Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

4 September 2025*

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Scope of VAT – Article 2(1)(c) – Concept of 'supplies of services for consideration' – Commercial services provided within the same group of companies – Transfer price – Articles 168 and 178 – Right to deduct VAT – Supporting documents)

In Case C-726/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Bucureşti (Court of Appeal, Bucharest, Romania), made by decision of 16 September 2021, received at the Court on 28 November 2023, in the proceedings

SC Arcomet Towercranes SRL

v

Direcția Generală Regională a Finanțelor Publice Bucureşti,

Administrația Fiscală pentru Contribuabili Mijlocii București,

THE COURT (First Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, A. Kumin, I. Ziemele and S. Gervasoni, Judges,

Advocate General: J. Richard de la Tour,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 16 January 2025,

after considering the observations submitted on behalf of:

– SC Arcomet Towercranes SRL, by M. Farcău and A. Slujitoru, avocați,

– the Romanian Government, by E. Gane, L. Ghiță and A. Rotăreanu, acting as Agents,

– the European Commission, by A. Armenia and E.A. Stamate, acting as Agents,

* Language of the case: Romanian.

after hearing the Opinion of the Advocate General at the sitting on 3 April 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1)(c) and Articles 168 and 178 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('the VAT Directive').

2 The request has been made in proceedings between SC Arcomet Towercranes SRL ('Arcomet Romania'), on the one hand, and the Direcția Generală Regională a Finanțelor Publice București (Regional Directorate-General for Public Finances, Bucharest, Romania) and the Administrația Fiscală pentru Contribuabili Mijlocii București (Tax Authority for Medium-sized Taxpayers, Bucharest, Romania) (together, 'the tax authority'), on the other, concerning an application for annulment of the administrative tax measures by which Arcomet Romania was ordered to pay additional value added tax (VAT), together with interest and penalties.

Legal context

European Union law

3 Article 2(1)(c) of the VAT Directive provides:

'1. The following transactions shall be subject to VAT:

…

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such'.

4 Under the second subparagraph of Article 9(1) of that directive:

'Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

5 Article 168(a) of the VAT Directive is worded as follows:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person'.

6 Article 178(a) and (f) of that directive provides:

‘In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI;

…

(f) when required to pay VAT as a customer where Articles 194 to 197 or Article 199 apply, he must comply with the formalities as laid down by each Member State.’

7 Article 199(1) of the VAT Directive states that Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the supplies listed in points (a) to (g) of that provision are made.

Romanian law

The Tax Code

8 Article 11 of Legea nr. 571/2003 privind Codul fiscal (Law No 571/2003 establishing the Tax Code) of 22 December 2003, in the version applicable to the facts at issue in the dispute in the main proceedings (‘the Tax Code’), provides, in paragraph 1 thereof:

‘When establishing the amount of a tax, levy or mandatory social security contribution, the tax authorities may disregard a transaction that has no economic purpose, altering the fiscal effects of such a transaction, or may reclassify the form of a transaction/activity so as to reflect the economic content of the transaction/activity.’

9 Under Article 19(5) of the Tax Code:

‘Transactions between associated persons shall be carried out in accordance with the arm’s length market price principle, according to which transactions between associated persons shall be carried out under conditions that are established or imposed, which must not differ from the commercial or financial relationships established between independent undertakings. When establishing the profits of associated persons, the principles concerning transfer pricing shall be taken into account.’

10 Article 126(1)(a) of that code is worded as follows:

‘(1) For the purposes of VAT, taxable transactions in Romania are those which satisfy the following cumulative conditions:

(a) any transaction which, for the purposes of Articles 128 to 130, constitutes or is treated as a supply of goods or services, within the scope of VAT, for consideration’.

11 Article 145(2)(a) of the Tax Code provides:

‘Any taxable person is entitled to deduct the tax related to purchases where these are intended to be used for the purposes of the following transactions:

(a) taxable transactions’.

12 Under Article 146(1)(a) of that code:

‘In order to exercise the right of deduction, a taxable person must satisfy the following conditions:

(a) in respect of tax due or paid, that relates to goods which have been or are to be supplied to him or her or services which have been or are to be supplied to him or her by a taxable person, he or she shall hold an invoice issued in accordance with the provisions of Article 155, as well as proof of payment in the case of purchases made by taxable persons who apply the VAT on receipt system or by taxable persons who purchase goods/services from taxable persons during the period in which they apply the VAT on receipt system’.

