

BREXIT – MIND THE GAP

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Your global tax partner



CONTENT OF THE WORKSHOP

WORKSHOP



This Brexit workshop shall give you a

- ❖ broad overview of the actual political situation,
- ❖ overview of the most important facts,
- ❖ explain in detail the need for action for indirect taxes, and
- ❖ provide a pragmatic approach with case studies

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Important warning



We do not aim to make you a Brexit expert within this workshop, especially given the fact that UK- and EU27- Administrations have not yet published guidance to all subjects. The information provided in this workshop bases on the most recent publications available from HMRC and other EU27-Administrations.

We are assuming hard Brexit/Customs Warehouse in these slides



ROAD TO BREXIT, FACTS AND NUMBERS

ROAD TO BREXIT



The EU and UK have agreed a further delay to Brexit until 31 October. So how will the deadlock be broken?

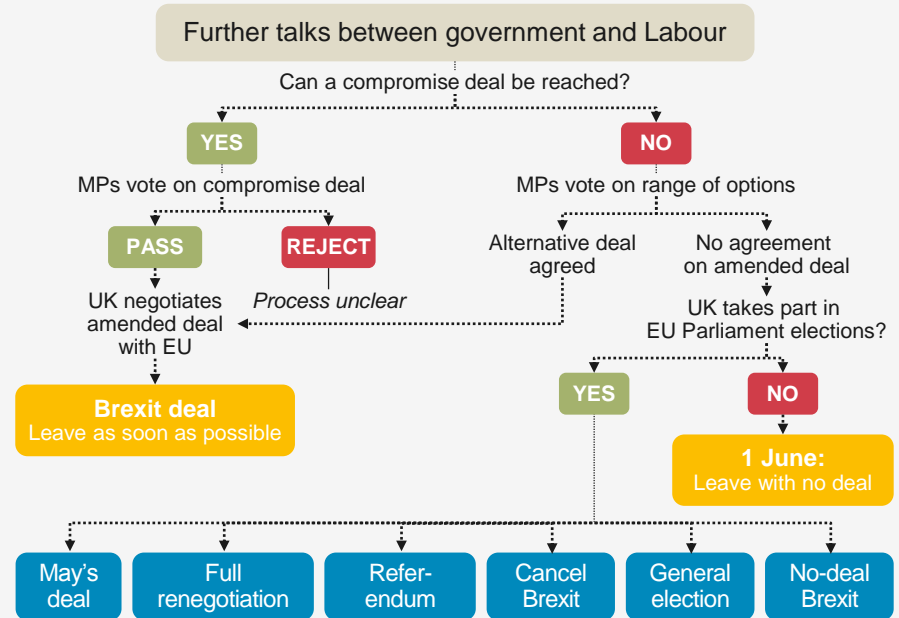
The UK could leave earlier if a withdrawal agreement has been ratified by MPs. The country must now take part in European elections on 23 May – if it did not the UK would have to leave the EU on 1 June without a deal.

And even after all that what would Brexit look like?

- ❖ Customs Union?
- ❖ Hard Brexit?
- ❖ A 'deal'
- ❖ Single Market
- ❖ Transition
- ❖ Tariff proposals?

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OPTIONS AFTER EXTENSION



ROAD TO
BREXIT?





**DOES
BREXIT
MATTER
TO THE UK?**



UK EXPORTS



Britain's exports: What are they and where do they go?

