

TRANSFER-PRICING

Implications for VAT

Companies engaging in intercompany cross-border transactions whereof the remuneration is not calculated on an independent market pricing basis might be subject to transfer pricing rules that could result in adjustments of their profits. However, in addition to income tax consequences, cross border transactions and transfer pricing adjustments may have VAT consequences. In addition, it should be noted that the Luxembourg VAT law under special circumstances foresees the application of an arm's length principle.



WHAT SHOULD YOU BE AWARE OF?

INTRA-GROUP CROSS BORDER TRANSACTIONS WITHIN THE SCOPE OF VAT

Under the Luxembourg VAT law, a supply of goods or services is generally within the scope of VAT when made for consideration by a taxable person. The general VAT rule provides that the taxable amount of the supply is everything that constitutes consideration (the subjective value), i.e., the price actually paid or deemed to be paid. The transaction could be subject to VAT or VAT exempt, resulting in different VAT implications and obligations for the recipient and the supplier.

The application of transfer pricing rules to cross-Border transactions for direct tax purposes could thus have VAT implications which should be checked on a case-by-case basis.

TP ADJUSTMENTS COULD HAVE VAT IMPLICATIONS

Whether or not a TP adjustment also leads to VAT implications depends on the nature of the TP adjustment. It is thus important to identify a specific consideration, a specific supply and, most importantly, a direct link between the supply and the consideration received. If these three elements are present, the TP adjustment will most likely have VAT consequences.

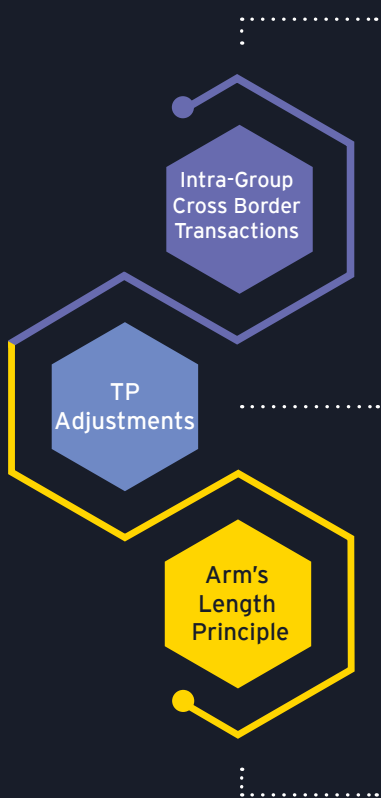
Determining whether a TP adjustment has VAT consequences is therefore not always straight forward. Consequently, circumstances and conditions under which a TP adjustment leads to a VAT adjustment have to be closely analyzed.

THE ARM'S LENGTH PRINCIPLE AS FORESEEN BY THE LUXEMBOURG VAT LAW

While the arm's length principle has generally to be observed in all intragroup transactions under the transfer pricing rules, the scope of the arm's length principle as set out in the Luxembourg VAT law is much narrower. The use of the arm's length principle under the Luxembourg VAT law intends to prevent tax evasion or avoidance in well-defined circumstances.

Such circumstances usually imply that either the recipient or the supplier of the services is not entitled to a full input VAT recovery right.

Consequently, as per the above principles, adjustments may trigger additional VAT liability and input VAT deduction right adjustments.



HOW WE CAN HELP

Our network of dedicated indirect tax professionals combines deep technical and industry knowledge. We can advise you on the VAT implications already upon the structuring of the TP flows and work with you to mitigate adverse VAT consequences resulting from intragroup transactions and/or the arm's length principle with alternative structures for the flows.



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