Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

13 May 2026 (*)

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Sixth Directive 77/388/EEC – Point 1 of Article 2 – Liability to VAT – Supply of services effected for consideration – Criteria – Intra-group relationships – Adjustments of the transfer prices of motor vehicles between manufacturers and distributors – Account taken of the after-sales costs of repair of those vehicles incurred by the distributors – Existence of a direct link between the supply of services and the consideration actually received – Existence of a legal relationship pursuant to which there is reciprocal performance)

In Case C-603/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal), made by decision of 3 July 2024, received at the Court on 16 September 2024, in the proceedings

Stellantis Portugal, S.A.

v

Autoridade Tributária e Aduaneira,

THE COURT (Ninth Chamber),

composed of M. Condinanzi, President of the Chamber, R. Frendo and A. Kornezov (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Stellantis Portugal, S.A., by P. Braz, advogado,

– the Portuguese Government, by P. Barros da Costa, C. Bento, R. Campos Laires and A. Rodrigues, acting as Agents,

– the European Commission, by M. Afonso and P. Carlin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 January 2026,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 45, p. 1; 'the Sixth VAT Directive').

2 The request has been made in proceedings between Stellantis Portugal, S.A., as the legal successor of Opel Portugal, Lda. (formerly General Motors Portugal ('GMP')), and the Autoridade Tributária e Aduaneira (Tax and Customs Authority, Portugal) concerning the liability to value added tax (VAT) of supplies of repair services for motor vehicles that GMP provided to other companies of the General Motors group (United States of America), which operates in the motor vehicle sector.

Legal context

European Union law

3 The Sixth VAT Directive was repealed and replaced, with effect from 1 January 2007, by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1). However, in view of the date of the facts at issue in the main proceedings, the Sixth VAT Directive is applicable to the dispute in the main proceedings.

4 Article 2 of the Sixth VAT Directive provided:

'The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. the importation of goods.'

5 Article 6 of that directive provided:

'1. "Supply of services" shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.

…

4. Where a taxable person acting in his own name but on behalf of another takes part in a supply of services, he shall be considered to have received and supplied those services himself.

…'

6 Article 11 of that directive was worded as follows:

'A. Within the territory of the country

1. The taxable amount shall be:

(a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies;

…'

Portuguese law

7 Article 1(1)(a) of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code), approved by Decreto-Lei n.º 394-B/84 (Decree-Law No 394-B/84) of 26 December 1984 (*Diário da República*, I Series–A, No 297, of 26 December 1984), in the version applicable to the facts of the dispute in the main proceedings, provides that the supplies of services effected for consideration within the national territory by a taxable person acting as such are subject to VAT.

8 Article 4 of the Value Added Tax Code provides:

‘1. Transactions effected for consideration which are not supplies, inter-community acquisitions or imports of goods shall be regarded as supplies of services.

…

4. Where the supply of services is effected by an agent acting in his or her own name, the agent is first, the recipient, and then, the supplier, of the service.

…’

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

9 GMP formed part of the General Motors group.

10 That group was made up of, inter alia, companies, referred to by the referring court as ‘original equipment manufacturers’ (‘OEMs’) that manufactured motor vehicles and parts and accessories and/or supplied them to other companies belonging to that group and companies, referred to by that court as ‘national sales companies/national sales organisations’ (‘NSCs/NSOs’), which distributed the products supplied in a defined geographical market.

11 GMP operated as an NSC/NSO in Portugal. On that basis, it purchased, in particular, motor vehicles from OEMs established in the European Union (‘the OEMs concerned’) and sold those vehicles to independent dealers operating in Portugal, which, in turn, resold those vehicles to the final customers.

12 Where those vehicles were affected by defects resulting from the production process (Recall Campaigns) or from anomalies covered by the warranties offered by the manufacturer (Policy and Warranty) or were the subject of procedures related to roadside assistance (Road Side Assistance), those customers presented those vehicles to the dealers in order for the dealers to repair those vehicles at their premises. Those dealers then invoiced GMP the costs of those repairs, applying the relevant VAT to them.

