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Client Alert

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Switzerland: Indirect Tax

Swiss Supreme Court confirms transfer pricing adjustments can have major VAT implications, especially for businesses with limited VAT recovery.

In brief

A recent decision of the Swiss Federal Supreme Court (9C_492/2025, 5 August 2026) confirms that transfer pricing (TP) adjustments can have significant VAT consequences. While the case concerned a Swiss captive insurance company, its implications extend beyond captives to businesses with limited input VAT recovery, including banks, asset managers, fund structures, and treasury companies.

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Key takeaways

The Federal Supreme Court confirmed that a TP adjustment agreed under a bilateral Advance Pricing Agreement (APA) may constitute consideration for intra-group services and therefore form part of the VAT taxable amount triggering Swiss reverse charge VAT.

This is particularly important for businesses operating in VAT-exempt sectors, where the resulting VAT may not be fully recoverable and can therefore become a real cost.

The judgment reflects a broader trend: tax authorities worldwide are scrutinizing whether TP adjustments represent compensation for identifiable supplies of goods or services. Where such a link can be established, VAT consequences are increasingly difficult to avoid.

The Court's findings

In the case at hand, the Swiss company argued that the APA adjustment merely represented a direct tax transfer pricing correction and should not have VAT consequences. The Court rejected this argument and held that the adjustment reflected remuneration for services that had in fact been provided by a foreign group company but had not been appropriately compensated.

Accordingly, the Court treated the TP adjustment as consideration for services subject to Swiss reverse charge VAT.

The Court did not accept a formalistic distinction between "transfer pricing adjustment" and "service remuneration". Instead, it focused on the economic reality of the arrangement. Where a TP adjustment effectively compensates a group company for functions performed, risks assumed or resources deployed, it may be regarded as additional consideration for a taxable supply.

The Court confirmed that transfer pricing and VAT pursue different objectives. While a TP adjustment may establish the arm's-length consideration between related parties, a separate VAT analysis is required to determine the nature of the underlying supplies and whether any exemptions apply.

Further, the Court emphasized that the taxpayer bears the burden of demonstrating that a payment relates to VAT-exempt services. In the absence of signed intercompany agreements, Detailed service descriptions, supporting evidence and a documented allocation of costs, tax authorities may treat the entire adjustment as consideration for taxable services.

The decision therefore reinforces the principle that VAT follows the underlying economic transaction rather than the accounting or transfer pricing label attached to a payment.

A growing area of VAT risk

The interaction between VAT and transfer pricing has become significant area of focus for tax authorities worldwide.

Historically, many multinational groups have treated year-end TP true-ups, APA settlements and profit reallocations as adjustments relevant only for corporate income tax purposes. However, tax authorities are increasingly assessing whether such adjustments alter the consideration payable for services supplied between group entities for VAT purposes.

This is particularly relevant in Switzerland where imported services from foreign group companies are generally subject to reverse charge VAT. A TP adjustment viewed as additional remuneration for cross-border intra-group services may therefore trigger, a Swiss VAT liability, even if no invoice for the services was originally issued.

The decision provides judicial support for this approach and is likely to encourage closer scrutiny by the Swiss Federal Tax Administration in future VAT audits.

Why this matters for banks, insurers and other partially exempt businesses

Financial and insurance services are generally exempt from Swiss VAT. Consequently, many businesses in these sectors can recover only part, or none, of the input VAT they incur.

Where a TP adjustment is regarded as additional consideration for services:

- Reverse charge VAT may become due in Switzerland.
- The recipient may not be able to recover the corresponding input VAT (or only partially).
- The TP true-up therefore creates an additional irrecoverable VAT cost.
- Material year-end adjustments can lead to unexpected VAT leakage and interest exposure and
- Historic TP adjustments may attract scrutiny during VAT audits, potentially resulting in assessments covering multiple years.