EXPORTS BY
COUNTRY/
REGION 2015

£133.365bn



Total EU

£45.276bn



USA

£22.24bn



Switzerland

£6.836bn



UAE

£6.628bn



Hong Kong

£5.429bn



Saudi Arabia

£4.719bn



South Korea

£4.310bn



Japan

£3.927bn



Singapore

£3.911bn



India

£3.842bn



Canada

£3.783bn



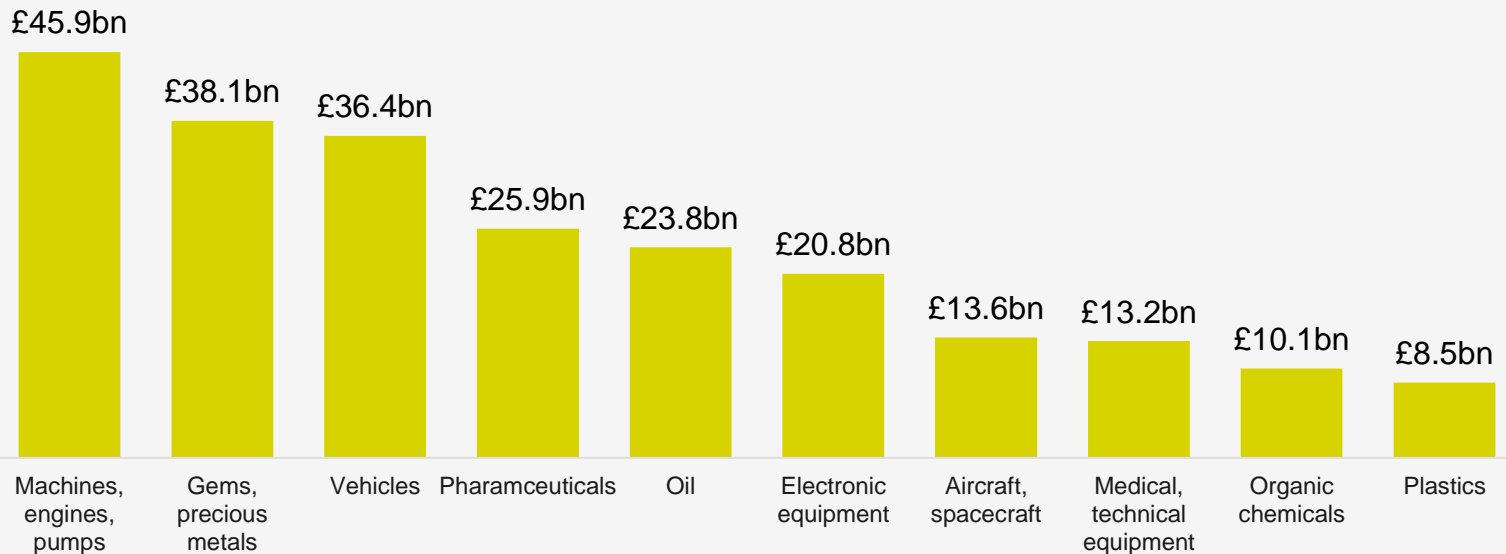
Australia

UK EXPORTS



Britain's exports: What are they and where do they go?

TOP 10
EXPORTS
IN 2015



UK IMPORTS



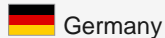
Where we import from: The UK's top 20 trading partners for imports

TOP 20 IMPORT PARTNERS



£56bn

▲ £40bn



Germany

£34bn

▲ £20.7bn



Netherlands

£32.1bn

▲ £27.6bn



United States

£31.6bn

▲ £15.7bn



China

£24.8bn

▲ £21.7bn



France

£20.1bn

▲ £14.3bn



Belgium

£18.2bn

▲ £10.4bn



Irish Republic

£16.8bn

▲ £14.8bn



Norway

£15.2bn

▲ £12.5bn



Italy

£12.5bn

▲ £10.4bn



Spain

£10.5bn

▲ £6.7bn



Canada

£8.1bn

▲ £4.6bn



Switzerland

£7.7bn

▲ £3.2bn



Poland

£7.4bn

▲ £5.8bn



Sweden

£7.4bn

▼ £8.5bn



Japan

£7.0bn

▲ £5.9bn



Russia

£7.0bn

▼ £8.5bn



Hong Kong

£6.2bn

▲ £3.2bn



India

£6.0bn

▲ £4.0bn



Turkey

£5.3bn

▲ £4.6bn



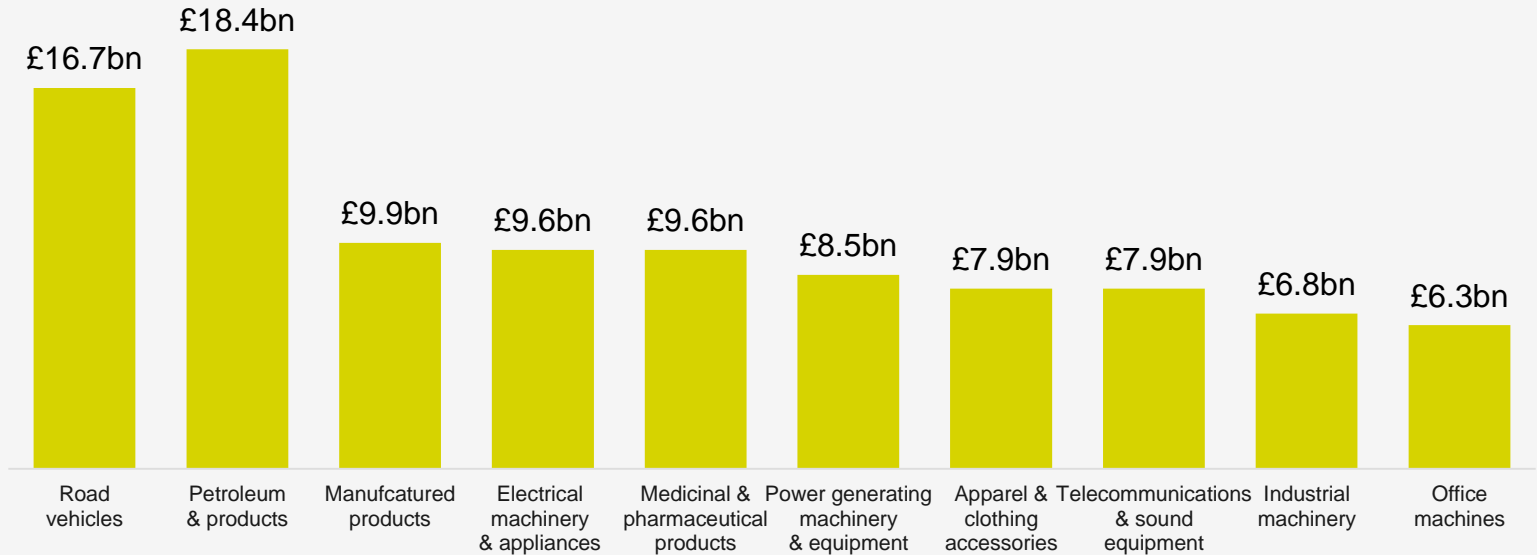
Denmark

UK IMPORTS



Where we import from: The UK's top 20 trading partners for imports

TOP 20
IMPORT
PRODUCTS
IN 2014
SO FAR



GOVERNMENT BREXIT PREPARATIONS (1/2)