13 Article 150(2) of the Tax Code provides:

‘The tax shall be payable by any taxable person, including by a non-taxable legal person registered for VAT purposes in accordance with Article 153 or 153[1], who receives services the place of supply of which is in Romania under Article 133(2) and which are provided by a taxable person who is not established in Romania or who is not deemed to be established there in respect of those services pursuant to Article 125[1](2), even if [that taxable person] is registered in Romania in accordance with Article 153(4) or (5).’

14 Article 155(4) and (5) of that code provides:

‘(4) Without prejudice to the provisions of paragraphs 30 to 34, the following rules on invoicing shall apply:

(a) in respect of supplies of goods and services the place of supply of which is deemed to be Romania in accordance with Articles 132 and 133, invoicing shall be subject to the provisions of this Article. …

(b) by way of derogation from the provisions of point (a):

…

(5) The taxable person must issue an invoice to each recipient in the following situations:

(a) in respect of supplies of goods or services made;

…’

Government Decision No 44/2004 approving the detailed rules for the implementation of Law No 571/2003 establishing the Tax Code

15 Point 2(2) of Hotărârea Guvernului nr. 44/2004 pentru aprobarea Normelor metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal (Government Decision No 44/2004 approving the detailed rules for the implementation of Law No 571/2003 establishing the Tax Code), in the version applicable to the facts of the dispute in the main proceedings, provides:

'Pursuant to Article 126(1)(a) of the Tax Code, a supply of goods and/or services must be made in return for payment. The condition relating to "payment" entails the existence of a direct link between the transaction and the consideration obtained. A transaction is taxable where it confers an advantage on the customer and the consideration obtained is linked to the advantage received, as follows:

(a) the condition relating to the existence of an advantage for a customer is satisfied where the supplier of goods or services undertakes to provide specific goods and/or services to the person making the payment or, in the absence of payment, where the transaction has been carried out to enable such an undertaking to be entered into. That condition is compatible with the fact that the services were collective, were not capable of being measured precisely or were part of a legal obligation;

(b) the condition relating to the existence of a link between the transaction and the consideration obtained is satisfied even if the price does not reflect the open market value of the transaction, that is, it takes the form of contributions, goods or services, or price discounts, or is not paid directly by the recipient but by a third party.'

16 Point 41 of that decision provides that, for the purpose of applying transfer pricing rules, the Romanian tax authorities must take into account the Transfer Pricing Guidelines adopted by the Organisation for Economic Co-operation and Development (OECD) ('the OECD Guidelines').

Government Order No 92 establishing the Code of Tax Procedure

17 Article 64 of Ordonanța Guvernului nr. 92 privind Codul de procedură fiscală (Government Order No 92 establishing the Code of Tax Procedure) of 24 December 2003 (republished in the *Monitorul Oficial al României*, Part I, No 513 of 31 July 2007) provides:

'The supporting documents and accounting records of the taxpayer shall constitute evidence for the purpose of determining the taxable amount. If other evidentiary documents exist, they shall be taken into account for the purpose of determining the taxable amount.'

18 Article 65(1) and (2) of that order is worded as follows:

'(1) The taxpayer shall have the task of proving the acts and circumstances that were the basis for its returns and any requests addressed to the tax body.

(2) The tax body shall be obliged to provide reasons for the tax assessment notice on the basis of evidence or its own findings.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

19 Arcomet Romania is part of the Arcomet Group, an independent global group in the crane rental sector. In the course of its activity, Arcomet Romania purchases or rents cranes in order to resell or rent them to its customers in Romania. Arcomet Service NV Belgium ('Arcomet Belgium') seeks suppliers for all its subsidiaries, including Arcomet Romania, and negotiates with those suppliers the contractual terms to be applied to its subsidiaries. However, the sales and rental contracts are, in respect of the activity carried out in Romania, concluded by Arcomet Romania both with its suppliers and with its customers.