For businesses with restricted input VAT recovery, even modest TP true-ups can translate into significant unrecoverable VAT costs. This is especially true for groups with centralized service models, where management, administrative, IT, compliance, legal, HR, risk management, treasury or strategic functions are performed by foreign group entities and recharged across the group.

Beyond insurance: which structures may be affected?

Although the decision concerned a captive insurance arrangement, its rationale is relevant to a wide range of operating models, including:

- Banks and securities dealers;
- Insurance and reinsurance groups;
- Asset and wealth managers;
- Investment funds and fund management companies;
- Captive insurance structures;
- Treasury and finance companies;
- Regional headquarters and principal structures;
- Shared service centres and global business service models; and
- Groups using cost-sharing, recharge or centralised procurement arrangements.

Particular attention should be given to situations where transfer pricing policies are supported by annual true-up payments, profit adjustments under APAs, benchmark refresh exercises or post-year-end pricing corrections.

Potential areas of audit focus

In light of the decision, taxpayers should anticipate increased scrutiny of:

- Whether a TP adjustment can be linked to a specific supply of services;
- The methodology used to calculate year-end true-ups;
- The documentation supporting intercompany charges;
- The consistency between VAT treatment, TP reports and APA documentation;
- Accounting entries reflecting TP adjustments; and
- Whether reverse charge VAT was correctly declared and reported.

Tax authorities may focus particularly on cases where TP documentation refers to management services, support activities or centralised functions, but the related TP adjustment has not been considered for VAT purposes.

Practical implications and documentation matters

Groups should review:

- Whether TP adjustments relate to identifiable supplies of services;
- The wording of intercompany agreements;
- The distinction between pricing adjustments and additional service remuneration;
- Whether VAT implications are considered when designing TP true-up mechanisms;
- The potential impact on input VAT recovery and VAT provisioning;
- Whether existing APAs or TP policies could trigger reverse charge VAT obligations;
- Whether historic TP adjustments have been treated consistently from both a direct tax and VAT perspective; and
- Whether VAT reserves may be appropriate for open periods that remain subject to audit.

Direct tax and VAT teams should coordinate more closely when implementing transfer pricing policies. In many groups, TP adjustments are designed and documented primarily from a direct tax perspective, without fully considering the VAT impact. The decision demonstrates that this siloed approach may create material tax leakage. For VAT purposes, the analysis must be supported by contemporaneous evidence describing the underlying services, their recipients and, where relevant, the basis for any claimed VAT exemption. Signed intercompany agreements, detailed service descriptions, invoices and service records may prove decisive during a VAT audit.

Baker McKenzie comment

The Federal Supreme Court's decision is a timely reminder that transfer pricing and VAT must be analyzed together. While the judgment arose in the context of a captive insurance structure, its reasoning is equally relevant for any partially exempt business receiving cross-border intra-group services.

The decision further highlights that the existence of an APA or an accepted TP methodology does not determine the VAT treatment. Even where an adjustment is required to comply with the arm's-length principle, taxpayers must separately assess whether it constitutes consideration for an underlying supply for VAT purposes.

For taxpayers with limited input VAT recovery, a transfer pricing adjustment that is entirely tax-neutral for corporate income tax purposes may create a significant irrecoverable VAT cost. The effective cost can be substantial, particularly where the adjustment relates to high-value management, treasury, risk management or other headquarters services received from abroad.

Businesses should therefore review existing TP policies, APA arrangements and year-end true-up mechanisms to identify potential VAT exposures before they crystallise. Taxpayers that proactively document the VAT consequences of TP adjustments will be better positioned to defend their approach during future audits.

Key message

TP adjustments are no longer just a direct tax issue. Following this decision, Swiss taxpayers should expect increased scrutiny of the VAT treatment of cross-border TP corrections, particularly in financial services and insurance. For businesses with limited input VAT recovery, close coordination between TP and VAT functions is essential to avoid unexpected and potentially irrecoverable VAT costs.

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