Besides the UK, many other countries in Europe are in the midst of their Brexit preparations

❖ Number of new hires of customs officers

Ireland

Approx. 1,000

Belgium

Approx. 350

Germany

Approx. 900

France

Approx. 700

Netherlands

Between 750-1,000

Spain

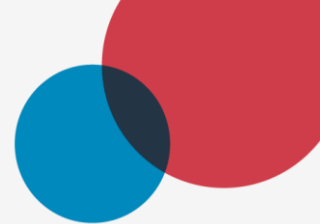
Approx. 860

❖ UK

'Only' 450 new
customs officers

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GOVERNMENT BREXIT PREPARATIONS (2/2)



❖ Switzerland

No additional hire of customs officers announced, but conclusion of 5 bilateral agreements to come into force after Brexit, covering trade, insurance, air (open sky) and overland transportation as well as citizens' rights

❖ Norway and Iceland

Trade agreements concluded (despite UK still being in EU – give legal certainty)

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The background features a large yellow circle on the left and three overlapping circles on the right: a blue one at the top, a red one at the bottom, and a dark blue one in the middle. The text is centered within the yellow circle.

CORPORATE TAX & EMPLOYMENT TAX CONSIDERATIONS



INDIRECT TAX AND CUSTOMS ASPECTS

THREE SCENARIOS



Hard Brexit

No transitional agreement, Customs duties, etc.

Withdrawal Agreement = Transitional period

Application of EU regulations until the end of 2020 with a possible extension until the end of 2022

No Brexit

As of today

1 Free trade agreement

Such as the ones already concluded by the EU (Japan, Korea, Canada, etc.)
PANEUROMED cumulation?



2 Hard Brexit

Customs duties, etc.



3 Customs Union

Like EU and Turkey, no Customs duties, alignment of Customs rules and tariffs



BREXIT – SUMMARY OF WHAT TO WORRY ABOUT



Registrations

- VAT registration
- EORI registration

Cashflow

- Postponed accounting
- Deferment account
- Import duties
- Import VAT recovery

VAT Refund procedures

- 8th/13th directive
- Deadlines
- Reciprocity

Supply chain

- Logistics
- Warehousing
- CFSP/TSP in UK
- Spare parts

Import/Export

- Agent/Broker
- Documents/CoO
- Importer of record
- Commodity Code BTI

Import procedures

- CPC 4000/4200
- IPR and OPR
- Customs Warehouse

Special schemes

- MOSS/TOMS
- Frequent exporter
- Financial services

Contractual obligations

- Incoterms
- Change of legal clauses
- Commodity Code

Services

- Use and Enjoyment rules
- Rules for non established entities

Transitional rules

BREXIT – REGISTRATIONS



- ❖ VAT registration

- ❖ EORI registration

- ❖ **UK businesses** to register for VAT purposes in one or several EU-Member States if performing taxable supplies, for which the reverse-charge mechanism does not apply. Appointment of fiscal representative depending on local VAT registration requirements
- ❖ **EU businesses** to register for VAT purposes in the UK if performing taxable supplies for which the reverse-charge mechanism is not applicable. No fiscal representative necessary
- ❖ **Triangulation supplies** within the EU of UK business will require EU VAT registration
- ❖ **Additional EORI number** registration in the UK and in the EU necessary
- ❖ **Distance selling and e-supplies** requires new VAT registrations
- ❖ **Intrastat** – From and to the UK: No more necessary!

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BREXIT – CASHFLOW



- ❖ Postponed accounting
- ❖ Deferment account
- ❖ Import duties
- ❖ Import VAT recovery

- ❖ **Potential additional cashflow impact** due to customs clearance of goods through UK or EU customs – possibility of postponed accounting or deferment to be explored
- ❖ **Postponed VAT Accounting** (PVA) scheme for UK based businesses will be implemented
- ❖ **Duty deferment account** might defer payment of import duties and import VAT for up to 45 days
- ❖ **Most importantly** is it to be noted that import duties will be levied for goods imported from the UK to the EU (and vice-versa) in case of a no-deal Brexit. In case of a deal Brexit, payment of import duties will depend on the exact agreement between the UK and the EU

BREXIT – VAT REFUND PROCEDURES



- ❖ 8th/13th directive
- ❖ Deadlines
- ❖ Reciprocity

- ❖ **UK business** should still be able to claim a refund under the 13th VAT directive. Filing of application to VAT authority of EU country concerned (no longer with HMRC)
- ❖ **EU businesses** should also be able to claim VAT incurred in the UK if not VAT registered locally. UK does so far not required reciprocity
- ❖ **Application period and deadline**

Country	Deadline	Refund period
UK	31.12.	1.7. – 30.6.
EU	30.6.	1.1. – 31.12.