13 GMP informed the OEMs concerned of the costs borne by it for the distribution of the motor vehicles and the parts and accessories supplied by those OEMs, which included the costs of those repairs in addition to GMP’s operating costs, such as the costs of staff, electricity and marketing.

14 It is apparent from the order for reference that, under an agreement concluded in 2004 between the companies of the General Motors group concerning the fixing of the transfer prices of vehicles within that group (‘the 2004 agreement’), the prices of the vehicles, parts and accessories sold by the OEMs to the NSCs/NSOs could be adjusted to guarantee the NSCs/NSOs a previously determined profit margin. In particular, in accordance with Clause 1.0 of that agreement, the transfer prices of those products were determined by deducting from the ‘external’ sale prices, namely the prices for the sale of those vehicles to third parties such as the dealers, the amount corresponding to the related distribution costs and the previously determined profit margin of the NSC/NSO concerned. The initial transfer prices were determined in respect of each reference period on the basis of applying a gross margin discount to the expected external sale prices. At the end of each reference period, a transfer pricing adjustment was made to increase or reduce the actual profit margin of that NSC/NSO in order that it was the same as the previously determined profit margin. Under Clause 4.0 of that agreement, the initial transfer prices were

adjusted at the end of each reference period in order to guarantee that the actual financial results of the NSCs/NSOs were consistent with the previously determined profit margin. That adjustment was made in the reference period concerned and the corresponding increase or decrease in the transfer prices had to be shown in the accounting records of the OEMs. The referring court states that, in the dispute before it, that adjustment was evidenced by a credit or debit note sent by the OEMs to GMP.

15 Following an inspection of the situation of GMP concerning the 2006 financial year, the tax and customs authority drew up, on 10 December 2009, a report in which it found that the responsibility for remedying the defects resulting from the production process of the motor vehicles and the anomalies covered by the warranties offered by the manufacturer and for repairing those vehicles in the context of the procedures related to roadside assistance lay with the OEMs concerned. That authority also found that the costs of repairs on account of those defects and anomalies were initially borne by GMP, which then passed on the costs of repairs to those OEMs by means of adjustments of the transfer prices of those vehicles. On that basis, that authority considered that GMP had provided, in the national territory, repair services for motor vehicles to the OEMs concerned and that those services ought to be subject to VAT. That authority therefore decided that that company, as a taxable person for that tax, should pay the sum of EUR 1 504 215.49, corresponding to the amount of the VAT due in respect of the provision of those services and the compensatory interest.

16 GMP brought an action before the Tribunal Administrativo e Fiscal de Sintra (Administrative and Tax Court, Sintra, Portugal) against the decision of the Tax and Customs Authority requiring the payment of the sum referred to in the preceding paragraph of the present judgment, claiming that the adjustments of the transfer prices of the vehicles, parts and accessories provided by the OEMs concerned to GMP did not constitute remuneration in respect of services consisting in the repair of those vehicles.

17 That court having upheld that action, the Tax and Customs Authority brought an appeal before the Tribunal Central Administrativo Sul (Southern Central Administrative Court, Portugal), which upheld that appeal.

18 GMP brought an exceptional appeal on a point of law against the judgment of that court before the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal), which is the referring court.

19 In the meantime, GMP became Opel Portugal, which was subsequently absorbed by Stellantis Portugal.

20 In those circumstances the Supremo Tribunal Administrativo (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 2 of the [Sixth VAT Directive], as worded in the version in force at the time of the facts, be interpreted as meaning that the concept of the supply of services effected for consideration contained in that provision includes an adjustment of the sale price of vehicles which is duly provided for and determined in a contract concluded between the parties, in order to achieve a minimum profit margin, and which is documented by means of a credit or debit note issued to the applicant/appellant by the European manufacturers of the General Motors group?’

