VAT ALERT

February 2017

About Mazars

Mazars is an international, integrated and independent organisation, specialising in audit, accounting, and tax, legal and advisory services. We rely on the skills of more than 18,000 professionals in the 79 countries that make up our integrated partnership.

Mazars Global Indirect Tax Group have a long history. The worldwide group of international advisors, specialized in indirect taxes (VAT, GST and sales and use tax) and Customs works closely together on joint client assignments as a fully integrated international team. Our services include a wide range of VAT/GST and Customs services including national and international advice, global VAT compliance, reclaiming foreign VAT, fiscal representation, VAT planning and supply chain management.

INTRODUCTION

Welcome to the first issue of Mazars VAT Alert!

Contributions to this newsletter come from members of the Global Indirect Tax Group, a group of professionals specialized in VAT and customs and international trade issues, based in the Mazars offices around the world.

This edition of the VAT Newsletter highlights the proposal of the European Commission to simplify the VAT rules for e-commerce businesses, the consequences for VAT and customs duties of the exit of the UK of the European Union and the new rules on the place of supply of services connected with immovable property. In addition, the newsletter highlights some customs duty topics: one on new developments concerning the REX system (Registered Exporter) and one concerning new AOE criteria (Authorized Economic Operator).

We welcome your feedback on the items covered and on what topics you would like to see covered in the future.

Kind regards,

Bert Laman
Head of Mazars Global indirect Tax Group

EUROPEAN COMMISSION PROPOSES NEW VAT RULES TO SUPPORT E-COMMERCE AND ONLINE BUSINESSES

On 1 December 2016 the European Commission introduced a series of measures to simplify the VAT rules for e-commerce businesses in the EU. These proposals will allow consumers and companies, in particular start-ups and SMEs, to buy and sell goods and services more easily online.

The proposals address four key actions:

Broadening of the VAT One-Stop-Shop system to companies selling goods online

Currently, online traders that sell goods online to private consumers have to register for VAT in all the Member States to which they sell goods. Often cited as one of the biggest barriers to cross-border e-commerce, these VAT obligations cost businesses around EUR 8,000 for every EU country into which they sell.

The Commission is now proposing that as of 2021 businesses make one simple quarterly return for the VAT due across the whole of the EU, using the online VAT One Stop Shop. This system already exists for sales of e services to private consumers. Administrative burdens for companies will be reduced as a result of this proposal.

Thresholds for cross-border sales of electronic services

As of 2018 a new yearly threshold of EUR 10,000 in online sales of cross-border electronic services will be introduced, under which businesses selling cross-border can continue to apply the VAT rules they are used to in their home country. This rule allows small businesses to stay out of the MOSS regime[1].

The thresholds could be applied as early as 2018 one services, and by 2021 for online goods. Another simplification targets small businesses selling online services whereby the yearly turnover from these sales stays below a threshold of EUR 100.000.

Going forward these businesses will only have to collect one piece of evidence to demonstrate the location of the customer to define the applicable VAT rate. Currently businesses need two corresponding indicators.

Removal of the VAT exemption for small value consignments

Currently small consignments imported into the EU that are worth less than EUR 22 are exempt from VAT. With around 150 million parcels imported free of VAT into the EU each year, this system is open to massive fraud and abuse, creating major distortions against EU business. Firstly, EU businesses are put at a clear disadvantage since unlike their non-EU competitors, they are liable to apply VAT from the first eurocent sold. Secondly, imported high-value goods such as smartphones and tablets are consistently undervalued or wrongly described in the importation paperwork in order to benefit from this VAT exemption.

Possibility for Member States to align the VAT rate on electronic and printed publications

Current rules allow Member States to tax printed publications such as books and newspapers at reduced rates or, in some cases, super-reduced or zero rates. The same rules exclude e-publications, meaning that these products must be taxed at the standard rate.

The European Commission now proposes to allow Member States, as of 2018, to tax electronic publications at the same VAT rate as the printed publications.

For more information please contact your local advisor or Bert Laman (bert.laman@mazars.nl).

[1] To save numerous businesses that sell electronic services to private consumers having to register for VAT purposes with the tax authorities in many different countries, businesses are permitted – under certain circumstances – to declare this VAT in/ via just one of those countries. This is known as the Mini One Stop Shop (MOSS).