BREXIT – SUPPLY CHAIN



❖ Supply chain

❖ Logistics

❖ Warehousing

❖ **Brexit -1mth:** Replenishing of UK warehouses in order to avoid shortage

❖ **Brexit +6mths:** Making use of transitional simplified procedures (TSP) for goods coming from the EU, which allows simplified entry into the UK. Only open to UK established business

❖ Customs Warehouse and Other Authorisations

❖ **Import post Brexit:** Company's records to include

• Unique reference number

• Date/Time of arrival

• Description, CN-number, quantity

• Purchase /Sales invoice

• Serial number

• Customs value

• Delivery details /Incoterms

• Transactional details

• Country of Origin (pre Brexit UK origin?)

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BREXIT – IMPORT/EXPORT UK VIEW

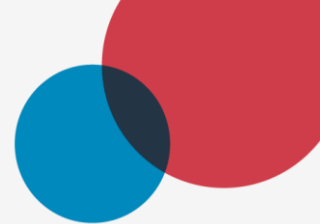


- ⌘ Agent/Broker
- ⌘ Documents/
CoO/Preference
- ⌘ Importer of
record
- ⌘ Commodity
code – BTI

- ⌘ **Detailed and proper instructions** to be given with regard to import/export of goods to or from the UK
- ⌘ **Import/export document** must meet information and formal requirements of UK/EU customs authorities. CoO to be issued, long-term suppliers declarations no longer applicable
- ⌘ **Importer of record rules** to be observed, in particular with regard to i) licenses and payments (PVA or deferment, import duties) and ii) right to claim import VAT
- ⌘ **Free Trade Agreement (FTA)** between the UK and the EU still to be negotiated. Acceptance of documents and other rules (eg direct transportation rules) for UK – EU trade not yet known
- ⌘ **Commodity code** – BTI – expectations

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BREXIT – IMPORT PROCEDURES UK VIEW



- ❖ CPC 4000/4200

- ❖ Repair/Warranty

- ❖ In- and outward PR

- ❖ Customs Warehouse

- ❖ **Beneficial customs import procedure** to be used for UK business selling into the EU to avoid cash-disadvantage resulting from import VAT payment and multiple VAT registration obligations. Logistics potentially to be adopted

- ❖ **Import procedures for repair and warranty** exchanges to be defined

- ❖ **Application of in- and outward processing relief** to be analysed in order to avoid unnecessary payment of import duties. Watch out: UK applies stricter rules on who can claim

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GENERAL CUSTOMS MANAGEMENT (1/2)



	EU ► UK FLOW	UK ► EU FLOW
Customs Formalities	<ul style="list-style-type: none">❖ EU businesses to register for VAT purposes in the UK if performing taxable supplies for which the reverse-charge mechanism is not applicable. No fiscal representative necessary❖ Additional EORI number registration❖ Identify who will act as importer❖ Distance selling and e-supplies may require new VAT registrations❖ Transitional simplified Customs procedures implemented by the UK (simplified declaration and complete declaration and postponement of the payment of the duties)❖ Import procedures for repair and warranty exchanges to be defined	<ul style="list-style-type: none">❖ Ensure that UK suppliers have EORI number❖ UK businesses to register for VAT purposes in one or several EU-Member States if performing taxable supplies, for which the reverse-charge mechanism does not apply. Appointment of fiscal representative depending on local VAT registration requirements❖ Triangulation supplies within the EU of UK business will require EU VAT registration❖ Beneficial Customs import procedure to be used for UK businesses selling into the EU to avoid cash-disadvantage resulting from import VAT payment and multiple VAT registration obligations. Logistics potentially to be adapted
Delay of implementation	<ul style="list-style-type: none">❖ Anticipate the lead times taking into account the delays due to eventual Customs audits❖ Contemplate other means of transportation	<ul style="list-style-type: none">❖ Implementation of simplification measures for the Customs clearance such as the home Customs clearance procedure in order to limit the delays

GENERAL CUSTOMS MANAGEMENT (2/2)



	EU ► UK FLOW	UK ► EU FLOW
Customs broker	<ul style="list-style-type: none">❖ Conclude a Customs representative agreement with a UK broker	<ul style="list-style-type: none">❖ Negotiate/renegotiate the agreement with the brokers in the EU if necessary
	<ul style="list-style-type: none">❖ Detailed and proper instructions to be given with regards to import/export of goods to or from the UK❖ Review or conclude agreements with the Customs broker with a focus on:<ul style="list-style-type: none">• Traceability• Customs value, origin and tariff classification• Liability of the supplier of service.	
Agreements	<ul style="list-style-type: none">❖ Review of the Customs clauses/inclusion of Customs clauses for all type of agreements (eg distribution, sale, purchase, etc.)❖ Who will bear the Customs clearance costs ?❖ Incoterms that were only of indicative nature in case of intracommunity supplies will now become important for cross-border shipments between the UK and the EU. Potential impact on IoR and VAT registration obligations + impact the Customs value❖ Specific clauses depending on the specificity of the products and the related regulations	
IT	<ul style="list-style-type: none">❖ Review of the internal IT system in order to adapt it according to the new declarations to carry out and review of the invoices❖ Determination of the persons in charge of the management of the IT systems for the import/export Customs clearance	