Admissibility of the request for a preliminary ruling

21 The European Commission harbours doubts as to the admissibility of the request for a preliminary ruling, since the referring court did not provide all the information enabling it to establish whether the amounts which were credited or debited to GMP by the OEMs concerned corresponded to the costs of the repairs of the motor vehicles or whether other parameters were taken into account in order to guarantee GMP a previously determined profit margin.

22 In that regard, it should be recalled that, since the order for reference serves as the basis for the procedure laid down in Article 267 TFEU, the national court is required, in that order for reference, inter alia, to

expand on its definition of the factual context of the dispute in the main proceedings (see, to that effect, judgment of 24 October 2024, *Omnitel Comunicaciones and Others*, C-441/23, EU:C:2024:916, paragraph 69 and the case-law cited).

23 The information contained in the order for reference must enable, first, the Court to provide useful answers to the questions referred by the national court and, secondly, the governments of the Member States and other interested parties to exercise the right conferred on them by Article 23 of the Statute of the Court of Justice of the European Union to submit observations. It is for the Court to ensure that that right is safeguarded, having regard to the fact that, under that provision, only the orders for reference are notified to the persons concerned (judgment of 24 October 2024, *Omnitel Comunicaciones and Others*, C-441/23, EU:C:2024:916, paragraph 70 and the case-law cited).

24 The cumulative requirements concerning the content of an order for reference are set out explicitly in Article 94 of the Rules of Procedure of the Court of Justice and are recalled, in particular, in paragraph 15 of the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1). They are now set out in paragraph 15 of the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ C, C/2024/6008).

25 In the present case, it should be noted that the referring court has, albeit in summary form, set out the factual elements of the dispute in the main proceedings in a way which makes it possible to understand the subject matter of that dispute. In particular, it follows from the order for reference that the adjustments of the transfer prices of the motor vehicles at issue were made by the OEMs concerned on the basis of all of the distribution costs of those vehicles incurred by GMP, including the costs linked to the repairs of those vehicles and GMP's operating costs.

26 Accordingly, the request for a preliminary ruling is admissible.

Consideration of the question referred

27 By its question, the referring court asks, in essence, whether point 1 of Article 2 of the Sixth VAT Directive must be interpreted as meaning that an adjustment of a transfer price of motor vehicles which is:

– duly set out in an agreement concluded between the companies belonging to the same group intended to guarantee that the company acquiring such vehicles obtains a previously determined profit margin on the resale of those vehicles;

– evidenced by a credit or debit note sent by the selling company to the acquiring company, and

– calculated on the basis, inter alia, of the costs incurred by the acquiring company in connection with the repair by third parties of those vehicles, constitutes consideration in respect of a 'supply of services for consideration', within the meaning of that provision.

28 As a preliminary point, it should be remembered that, under point 1 of Article 2 of the Sixth VAT Directive, the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such is to be subject to VAT.

29 Under the first subparagraph of Article 6(1) of the Sixth VAT Directive, a supply of services is considered to be 'any transaction which does not constitute a supply of goods'.

30 In accordance with settled case-law, a supply of services is carried out 'for consideration', within the meaning of point 1 of Article 2 of the Sixth VAT Directive, and is therefore subject to VAT, only if there is a direct link between that supply of services, on the one hand, and the consideration actually received by the taxable person, on the other. Such a direct link is established where there is a legal relationship between

the provider of the service and its recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of those services constituting actual consideration for an identifiable service supplied to the recipient (see, to that effect, judgment of 16 September 2020, *Mitteldeutsche Hartstein-Industrie*, C-528/19, EU:C:2020:712, paragraph 43; see, by analogy, judgments of 4 July 2024, *Latvijas Informācijas un komunikācijas tehnoloģijas asociācija*, C-87/23, EU:C:2024:570, paragraph 26, and of 4 September 2025, *Arcomet Towercranes*, C-726/23, EU:C:2025:646, paragraph 33).