BREXIT – WHAT ARE THE ISSUES FOR BUSINESSES FROM A VAT AND CUSTOMS POINT OF VIEW

As it seems to be clear that the UK government plans to apply for Art. 50 of the EU-Lisbon-Agreement in March 2017, different models of the exit of the UK of the European Union are currently under discussion (e.g. EFTA-Model, Swiss Solution, Contract Model WTO, Continental Partnership).

However, for (regulated) temporary employment agencies (or interim agencies) in Belgium there were some uncertainties with respect to who should withhold and

Currently, it is completely unclear which model finally will make it although rumors say that the "Continental Partnership" would be preferred by the UK government. However, from a VAT point of view it has to be noted that the UK will no longer be part of the territory of the European Union after its exit and will, thus, have a status similar to Switzerland and Norway.

For businesses with supplies of goods and services to and from the UK, this means that the respective rules of the EU-VAT Directive generally will no longer be applicable. However, one might think that the current EU-regulations will remain unchanged and adopted into national UK law for a certain period of time. Such an approach is at present under discussion under the header 'Great Repeal Bill'.

From the viewpoint of German companies, the following has to be noted:

- In the case of supplies of goods from Germany to the UK, intra-community supplies will be reclassified into (VAT exempt) exports into a third country – the new status will result in different documentation requirements as proof of the VAT exemption (e. g. no more 'Gelangensbestätigung').

- Simplification rules like intra-community triangulation in case of chain transactions (several supplies from a civil point of view, but only one shipment of the goods) would no longer be applicable.

- Purchases in the UK are no longer to be reported as intra-community acquisitions (which normally would not result in any cash flow burden of the companies) but will be qualified as imports for which in general import VAT and (assuming no exemptions or simplifications are available - depending on the imported goods) Customs duty would become due.

- Shipments of goods from one part of a business to another within the same legal entity and crossing the UK-German border will no longer be qualified as intra-community transfer of own goods. Instead, such transactions follow the underlying customs regulations.

- For services to be rendered to companies located in the UK, the proof of the status as VAT entrepreneur needs to be carried out via ‚different' documentation and no longer on the basis of the VAT Identification Number of the service recipient.

- In case of the UK's exit from the EU, the regulations of the EU-cross-border VAT refund procedure based on the 8th EC-Directive are no longer applicable. Instead, the rules for companies located in third countries are of relevance. As an outcome, the deadline for filing such an application will be shortened to six months (30 June following the end of the calendar year); the 9-months-deadline for businesses located in the EU would no longer be applicable.

- Supplies of goods to the UK and supplies of services to companies located in the UK have no longer to be reported in the EC sales list. Moreover, for supplies of goods, no statistics returns have to be submitted in case of exceeding the underlying thresholds. Instead, extrastat reporting is required.

All the above listed regulations are in general applicable with the day of the UK's exit from the European Union. However, this is not the day the application of Art. 50 of the Lisbon Agreement will be submitted.

Crucial for the VAT treatment of supplies of goods is in general the point of time the shipment of the goods begins. The (later) point of time of the invoicing is irrelevant in this respect.

This means that shipments of goods which begin before the exit and where the goods will be delivered after the exit, still would have to be classified as intra-community supplies of goods. Purchases from the UK where the shipments begin before the exit, would have to be treated as intra-community acquisitions in Germany as the country of destination.

In terms of Customs, one has to have in mind that as a matter of fact generally the direct application of the Union Customs Codex is no longer possible with the day of the exit.

From the discussions in the UK so far, one can learn that the general pro-Brexit sentiment has a customs exemption as an overall aim. However, in this respect it has to be noted that between the European Union and several countries a significant number of free trade agreements apply which result in customs exemptions or decreased customs duties for imports of goods. These agreements will have to be negotiated completely anew after the exit of UK. Having in mind that the average time for negotiations of free trade agreements is approximately seven years, companies must be prepared for a substantial period of uncertainty for an intermediate period.

During the two-year period of negotiations after applying for Art. 50, all EU regulations continuously are applicable as the UK remains a member of the European Union during that period. Under certain conditions (i. a. unanimity), the two-year period can be prolonged. For this period, it is decisive which interim solution will be accepted by the UK and the remaining EU member states.