BREXIT – SPECIAL SCHEMES



❖ MOSS/TOMS

❖ Frequent exporter

❖ Financial services

- ❖ **Existing MOSS and TOMS** registration to be verified. In case of Brexit, the UK will no longer be part of the MOSS system and EU businesses need to register for VAT locally. Same application for travel services rendered by EU businesses in the UK and vice versa
- ❖ **Frequent exporter rules** will be implemented in the UK. These rules will allow local supplies within the UK to sell goods locally applying the zero-rate, if the goods are subsequently exported (similar to some other EU Member States)
- ❖ **Financial services** rendered by UK entities to EU businesses or vice versa might be exempt with credit as the UK will no longer be considered as an EU Member State. The same effect will happen to UK entities rendering VAT exempt financial services to EU based counterparties

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BREXIT – DETAILS



- ⌘ Incoterms
- ⌘ Change of legal clauses
- ⌘ Commodity code

- ⌘ **Incoterms** that were only of indicative nature in case of intracommunity supplies will now become important for crossborder shipments between the UK and the EU. Potential impact on IoR and VAT registration obligations
- ⌘ **Incoterms** will also impact the customs value to be declared, depending on the terms used
- ⌘ **Change of law clauses** should be added to any contracts for cross border supplies made to the UK or purchased from the UK in order to avoid unnecessary additional charges
- ⌘ **Commodity code** – who determines?

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BREXIT – SERVICES



- ❖ Use and Enjoyment rules
- ❖ Rules for non-established entities

- ❖ **UK businesses** rendering services to non-established companies within the UK need to check if local UK rules provide for a U&E override in case the services are used or enjoyed locally. Potentially UK VAT will have to be charged
- ❖ **EU businesses** should also check if services rendered to UK established businesses do fall under local U&E provisions, and whether local VAT needs to be charged
- ❖ **UK businesses** will no longer have the obligation to report services rendered to EU based clients in their ECSLs. No such reports will be needed after Brexit

IMPORT OF GOODS INTO THE EU (1/2)



Import UK-Germany

No deal scenario

- ❖ UK business to import goods into the EU
- ❖ Comparison of Customs procedure 4000 and 4200

Fact pattern

- ❖ UKCo selling goods to a German client. Goods are shipped directly from the UK to Germany. German client does not want to be involved in any import procedures or formalities

Issue

- ❖ Customs clearance in Germany: What are the consequences?

Customs procedure 4000 in Germany

- ❖ Since UKCo will be the IoR, payment of import VAT and customs duties (if any), and shifting of the place of supply to Germany. UKCo must register for VAT in Germany, sale with 19% German VAT. Negative cash impact for UKCo and for German client

Customs procedure 4200 in the Netherlands

- ❖ Under customs procedure 4200 goods can be imported in another EU Member State than the one of final destination at a VAT rate of 0%. Subsequent sale is a zero-rated IC supply

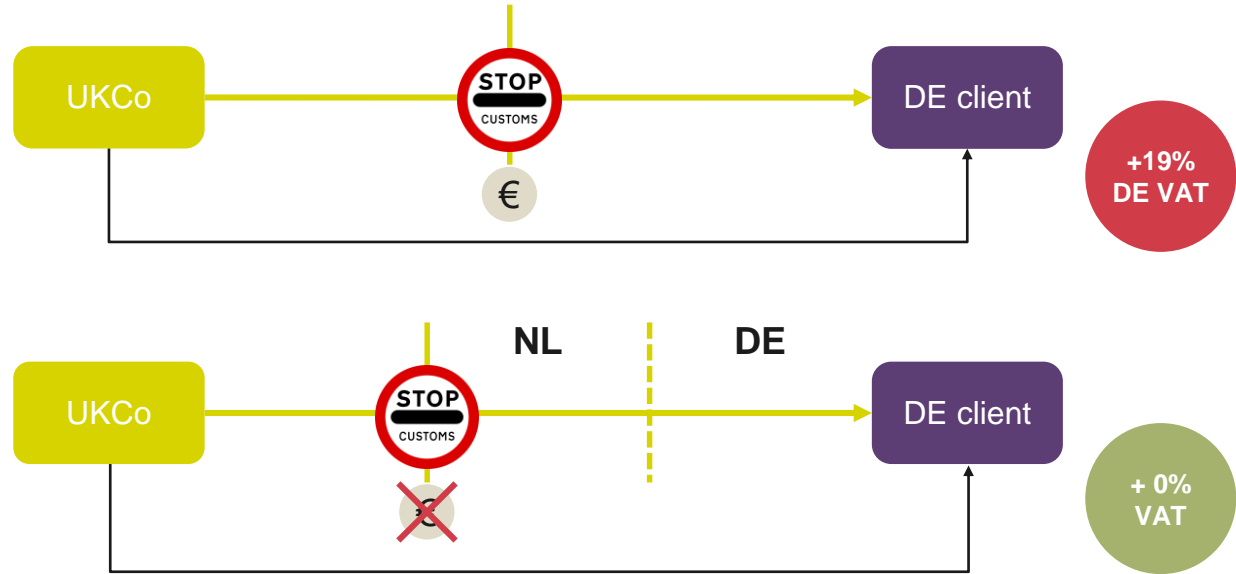
IMPORT OF GOODS INTO THE EU (2/2)