31 In the present case, it is apparent from the information provided by the referring court that the OEMs concerned sold to GMP, inter alia, motor vehicles which GMP then resold to independent dealers established in Portugal, which were responsible, in turn, for the sale of those vehicles to the final customers.

32 In the event of defects resulting from the production process of those vehicles, anomalies covered by the warranties offered by the manufacturer or procedures related to roadside assistance, those dealers carried out the repairs of those vehicles and invoiced the price of those repairs to GMP, which then informed those OEMs of the costs that it had incurred in that regard, as well as other costs, such as its operating costs, which included, inter alia, the costs of staff, electricity and marketing.

33 Furthermore, under the 2004 agreement, GMP was to guarantee a previously determined profit margin on the resale of the motor vehicles. To that end, the OEMs concerned made the adjustments of the transfer prices of the vehicles at issue, calculated on the basis of all the costs referred to in the preceding paragraph of the present judgment, and drew up, in order to comply with that margin, as appropriate, a credit or debit note sent to GMP.

34 In those circumstances, the referring court asks, in essence, whether GMP should not be regarded as having provided the OEMs concerned repair services for those vehicles, in respect of which all or part of the sums resulting from those adjustments constitute the remuneration.

35 It is for the referring court, which alone has jurisdiction to assess the facts, to determine the nature of the transactions at issue in the main proceedings. That said, it is for the Court of Justice to provide that court with the guidance as to the interpretation of EU law which may be of assistance in adjudicating on the case before it (see, to that effect, judgment of 4 July 2024, *Latvijas Informācijas un komunikācijas tehnoloģijas asociācija*, C-87/23, EU:C:2024:570, paragraphs 24 and 25 and the case-law cited).

36 In that regard, in the first place, it should be noted that the sole legal relationship between GMP and the OEMs concerned mentioned by the referring court is that arising from the 2004 agreement.

37 It is apparent from the information available to the Court that the object of that agreement was to fix the transfer prices of the vehicles sold by those OEMs to GMP and that the adjustments of those prices, provided for in that agreement, were intended to guarantee that GMP obtained a previously determined profit margin.

38 None of the clauses of the 2004 agreement referred to in the order for reference states that there was, between GMP and the OEMs concerned, a legal relationship according to which GMP was under an obligation to repair, in return for remuneration, the vehicles which it purchased from those OEMs.

39 Furthermore, that decision does not provide any other evidence, including, where appropriate, unwritten factual material that could reveal the existence of such a legal relationship.

40 Accordingly, the information in the file before the Court does not support the conclusion that there is, between GMP and the OEMs concerned, a legal relationship, within the meaning of the case-law cited in paragraph 30 above, resulting from the 2004 agreement or from any other information deriving from that file, pursuant to which there was reciprocal performance between those companies, one of which consists in the provision, by GMP to those OEMs, of repair services for motor vehicles and the other in the remuneration of those services.

41 Should the referring court conclude, on the basis of material not submitted for the Court's attention, examined, where appropriate, in conjunction with the 2004 agreement, that there is such a legal relationship between GMP and those OEMs, it will still be for that court to establish whether the adjustments at issue in the main proceedings constitute actual consideration for identifiable services, within the meaning of the case-law cited in paragraph 30 above, namely whether those adjustments constitute GMP's remuneration in respect of the provision of repair services for the vehicles at issue.

42 In that regard, it should be recalled 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 (judgment of 4 September 2025, *Arcomet Towercranes*, C-726/23, EU:C:2025:646, paragraph 46 and the case-law cited). Accordingly, in order for such a link to be established, that payment must neither be voluntary nor uncertain nor difficult to quantify (see, to that effect, judgment of 4 September 2025, *Arcomet Towercranes*, C-726/23, EU:C:2025:646, paragraph 47 and the case-law cited).