This means for businesses that they have to monitor continuously their operative business models and its VAT and customs implications in order to amend them accordingly whenever appropriate.

In case the two-year-period should not be prolonged, the UK will exit the EU and will become a third country.

After the state of shock of the first weeks and the clarity that the UK is indeed going to apply for the exit, it is strongly recommended that companies review their current business setups in the light of the discussed exit models. Depending on the result of such investigations, businesses should develop scenarios for the operative implementation and get in touch as early as possible with their main vendors, customers and other business partners.

The following list of areas requiring amendment shows clearly that (supposedly) simple VAT compliance obligations can result in time consuming and complex efforts:

- Processes (e.g. amendment of the supply chain: who imports the goods into the EU, warehousing, different documentation requirements)
- IT-Setup (e. g. Tax Codes, ‚wording' on invoices)
- Invoicing (i. a. wording, prices)
- Pricing (e.g. in case customs should become due in future)
- Customs Licenses / Simplifications (e.g. customs warehouse, AEO)

In case customs duty should become due for the supplies of goods, it should be checked whether such a burden could be reduced by applying for specific customs procedures, simplifications and amended tariffs.

As customs duty is not deductible like input VAT, immediate action is required for businesses which fall under the scope of the new regulations. Otherwise, the additional costs have to be considered for pricing purposes which might be a challenge at the market.
In case Scotland should remain a member of the EU, this should be considered carefully by companies while they are planning their (new) business setup.

For more information please contact your local advisor or Birgit Jürgensmann (birgit.juergensmann@mazars.de).

NEW AEO CRITERIA AS A RESULT OF THE UNION CUSTOMS CODE (UCC)

Effective May 1, 2016, the UCC was introduced. The UCC replaced the Community Customs Code after a period of 20+ years. The UCC inter alia contains significant changes on the AEO (Authorized Economic Operator) concept, which we will outline below.

First, the AEO status is no longer obtained via a "certification" process. As of May 1, the AEO status is awarded by means of a customs license. Second, effective May 1, 2016, there are only 2 types of AEO licenses, (i) AEO-C (customs simplifications) and; (ii) AEO-S (Safety & Security). It is however possible to obtain a combined license. Third, specific (new) criteria were introduced concerning practical standards of competence and professional qualifications.

How do these changes affect the daily practice?

The new criteria, which are embedded in the UCC, are elaborated in an Information Document[2] of the European Commission and in an updated version of the "AEO Guidelines". From these documents, it can be derived that the person in charge of the AEO's customs affairs must at least have 3 years of practical experience in customs matters or is in possession of a qualification standard adopted by a European Standardization Body. According to the Information Document, such a qualification standard does not (yet) exist. Regarding the practical standards of competence, it is important that the person responsible for customs matters concluded specific training/education on EU customs legislation. This can be demonstrated in various ways.

It is noted that these are new criteria effective May 1, 2016. In practice, a situation can occur where a company in possession of the AEO status prior to May 1, no longer meets the AEO criteria after May 1, 2016. Therefore, it is crucial for existing AEO's to carefully review the AEO-Guidelines and to verify whether the conditions are still satisfied. The European customs administrations have until May 1, 2019, to re-assess existing AEO's. As re-assessments can be initiated at any given moment, it is important to evaluate the situation within your company as soon as possible.

If the (new) criteria are not complied with, the AEO status may be suspended and, in the worst case, be revoked. This can have a major impact on existing customs licenses and accompanying guarantees.

For more information please contact your local advisor or Martin Ouwehand (martin.ouwehand@mazars.nl) or Eline Polak (eline.polak@mazars.nl).

PLACE OF SUPPLY – SERVICES RELATING TO IMMOVABLE PROPERTY

This article provides a short commentary on Council Implementing Regulation No. 1042/2013 which has effect from 1 January 2017. The Regulation helps to clarify which services fall within Article 47 of the VAT Directive, which deals with the place of supply of services connected with immovable property.

Regulation 1042/2013 provides significant additional background and guidance on:

- The nature of immovable property;
- The level of connection required between the immovable property and the service;
- Whether certain types of services are considered to be connected with immovable property (and the types of services which are not considered to be connected).