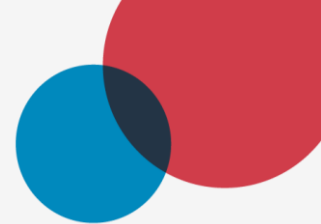
Import UK-Germany

No deal scenario

- ❖ UK business to import goods into the EU
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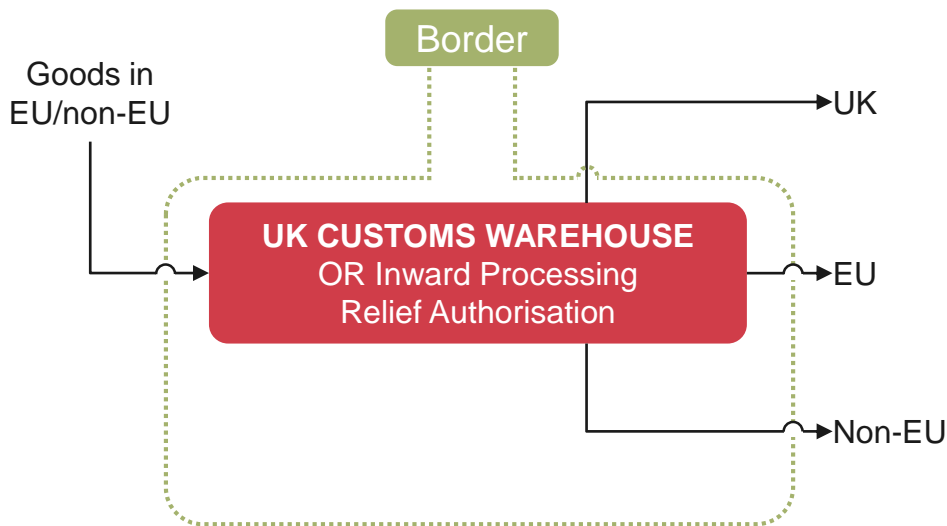
NON – STANDARD TRANSACTIONS



No Sale of goods | Toll Processing | Storage | Warranty | Repair | Pharma Industry

Consider alternative
CPCs or
Authorisations

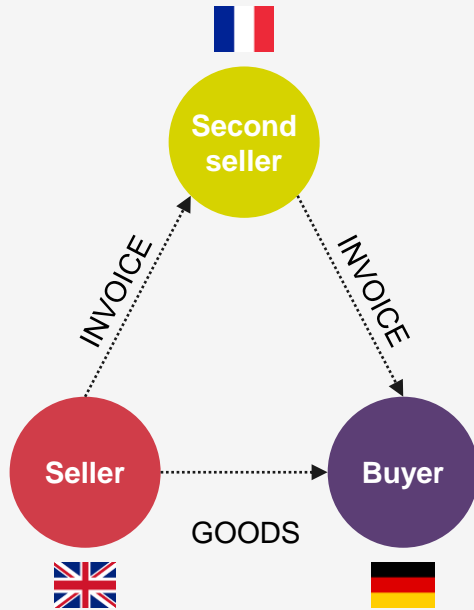
- ❖ IPR
- ❖ CW
- ❖ TI
- ❖ Goods for test
- ❖ Samples etc.



What do you need?

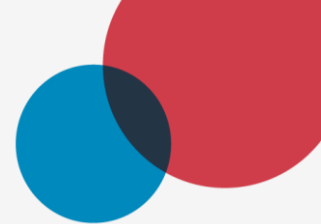
1. Time
2. CCG
3. Processing activity
4. Customs Broker
5. CFSP
6. Preferably AEO status
7. Controls