20 A transfer pricing study in respect of the relations between Arcomet Belgium and its subsidiaries, carried out in December 2010, showed that, concerning the relevant market, the subsidiaries had to record, in accordance with transfer pricing rules, an operating profit margin of between -0.71% and 2.74%.

21 A contract was concluded, on 24 January 2012, between Arcomet Belgium and Arcomet Romania, under which each party undertook to carry out a certain number of services for the other ('the contract of 24 January 2012'). On the one hand, Arcomet Belgium undertook to assume, inter alia, from an operational point of view, the majority of the commercial responsibilities, such as strategy and planning, negotiating (framework) contracts with third-party suppliers, negotiating the terms and conditions of financing contracts, engineering, finance, crane fleet management at central level, and quality and safety management. Arcomet Belgium also bore the main economic risks associated with the activity of Arcomet Romania. On the other hand, Arcomet Romania undertook to purchase and hold all the goods necessary for the exercise of its activity and to be responsible for the sale and rental of those goods and for the provision of services.

22 According to its very terms, the contract of 24 January 2012 provided for remuneration in respect of the activities carried out by the parties equal to the amount necessary to place Arcomet Romania in a position corresponding to the activities which it carried out and the risks which it assumed; it also provided that that position was to be determined by mutual agreement between the parties and based on the transactional net margin method laid down in the OECD Guidelines. Thus, it was provided that, in the event that Arcomet Belgium was entitled to receive remuneration from Arcomet Romania for its activities described in that contract, Arcomet Belgium had to send an invoice to Arcomet Romania at the end of each year, with Arcomet Romania having to bear the amount of the VAT relating to the remuneration received by Arcomet Belgium in accordance with the Romanian tax legislation. According to the detailed rules for determining that remuneration, set out in the annex to that contract, an annual settlement invoice had to be issued by Arcomet Belgium where the operating profit margin of Arcomet Romania was greater than 2.74% in order to recover the excess profit, or by Arcomet Romania where such a margin was less than -0.71% in order to cover any excess loss. By contrast, no remuneration was due where the operating profit margin at issue was between -0.71% and 2.74%.

23 In 2011, 2012 and 2013, Arcomet Romania recorded an operating profit margin greater than the 2.74% provided for in the contract of 24 January 2012. In respect of each of those years, Arcomet Romania received from Arcomet Belgium an invoice containing an amount exclusive of VAT, Arcomet Belgium, further to the settlement, having declared those invoices as relating to supplies of services. Arcomet Romania declared the first two invoices as relating to

intra-Community purchases of services in respect of which it applied the reverse charge mechanism for the VAT due on those purchases, but considered that the third invoice had been issued for transactions falling outside the scope of VAT.

24 Arcomet Romania was the subject of a tax inspection concerning, in particular, the years in which those three invoices were issued, at the end of which it was charged additional VAT, on account of the deductions refused in respect of the invoices issued by Arcomet Belgium, together with interest and penalties. The right of deduction was refused on the ground that Arcomet Romania had not demonstrated that the services invoiced had actually been supplied and that those services were necessary for the purposes of Arcomet Romania's taxable transactions.

25 Arcomet Romania brought an action before the Tribunalul București (Regional Court, Bucharest, Romania) for annulment of the decision rejecting its complaint against the report of the tax inspectors, the decision establishing additional VAT, and the corresponding interest and penalties. That court dismissed that action by a ruling of 10 March 2017.

26 Arcomet Romania has brought an appeal against that ruling before the Curtea de Apel București (Court of Appeal, Bucharest, Romania), which is the referring court.

27 In the context of the dispute before it, that court has doubts, in the first place, as to whether an amount invoiced by one company to a second company belonging to the same group of companies, which facilitates the operating profit margin of the second company being adjusted in accordance with the transactional net margin method, under the OECD Guidelines, constitutes the actual consideration for a service provided by the first company and, consequently, means that a supply of services for consideration exists, within the meaning of Article 2(1)(c) of the VAT Directive.

28 The question arises as to whether settlement invoices such as those under examination by the referring court constitute a formal means of adjusting the operating profit margin of the company to which they are addressed, without there being any link whatsoever with a supply of services. In the absence of a clearly identifiable service provided by Arcomet Belgium to Arcomet Romania, that adjustment of Arcomet Romania's operating profit margin thus does not fall within the scope of VAT.