43 In the present case, it is apparent from the order for reference that the adjustments at issue in the main proceedings were calculated by taking into account not only the costs relating to the repairs carried out by the independent dealers and invoiced by the independent dealers to GMP, but also the operating costs of GMP. Accordingly, the costs relating to the repairs of the vehicles at issue appear to be only one of the parameters taken into account for the purposes of the calculation of those adjustments. Consequently, depending on the significance of all those costs in relation to the initial transfer prices, those adjustments could give rise not only to credit notes but also to debit notes, sent by the OEMs to GMP.

44 In addition, the various costs incurred by GMP in connection with the distribution of those vehicles were taken into account only in order to guarantee that the previously determined profit margin was obtained, with the result that, once obtained, it does not appear that GMP was guaranteed that all of those costs, and in particular those incurred by GMP for the purpose of repairing those vehicles, would be reimbursed by the OEMs concerned.

45 In the light of the foregoing, it appears, subject to the verifications to be carried out by the referring court in accordance with paragraph 41 above, that the link that may exist between any repair services for the vehicles at issue provided by GMP to the OEMs concerned and the adjustments of the transfer prices of those vehicles is, at most, only indirect.

46 As regards, in the second place, the Portuguese Government's argument that, by bearing the costs of repairing those vehicles, GMP acted on behalf of the OEMs concerned and took part in a supply of services by the dealers to those OEMs, with the result that the attribution of those costs to those OEMs should be classified as a chargeable event for a taxable transaction subject to VAT, pursuant to Article 6(4) of the Sixth VAT Directive, it is sufficient to note that the documents before the Court do not contain anything from which it might be inferred that GMP took part in such a supply of services and that it acted on behalf of another.

47 In the third and last place, should the referring court consider that the adjustments at issue in the main proceedings do not constitute the remuneration in respect of a supply of repair services for vehicles by GMP to the OEMs concerned, but rather a subsequent amendment of the price paid by GMP when purchasing those vehicles from those OEMs, it should be noted that, as the Advocate General stated, in essence, in points 56 to 62 of her Opinion, it will be for the competent national authorities, where appropriate, to assess the effect of such an amendment on the determination of the taxable amount of the transaction consisting in the supply of those vehicles by those OEMs to GMP, inter alia, in the light of Article 11 of the Sixth VAT Directive.

48 Having regard to all the foregoing, the answer to the question referred is that point 1 of Article 2 of the Sixth VAT Directive must be interpreted as meaning that an adjustment of a transfer price of motor vehicles which is:

– duly set out in an agreement concluded between the companies belonging to the same group intended to guarantee that the company acquiring such vehicles obtains a previously determined profit margin on the resale of those vehicles;

– evidenced by a credit or debit note sent by the selling company to the acquiring company, and

– calculated on the basis, inter alia, of the costs incurred by the acquiring company in connection with the repair by third parties of those vehicles,

does not constitute consideration in respect of a ‘supply of services effected for consideration’, within the meaning of that provision, unless there is, between those companies, a legal relationship characterised by reciprocal commitments relating to the supply by the acquiring company of services to the selling company and the payment by the selling company of remuneration in respect of those services in the form of such an adjustment, establishing a direct link between the supply of those services and that adjustment.

Costs

49 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 (Ninth Chamber) hereby rules:

Point 1 of Article 2 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment,

must be interpreted as meaning that an adjustment of a transfer price of motor vehicles which is:

– **duly set out in an agreement concluded between the companies belonging to the same group intended to guarantee that the company acquiring such vehicles obtains a previously determined profit margin on the resale of those vehicles;**

– **evidenced by a credit or debit note sent by the selling company to the acquiring company, and**

– **calculated on the basis, inter alia, of the costs incurred by the acquiring company in connection with the repair by third parties of those vehicles,**

does not constitute consideration for a ‘supply of services effected for consideration’, within the meaning of that provision, unless there is, between those companies, a legal relationship characterised by reciprocal commitments relating to the supply by the acquiring company of services to the selling company and the payment by the selling company of remuneration in respect of those services in the form of such an adjustment, establishing a direct link between the supply of those services and that adjustment.

[Signatures]

* Language of the case: Portuguese.