TRIANGULATION POST BREXIT

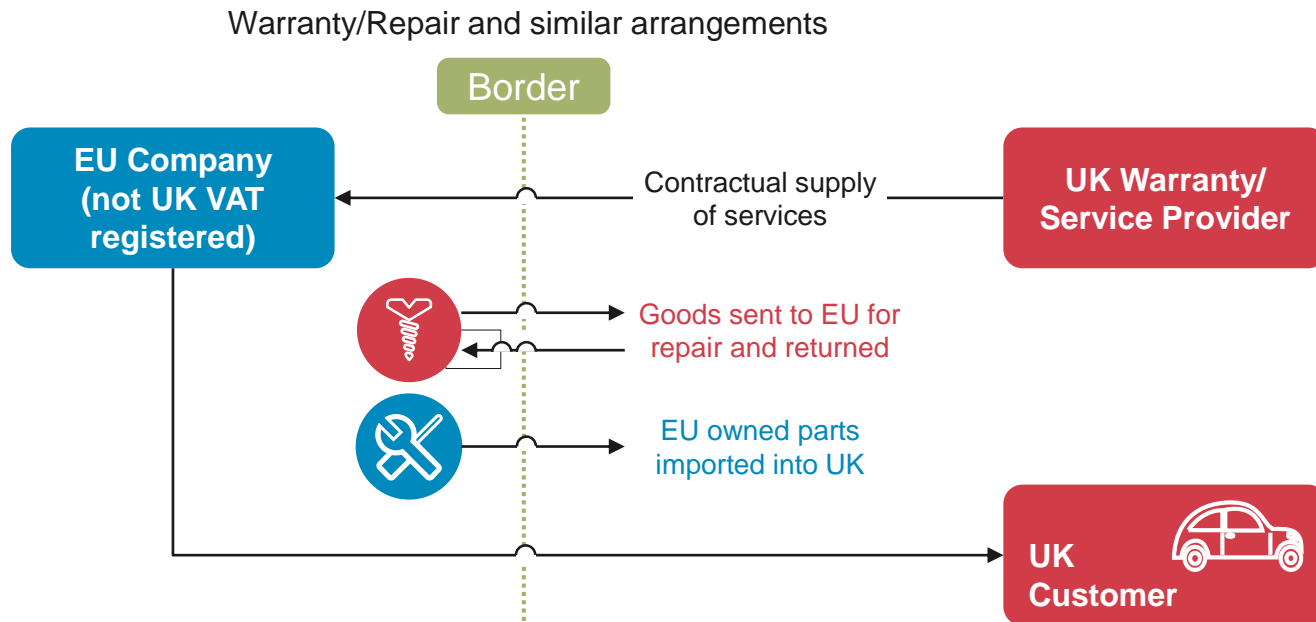


OR OR		
<ul style="list-style-type: none">❖ Zero-rated export by the from the UK❖ Import in Germany by French Seller → pays Import VAT and is required to register for VAT purposes❖ Customs formalities and potential duties	<ul style="list-style-type: none">❖ Local sale with UK VAT to the French Seller❖ French Seller must register in the UK for export? VAT credit position❖ Import by the German company❖ Customs formalities and potential duties	<ul style="list-style-type: none">❖ Zero-rated export by the from the UK❖ Import in Germany by German company → pays import VAT and claims it as input VAT❖ No registration obligations for French Seller❖ Customs formalities and potential duties (Incoterms)

WARRANTY/REPAIR AND SIMILAR ARRANGEMENTS (1/2)

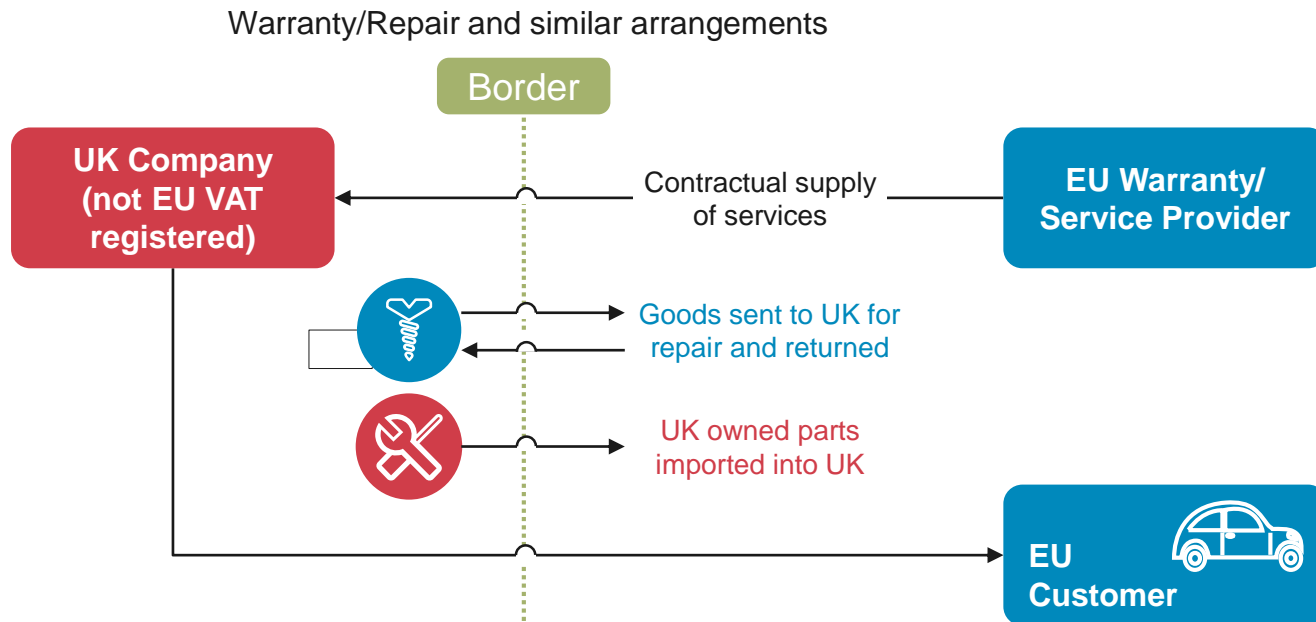


- ❖ VAT treatment of services?
- ❖ Who can import the goods into the UK?
- ❖ Who can recover the import VAT?
- ❖ Import process – options?
- ❖ What if goods sent to EU for repair?



WARRANTY/REPAIR AND SIMILAR ARRANGEMENTS (2/2)

- ❖ VAT treatment of services?
- ❖ Who can import the goods into the UK?
- ❖ Who can recover the import VAT?
- ❖ Import process – options?
- ❖ What if goods sent to UK for repair?