29 In the second place, should Arcomet Belgium nevertheless be considered as having provided Arcomet Romania with a supply of services falling within the scope of VAT, the question then arises as to whether the input VAT paid in respect of that supply is deductible, as it is claimed that Arcomet Belgium provided those services for the purposes of Arcomet Romania's taxable activity. The referring court, while stating that the provisions of Romanian law require only the existence of an invoice for the purpose of exercising the right to deduct VAT, questions whether the Romanian administrative practice which makes the exercise of that right subject to the submission, by the taxable person, of documents other than invoices is in line with Articles 168 and 178 of the VAT Directive and with the principle of proportionality.

30 In those circumstances, the Curtea de Apel București (Court of Appeal, Bucharest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 2(1)(c) of [the VAT Directive] to be interpreted as meaning that the amount invoiced by a company (the principal company) to an associated company (the operating company), equal to the amount necessary to align the operating company's profit with the activities carried out and the risks assumed in accordance with the margin method of [the OECD Guidelines], constitutes a payment for a service which therefore falls within the scope of VAT?

(2) If the answer to the first question is in the affirmative, with regard to the interpretation of Articles 168 and 178 of [the VAT Directive], are the tax authorities entitled to require, in addition to the invoice, documents (for example, activity reports, [works] progress reports, and so forth) justifying the use of the services purchased for the purposes of the taxable person's taxable transactions, or must that analysis of the right to deduct VAT be based solely on the direct link between purchase and supply or [between purchase and] the taxable person's economic activity as a whole?'

Consideration of the questions referred

The first question

31 By its first question, the referring court asks, in essence, whether Article 2(1)(c) of the VAT Directive is to be interpreted as meaning that the remuneration in respect of intra-group services, provided by a parent company to its subsidiary and contractually detailed, which is calculated in accordance with a method recommended by the OECD Guidelines and corresponds to the part of the operating profit margin greater than 2.74% achieved by that subsidiary, constitutes the consideration for a supply of services for consideration falling within the scope of VAT.

32 It must be stated, in that regard, that, under Article 2(1)(c) of the VAT Directive, 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' is to be subject to VAT.

33 According to settled case-law, a supply of services is carried out 'for consideration', within the meaning of Article 2(1)(c) of the VAT Directive, and is therefore subject to VAT, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the actual consideration for an identifiable service supplied to the recipient. That is the case if there is a direct link between the service supplied and the consideration received (see, to that effect, judgments of 8 March 1988, *Apple and Pear Development Council*, 102/86, EU:C:1988:120, paragraph 12, and of 12 December 2024, *Weatherford Atlas Gip*, C-527/23, EU:C:2024:1024, paragraph 23).

34 While it is for the referring court to assess whether the circumstances of the case in the main proceedings give rise to a transaction for consideration, it is for the Court of Justice, on the basis of the information in the file before it, to provide that court with useful guidance under EU law.

35 Having regard to the information provided in the order for reference and restated in paragraphs 21 and 22 of the present judgment, it appears that, in the context of the contract of 24 January 2012, both parties entered into reciprocal commitments. Thus, on the one hand, Arcomet Belgium undertook to provide a certain number of commercial services and to bear the main economic risks associated with the activity of Arcomet Romania in its capacity as the operating company and, on the other, Arcomet Romania undertook to pay at the end of each year an amount corresponding to the part of the operating profit margin greater than 2.74% achieved by it. The first condition laid down by the case-law cited in paragraph 33 of the present judgment, requiring the existence of a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, appears to be satisfied.

36 It is apparent from the same information that the payments made by Arcomet Romania under the contract of 24 January 2012 constituted the remuneration in respect of the activities carried out by Arcomet Belgium. In addition, the services received in return for those payments were such as to confer a specific advantage on Arcomet Romania given that, as the Advocate General observed in point 49 of his Opinion, the services provided by Arcomet Belgium, common in the context of an intra-group relationship, had an effect on Arcomet Romania's operating profit margin through the savings which they enabled it to make and the improvement of the service provided to end customers.

