intercompany agreements and supporting documentation can directly influence VAT treatment, customs valuation and the ability to defend the position in practice.

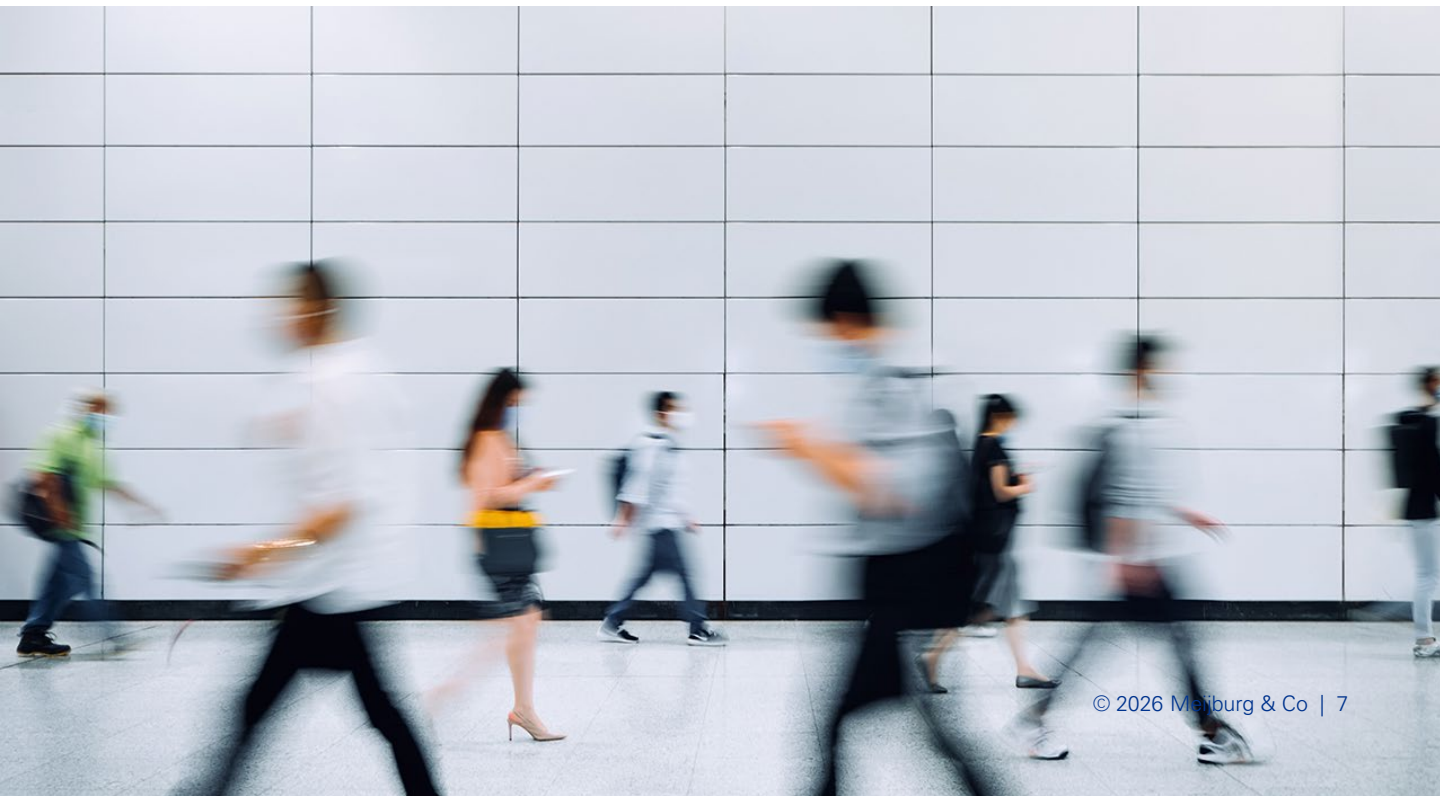
TP policies therefore cannot be designed and implemented in isolation: they also shape indirect tax outcomes and operational compliance. As a result, it is important to assess current and future arrangements from a holistic perspective also considering whether potential adverse VAT or customs consequences can be identified and mitigated.

A holistic framework requires:

- Coordination between CIT, VAT, Customs, Legal, Finance and Operations.
- Consistency between TP policies, contracts, invoices, and ERP/systems.
- A solid Operational Transfer Pricing (OTP) process, ensuring TP policies are correctly implemented in daily transactions and supporting robust and workable indirect tax positions.

Key actions for businesses:

- Map TP arrangements, intercompany agreements and intercompany flows.
- Determine and consistently apply VAT treatment, including for TP adjustments.
- Align (intercompany) agreements and invoices with TP, VAT and customs outcomes.
- Reflect TP adjustments correctly in VAT returns and customs declarations/disclosures.



05. How Meijburg & Co can help

Meijburg & Co's multidisciplinary team consists of tax specialists and lawyers who are admitted to the Dutch bar. It brings together TP, VAT, Customs and Legal specialists to help you design, review and implement intercompany arrangements in an integrated way.

This allows you to manage all disciplines consistently, supported by robust legal documentation and operational processes. A practical starting point is an integrated workshop to assess the current model, identify the key risks as described above and prioritize follow-up actions.

Our support includes

Operational Transfer Pricing (OTP)

- Reviewing how TP policies are embedded in processes and systems.
- Workshops and diagnostics to close gaps between TP design and operational practice.

VAT review

- Classifying TP charges and adjustments (out of scope, separate supply, price adjustment).
- Assessing VAT recovery, risks and optimization options.
- Ensuring positions are reflected in documentation and compliant VAT reporting.

Customs advisory

- Assessing the use of transfer prices for customs valuation.
- Analysing the impact of TP adjustments on imports and designing correction/disclosure procedures.
- Supporting Authorised Economic Operator(AEO) and CCI applications and obtaining valuation rulings where appropriate.

Legal support

- Reviewing and drafting intercompany agreements to reflect economic reality and support TP and indirect tax positions.
- Identifying and mitigating tax and legal risks in line with CJEU case law.

Meijburg & Co can help you diagnose your current position, design a practical integrated framework, support implementation and help negotiating beneficial valuation rulings, so that your TP model is technically robust, operationally embedded and aligned with indirect tax and legal requirements.

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