The explanatory notes provide a helpful resource in understanding these matters; however, although the Commission has consulted with Member States, it should be remembered that the notes represent the Commission's view, and there is nothing to prevent tax administrations in Member States from adopting their own national guidance on the same matters. The Regulation is unlikely to provide a definitive view of all supplier – customer situations that will arise.

Broadly speaking, the Regulation and the guidance state that in order for services to be considered connected with immovable property, there are two key considerations:

- There must be a direct connection to property; and
- The connection must be to a specific property.

[2] TAXUS/B2/031/2016

REGULATIONS
COMPLIANCE

Where such a direct connection exists between the services being supplied and specific immovable property, the place of supply is the place where the immovable property is located.

The Regulation gives examples of what should be considered to be immovable property:

- Any specific part of the earth, on or below its surface, over which title and possession can be created;
- Any building or construction fixed to the land which cannot be easily dismantled or moved;
- Any item that has been installed and which represents an integral part of a building or construction without which the building or construction is incomplete, such as doors and roofs;
- Any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building.

In terms of the services included within Article 47, these generally include:

- Changing the physical characteristics of specific property, eg construction of a new building;
- Being connected with a survey or assessment of specific property;
- Situations where the property is integral to the service being provided;
- Changing the legal status of specific property, or allowing its use, eg a new property lease.

It therefore appears that certain services such as legal and consultancy services are not normally to be regarded as having sufficient connection with specific immovable property, hence normal place of supply rules (eg the General Rule) will apply.

Some Member States, including the UK, have already implanted most if not all the Commission's views within their own national guidance.

For more information please contact your local advisor or James Hurst (james.hurst@mazars.co.uk).

ECJ EASES FORMAL INVOICE REQUIREMENTS FOR VAT DEDUCTION

The case-law of the European Court of Justice (hereafter 'the ECJ') is characterized by its continuing development of interpretation of VAT law such as is the case of the effect of an incomplete VAT invoice on the right to deduct input VAT.

The ECJ has repeatedly ruled in the past that the right to deduct VAT is a fundamental principle of the common system of VAT established by EU legislation. The right to deduct VAT was characterized as an integral part of the VAT scheme that cannot in principle be limited. However the ECJ demonstrated strict formalism on earlier case law (i.e. C-368/09 Pannon Gép Centrum and C-271/12 Petroma) when they ruled that the right to deduct VAT can be refused when the right is based on invoices which are incomplete even when those invoices are supplemented by the additional information.

The recent case law No. C-516/14 Barlis (published in September 2016) clearly defined the substantive conditions which must be met in order for the right to deduct VAT to arise. The right must be used by the business for the purpose of his own output taxable transactions and secondly, the supplier of goods or services on which input VAT is claimed must be another taxable business. Holding an invoice was noted to be a formal condition for exercising the right to deduct.

The ECJ noted that the right to deduct input VAT shall be allowed if the substantive requirements are satisfied, even if the business claiming VAT fails to comply with some formal conditions. Consequently, where the tax authority has all relevant information to establish that the substantive requirements are satisfied, it cannot deny the right to claim input VAT.

As a consequence, an incomplete VAT invoice cannot cause that right to claim input VAT be refused on the sole grounds that an invoice does not satisfy the relevant conditions, and the authorities cannot restrict themselves to examining the invoice itself without also taking account of the additional information provided.

For more information please contact your local advisor or Petr Drahos (petr.drahos@mazars.cz).

REX (REGISTERED EXPORTER) EFFECTIVE FROM 2017

The REX system is the new "origin certification" system of goods subject to the EU's preferential trade agreements. It facilitates a simplified way to prove the origin of the goods, reducing the administrative burden for exporters. Effective 2017, the REX system is first applied in the General System of Preferences (GSP).

Example: Currently, the preferential origin of goods under the GSP arrangement is proven via a FORM-A certificate, which is issued/validated by the (local) competent authorities. When in possession of a FORM-A certificate, the importer into the EU is entitled to a lower (preferential) customs duty rate. The REX system replaces the current system with a self-certification scheme; it allows for a mere "statement on origin" (SoO) by the exporter on the commercial invoice or any other commercial document. As a result, goods can be imported from designated developing countries with a "self-issued" SoO instead of a FORM-A. Besides a reduction of the administrative burden, this also speeds up the issuing process.