37 Consequently, the second condition laid down by the case-law cited in paragraph 33 of the present judgment, requiring that the remuneration received by the provider of the service constitutes the actual consideration for the service supplied to the recipient, also appears to be satisfied. Accordingly, in the circumstances of the case in the main proceedings, subject to verification by the referring court, there is a direct link between the service supplied and the amounts received.

38 The arguments raised by Arcomet Romania are not such as to invalidate that finding.

39 First, the foregoing analysis cannot be objected to on the basis that the remuneration payable to the parent company is merely intended to adjust, in accordance with the OECD Guidelines, the operating profit margin of the subsidiary for the purpose of observing the arm's length principle, as affirmed by those guidelines, without a specific activity having to be provided in return.

40 The existence of a supply of services for consideration, within the meaning of Article 2(1)(c) of the VAT Directive, must be established by taking into account all the circumstances which actually characterise the transaction concerned, including, in particular, its economic and commercial reality, which is a fundamental criterion for the application of the common system of VAT (see, to that effect, judgment of 20 January 2022, *Apcoa Parking Danmark*, C-90/20, EU:C:2022:37, paragraph 38 and the case-law cited).

41 Where such information is present that argues in favour of the existence of a supply of services for consideration, even if a transfer price between two companies within the same group of companies has been set in such a way as to comply with the arm's length principle, in accordance with a method recommended by the OECD Guidelines for the purposes of direct taxation, that transfer price is capable of constituting the actual consideration for a service supplied.

42 Secondly, activities such as those carried out by Arcomet Belgium must be distinguished from the acquisition of shares by a holding company in other companies where that holding company does not involve itself directly or indirectly in the management of those companies, without prejudice to the holding company's rights as a shareholder. According to the case-law, the mere acquisition

and holding of shares in a company does not amount to an economic activity within the meaning of Article 9(1) of the VAT Directive and does not, therefore, entail carrying out transactions which are subject to VAT by virtue of Article 2 of that directive (see, to that effect, judgments of 20 June 1991, *Polysar Investments Netherlands*, C-60/90, EU:C:1991:268, paragraph 16, and of 5 July 2018, *Marle Participations*, C-320/17, EU:C:2018:537, paragraphs 27 and 28).

43 However, the Court has ruled that it is otherwise where the holding is accompanied by direct or indirect involvement in the management of the companies in which the holding has been acquired, without prejudice to the rights held by the holding company as shareholder (judgment of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C-108/14 and C-109/14, EU:C:2015:496, paragraph 20 and the case-law cited).

44 It follows from the description of the facts set out in the order for reference, as summarised in paragraphs 21 and 22 of the present judgment, that, unlike a holding company whose activities are limited to the acquisition of financial holdings in other companies and which does not involve itself directly or indirectly in the management of those companies, Arcomet Belgium is actively involved in the management of Arcomet Romania in the context of transactions subject to VAT under Article 2 of the VAT Directive, such as the supply of commercial services to its subsidiary.

45 Thirdly, the existence of a direct link between those services and the consideration received cannot be affected by the remuneration arrangements laid down in the contract of 24 January 2012, under which the amount due to Arcomet Belgium was consistent, for the years 2011, 2012 and 2013, with the part of the operating profit margin achieved by Arcomet Romania which is greater than 2.74%.

46 It is apparent, in that regard, from the case-law of the Court that the uncertain nature of the provision of any payment is such as to break the direct link between the service provided to the recipient and any payment which may be received (judgments of 3 March 1994, *Tolsma*, C-16/93, EU:C:1994:80, paragraph 19, and of 9 February 2023, *Finanzamt X (Supplies of the owner of a stable)*, C-713/21, EU:C:2023:80, paragraph 32).

47 In the present case, it is true that the amount of the remuneration agreed upon in the contract of 24 January 2012 is in itself variable, inasmuch as the remuneration presupposes the existence of a positive operating profit margin and thus depends on Arcomet Romania's profits and losses in a given year. However, that remuneration is neither voluntary nor uncertain; nor is the amount thereof difficult to quantify or uncertain within the meaning of the case-law of the Court (see, to that effect, judgments of 3 March 1994, *Tolsma*, C-16/93, EU:C:1994:80, paragraph 19, and of 10 November 2016, *Baštová*, C-432/15, EU:C:2016:855, paragraphs 35 and 37). As the Advocate General observed in point 46 of his Opinion, the detailed rules for that remuneration are laid down in advance in that contract and according to precise criteria, with the result that, as such, that remuneration is not uncertain (see, by analogy, judgment of 9 February 2023, *Finanzamt X (Supplies of the owner of a stable)*, C-713/21, EU:C:2023:80, paragraphs 46, 48 and 50).

48 Fourthly, contrary to the submissions of Arcomet Romania before the Court, the situation provided for in the contract of 24 January 2012 in accordance with which, in the event of an operating profit margin of less than -0.71%, remuneration is payable by Arcomet Belgium to Arcomet Romania, is not, in any event, such as to break the direct link between the supply of services at issue and the consideration received. Indeed, the factual context of the case in the main proceedings described by the referring court differs from that situation and concerns the

reverse situation, also provided for in that contract, of the payment of remuneration to Arcomet Belgium at the end of the year by Arcomet Romania, given that Arcomet Romania recorded, during each of the three years concerned by the invoices at issue in the main proceedings, a positive operating profit margin greater than that provided for in that contract.

49 In light of the foregoing, the answer to the first question is that Article 2(1)(c) of the VAT Directive must be interpreted as meaning that the remuneration in respect of intra-group services, provided by a parent company to its subsidiary and contractually detailed, which is calculated in accordance with a method recommended by the OECD Guidelines and corresponds to the part of the operating profit margin greater than 2.74% achieved by that subsidiary, constitutes the consideration for a supply of services for consideration falling within the scope of VAT.

The second question

50 By its second question, the referring court asks, in essence, whether Articles 168 and 178 of the VAT Directive are to be interpreted as precluding the tax authority from requiring a taxable person who seeks the deduction of input VAT paid to submit documents other than the invoice in order to prove the existence of the services referred to in that invoice and their use for the purposes of the taxed transactions of that taxable person.

51 It should be stated, in the first place, that the right to deduct VAT provided for in Article 167 et seq. of the VAT Directive is subject to compliance with both substantive and formal conditions.

52 As regards, first, the formal conditions for the exercise of the right to deduct VAT, Article 178 of the VAT Directive provides, in point (a) thereof, that the taxable person must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI of that directive and, in point (f) thereof, that, when required to pay VAT as a customer where Articles 194 to 197 and Article 199 of that directive apply, the taxable person must comply with the formalities as laid down by each Member State.

53 In the case in the main proceedings, it is apparent from the order for reference that the invoices relating to the services at issue in the main proceedings gave no indication as to the nature of the services purchased by Arcomet Romania, the number of hours provided in respect of each transaction, the human and material resources used and the method of calculating the rates. The Romanian Government stated in that regard at the hearing before the Court that those invoices showed neither the quantity nor the nature of the services rendered. It therefore appears, subject to verification by the referring court, that those invoices did not comply with the formal rules laid down by the provisions of Romanian law transposing the VAT Directive.

54 It is apparent from the case-law of the Court that the tax authority cannot refuse the right to deduct VAT on the sole ground that an invoice does not satisfy certain formal conditions required by the national legislation transposing the VAT Directive, if it has available all the information to determine whether the substantive conditions for that right are satisfied (see, by analogy, judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraph 43). On the other hand, where the tax authorities reach the conclusion that the invoices submitted by the taxable person do not meet the formal requirements laid down by the national legislation transposing the VAT Directive, it is open to them, as the

Advocate General observed in point 66 of his Opinion, to determine whether the substantive conditions of that right are satisfied and to require the taxable person to adduce additional evidence for that purpose, without this being precluded by the principle of proportionality.

55 As regards, secondly, the substantive conditions, it is apparent from Article 168 of the VAT Directive that, in order for that right to be available, (i) the person concerned must be a 'taxable person' within the meaning of that directive and (ii) the goods or services relied on as the basis for claiming that right must be used by the taxable person for the purposes of its own taxed output transactions, and that, as inputs, those goods or services must be supplied by another taxable person (judgment of 12 December 2024, *Weatherford Atlas Gip*, C-527/23, EU:C:2024:1024, paragraph 25 and the case-law cited).