There are 3 starting dates for exporters to apply the REX system, the first one commencing on January 1, 2017. Once started, a transition period will apply, where the current system and the REX system will be operated in parallel. In order to apply the REX system, the exporter needs to fulfil certain requirements.

We advise internationally operating companies with multiple cross-border operations to review their supply chains and identify suppliers that may be affected by these changes. Efficient utilization of the REX system can lead to customs duty savings.

For more information please contact your local advisor, Martin Ouwehand (martin.ouwehand@mazars.nl) or Eline Polak (eline.polak@mazars.nl).

MISCELLANEOUS

Belgium

With regards to Belgium the following is important as of January 2017:

- Expanding the scope of the medium rate of 12% for social housing. The scope will be expanded to private persons and companies/legal entities who will be buying/leasing/... dwelling houses meant for social housing. Until the end of2016r, the medium rate of 12% only applied on entities acknowledged by the (local/regional/federal) government(s).
- VAT taxable entities using the mandatory registered cash register system or voluntarily using the registered cash register for catering services can no longer use the franchise regime for small companies (for their entire business).
- The Belgian VAT authorities take the position that article 53 of the VAT Directive 2006/112/EC (right to admission to a cultural event in a B2B-scenario) only applies for conferences which last not more than one day. As from the moment the conference lasts for more than one day, the general B2B-rule applies (place where the recipient of the service has located its business).

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Croatia

With regards to Croatia the following changes in the VAT regulation are implemented as of January 2017:

- General VAT rate still is 25%. However, services of food preparation and serving of food in hospitality facilities, preparing and serving non-alcoholic drinks and beverages, wine and beer in such premises will be taxed at a general tax rate instead of reduced VAT of 13%. The same change is expected for supplies of white sugar produced from sugar cane or sugar beet and placed on the market as granulated sugar.
- Supply of public service of collecting waste, supply of electricity power, supply of seeds, fertilizers, pesticides and other agrochemical products will be taxed at a rate of 13% from 1st of January 2017.
- VAT registration threshold will be increased to 280.000 HRK (approx. 37.000 EUR) from1 January 2018.

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Ireland

The Finance Bill 2016 did introduce some minor VAT changes to the Irish VAT regime, as follows:

- Increase in the flat-rate addition for unregistered farmers from 5.2% to 5.4% with effect from 1 January 2017.
- There is also an anti-avoidance provision included to allow the flat-rate addition not to be paid in certain circumstances where certain structures were being used to abuse the subsidy scheme.
- Dual-use inputs (partial exemption calculations) change. The Irish Revenue Commissioners have amended the Irish VAT legislation so that turnover is the primary method that must be used to perform apportionment calculations. They say that this was only done for the purposes of more correctly aligning the Irish VAT legislation with the VAT Directive.
  Context:
  Under the VAT legislation as it existed before this amendment a tax payer could use any method - turnover, sq. meters, staff numbers, transaction numbers, etc., provided that whatever method was used:
  (1) That method correctly reflected the extent to which the inputs were used for taxable purposes, and
  (2) that method had due regard to the extent of the taxable persons total range of supplies or activities.
  Now the Revenue appear to be saying you have to use turnover as the basis for deduction in the first place and only if this is not workable based on the two criteria above, that you may use an alternative.

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France

With regards to France the following is important as of January 2017:

1. Import VAT

Following the publication of the "Economie Bleue" law, it is now possible in France to pay import VAT under the reverse-charge mechanism by way of simple option since June 22th, 2016. This process is only available for companies established in the EU (including France). Companies concerned do not need to meet any specific criteria. Such option should be sent to the French customs authorities. This new process leads to settle main cash issues related to import.

2. Distance selling

According to the 2016 Finance Bill, from January 1st, 2016, the threshold of distance selling is EUR 35.000 per year (this threshold was EUR100.000 before this date).

3. Refund of VAT

According to the draft of the bill of the Amending Finance Bill for 2016, the process concerning the refund of VAT credit will change. It is discussed to introduce an on-the-spot control from the FTA for such claim. This process may apply to claim from January 1st, 2017. Please note that this provision is still in discussion at the French Parliament. It is not a definitive law.

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Malta

Extension of the scope of the exemption relating to the management of collective investment schemes and retirement schemes.

Legal Notice 383 of 2016, published on 22nd November 2016, extended the scope of the exemption relating to management services provided to collective investment schemes and retirement schemes.