56 In the case in the main proceedings, the tax authority did not call into question the taxable person status of Arcomet Belgium and Arcomet Romania. The tax authority refused Arcomet Romania the right to deduct input VAT paid on the ground that that company had not adduced evidence that the services referred to in the invoices had actually been supplied to it and that they were necessary for the purposes of its taxable activities.

57 According to the case-law, if the input services are not actually carried out by another taxable person, no right of deduction can arise (see, to that effect, judgment of 25 May 2023, *Dyrektor Izby Administracji Skarbowej w Warszawie (VAT – Fictitious acquisition)*, C-114/22, EU:C:2023:430, paragraphs 31 and 37). Therefore, the question whether the service relied on as the basis for claiming the right of deduction was actually supplied and used by the taxable person for the purposes of its own taxed output transactions is relevant for assessing whether the second substantive condition of that right, referred to in paragraph 55 of the present judgment, is satisfied. By contrast, the situation is different as regards the question whether the services supplied were necessary or appropriate for the purposes of the taxable person's taxed transactions. The Court has already stated that the VAT Directive does not make the exercise of the right of deduction subject to a criterion of the economic profitability of the input transaction (see, to that effect, judgment of 12 December 2024, *Weatherford Atlas Gip*, C-527/23, EU:C:2024:1024, paragraph 35 and the case-law cited).

58 It follows that, in the case in the main proceedings, the tax authority could require Arcomet Romania to establish that the input services concerned had actually been provided by Arcomet Belgium and that Arcomet Romania had actually used them for its own taxed transactions, but Arcomet Romania could not be required to establish the necessity or appropriateness of those services in respect of its taxed transactions.

59 As regards, in the second place, the burden of proof on the taxable person, it is apparent from the case-law of the Court that it is for the taxable person seeking deduction of VAT to establish that it meets the conditions for eligibility (judgment of 12 December 2024, *Weatherford Atlas Gip*, C-527/23, EU:C:2024:1024, paragraph 36 and the case-law cited).

60 The tax authorities may thus require the taxable person to adduce the evidence necessary for determining whether or not the deduction requested should be granted, inter alia, with a view to establishing that the services relied on as the basis for claiming the right of deduction were used by the taxable person for the purposes of its own taxed output transactions. In making that assessment, the tax authorities are not limited to an examination of the invoice itself. That evidence may include documents held by the service provider from whom the taxable person has acquired the services in respect of which he or she has paid the VAT (see, to that effect, judgment

of 11 November 2021, *Ferimet*, C-281/20, EU:C:2021:910, paragraphs 38 and 39 and the case-law cited). However, the evidence required must be necessary and proportionate for the purpose of assessing whether the substantive conditions for the right of deduction are satisfied, which it is, in the circumstances of the case in the main proceedings, for the referring court to determine.

61 In the light of the foregoing, the answer to the second question is that Articles 168 and 178 of the VAT Directive must be interpreted as not precluding the tax authority from requiring a taxable person who seeks the deduction of input VAT paid to submit documents other than the invoice in order to prove the existence of the services referred to in that invoice and their use for the purposes of the taxed transactions of that taxable person, provided that the submission of that evidence is necessary and proportionate for that purpose.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010,**

   must be interpreted as meaning that the remuneration in respect of intra-group services, provided by a parent company to its subsidiary and contractually detailed, which is calculated in accordance with a method recommended by the Transfer Pricing Guidelines adopted by the Organisation for Economic Co-operation and Development (OECD) and corresponds to the part of the operating profit margin greater than 2.74% achieved by that subsidiary, constitutes the consideration for a supply of services for consideration falling within the scope of value added tax.

2. **Articles 168 and 178 of Directive 2006/112, as amended by Directive 2010/45,**

   must be interpreted as not precluding the tax authority from requiring a taxable person who seeks the deduction of input VAT paid to submit documents other than the invoice in order to prove the existence of the services referred to in that invoice and their use for the purposes of the taxed transactions of that taxable person, provided that the submission of that evidence is necessary and proportionate for that purpose.

[Signatures]