This exemption now also covers management services rendered to securitization vehicles (as defined under the Securitization Act) and authorized reinsurance special purpose vehicles (as defined in the Re-Insurance Special Purpose Vehicle Regulations), provided that the services are specific to and essential for the core activity of the vehicles.

The implications of this extension are particularly two-fold:

1. Such entities acquiring management services will start to enjoy an 18% reduction in their management costs; and
2. The managers of such vehicles will no longer require to charge VAT on the provision of management services however this will affect their right to claim VAT incurred on purchases.

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Norway

From the income year 2017 the Norwegian tax authorities will replace the old VAT return with a new VAT return; a form called “Skattemelding for merverdiavgift”. The main reason for this change is that as from 2017 import VAT shall be reported in the VAT return, instead of paid on importation. However, this change means also that all VAT liable businesses in Norway will have to update their ERP systems and VAT codes to be adapted to the new form, in order for the business to be able to report the correct numbers.

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Poland

With regard to Poland, the following is important as of January 2017:

- In Poland starting 2017 the incorrect recognition of VAT (in addition to tax arrears and interest) will give rise to an obligation to pay a penalty in the form of 30% additional tax liability. The erroneous deduction of VAT in certain cases will require to pay 100% of the erroneously deducted VAT. This sanction will also apply to cases when invoices concern activities that have never been carried out.
- Another issue is the obligation to settle VAT on construction services provided by subcontractors using reverse charge mechanism by the service recipient.

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Portugal

With regard to Portugal, the following is important as of January 2017:

Self-assessment of VAT on imports

The approved State Budget Law for 2017 (due to be enacted on 1st January 2017) determines that, from March 2018 onwards, VAT on imports may, by option of the tax payer, be subject to the reverse charge mechanism, provided the tax payer is under the monthly VAT regime and has no restrictions on the right to deduct the VAT on the inputs.

This option is anticipated to September 2017 for imports of goods listed in Annex C of the VAT Code (basic raw materials with the exception of mineral oils).

Currently VAT due on imports should be paid at customs.
Contact: José Silva Jorge (jjorge@mazars.pt).

Romania

With regard to Romania, the following is important:

- From the 1st of January 2017 the standard VAT rate will decrease from 20% to 19%.
- The provisions concerning the VAT adjustments, in case of capital goods are harmonized with the provisions of Directive 2006/112/CE. The adjustment will no longer be performed only once for the remaining adjustment period, but it will be performed annually, within the period of adjustment, only for one-fifth or one-twentieth of the initial applied VAT. There are still some exceptions, when one-off adjustments should be performed.
- The provisions concerning the taxpayers who re-register for VAT purposes after their VAT number has been cancelled are amended. Therefore, after the re-registration for VAT purpose, the tax payers will be able to deduct the VAT related to acquisitions made during the period when their VAT number was cancelled. Meanwhile, the beneficiaries will be able to deduct the VAT from the time when their suppliers had their VAT number cancelled.
- A special VAT scheme for farmers is established. Those who will apply this regime will not deduct and collect VAT for acquisitions, and for supplies respectively, benefiting from a flat rate compensation for VAT on purchases. The regime will be optional. Farmers may apply the normal VAT regime.
- Intra-community Operators Registry is eliminated given that there are more effective measures concerning the prevention of tax evasion in respect to intra-community transactions.

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Sweden

With regard to Sweden, the following changes were introduced January, 1st 2017:

- A VAT registration threshold is introduced. It will be voluntarily to register if VAT taxable turnover is below 30 000 SEK (approx.3 300 Euro)
- Reduced rate (12%) on certain repairs.
- New real estate term.
- Extended deductibility on business entertainment.
- Standard rate (25%) on movie tickets (before 6 %).

Contact: Carl Eberstein (carl.eberstein@mazars.se).

United Kingdom

VAT grouping

The Government announced that it will consult on the UK's current VAT grouping rules. It is expected the consultation to consider recent case law developments, and the operation of current UK VAT grouping rules.

Insurance premium tax (IPT) increased to 12%.

It has been announced that the standard rate of IPT will increase from 10% to 12% with effect from 1 June 2017. This increase means that the standard rate will have doubled over a 19 month period.

Contact: Sean Glancy, (Sean.Glancy@mazars.co.uk).

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