**ADDITIONAL
INFORMATION
ON CUSTOMS
DEBT**

CUSTOMS DEBT (1/2)



	EU ► UK FLOW	UK ► EU FLOW
Customs broker	<ul style="list-style-type: none">❖ Anticipate the revocation of the UK BTIs❖ Necessary securitisation of the tariff classification	
Customs reliefs	<ul style="list-style-type: none">❖ May be preferable to avoid any placement under Customs relief at the date the BREXIT happens❖ Request Customs reliefs authorizations as soon as they are available in the UK❖ Anticipate potential exports to the UK and place under Customs reliefs into the EU	<ul style="list-style-type: none">❖ Authorizations of Customs reliefs provided for several EU Member States will no longer apply to the UK❖ Review the amounts of the guarantees, the tariff headings provided in the authorizations of Customs reliefs, Customs clearance delays, etc.
Preferential origin	<ul style="list-style-type: none">❖ Anticipate the revocation of the BOIs❖ Review the flows that benefit from the EU preferential origin although the products are manufactured into the UK❖ Anticipate duty costs that may impact the margin❖ Necessary to review the sourcing of raw materials originating from the UK❖ In case of EU preferential origin, necessity to comply with the direct transport rule, may necessitate to change the flows transiting through the UK	

CUSTOMS DEBT (2/2)



	EU ► UK FLOW	UK ► EU FLOW
Customs value	<ul style="list-style-type: none">❖ In case of R&D center into the EU, necessity to include the R&D costs as assists into the Customs value upon import into the UK❖ Review internally the direct or indirect free disposal of assists for manufacturing into the EU – necessity to include those in the value of the final product	<ul style="list-style-type: none">❖ In case of R&D center into the UK, necessity to include the R&D costs as assists into the Customs value upon import into the EU❖ Review internally the direct or indirect free disposal of assists for manufacturing into the UK – necessity to include those in the value of the final product
	❖ Necessity to anticipate the impact of the TP adjustments	
Import VAT	<ul style="list-style-type: none">❖ Anticipate the payment of the import VAT❖ Postponed VAT Accounting (PVA) scheme for UK based businesses will be implemented❖ Import duty deferment licenses might defer payment of import duties and import VAT for 30 days	<ul style="list-style-type: none">❖ Anticipate the costs of payment of the import VAT – the reverse charge mechanism shall be used in those countries having implement RC mechanism on import

SPECIFIC REGULATIONS (1/2)



	EU ► UK FLOW	UK ► EU FLOW
Excise products	<ul style="list-style-type: none">❖ To export to the UK, an EAD shall be issued for covering the circulation of the excise products❖ To import the products into the UK an import declaration shall be issued and excise duties paid or the product shall be placed under a suspensive relief	<ul style="list-style-type: none">❖ For any circulation, the products shall be accompanied with an EAD and a Customs declaration❖ To import from the UK, an import declaration shall be issued and used for issuing the DAE which will be required for the circulation between the boarder and the destination
Plants and plant based products	<ul style="list-style-type: none">❖ Phytosanitary certificate may be required❖ Common transit will not allow to postpone the phytosanitary controls to the place of destination since they must take place at the time of entry	<ul style="list-style-type: none">❖ Phytosanitary controls when products come from the UK❖ A prior notification of import shall be issued through TRACES
Chemicals	<ul style="list-style-type: none">❖ EU operators placing REACH products on the UK market will have to carry out national formalities of registration of the substances	<ul style="list-style-type: none">❖ Operators registered in the UK will have to have an entity registered in the EU❖ UK operators will no longer be able to follow the authorizations issued by ECHA to EU operators❖ The UK will no longer be the country centralizing REACH formalities❖ Authorizations and registrations issued before the BREXIT will have to be transferred to an EU entity

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SPECIFIC REGULATIONS (2/2)



	EU ► UK FLOW	UK ► EU FLOW
CITES	<ul style="list-style-type: none">❖ Import and export certificates required	<ul style="list-style-type: none">❖ Veterinary control upon import carried out by the SIVEP at the point of entry into the EU❖ Transport documents must be accompanied with the veterinary certificate of entry required for the Customs clearance❖ Obligation to pre notice the import through TRACES❖ Import and export certificates required❖ Common transit will not allow to postpone the veterinary controls at the place of destination since they must take place at the first point of entry
Cosmetics	<ul style="list-style-type: none">❖ An EU entity shall appoint a responsible person in charge of the notification of the new products placed on the market❖ The current EU notification procedure will no longer apply and a local notification will have to be carried out towards a national organization❖ A 90 days transitional period is provided after BREXIT in order to comply with regulations	<ul style="list-style-type: none">❖ UK operators will have to comply with the same obligation to appoint an EU responsible person

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**SPEAKER
PROFILES**



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Claire Lambert is a Senior Director with Alvarez & Marsal Taxand UK. Claire has over 19 years of experience in corporate and international tax, working with multinational companies active across the globe but has particular expertise in UK, US and European jurisdictions.

Claire's clients have included a wide range of companies from some of the largest listed multinationals right the way through to growing privately held companies.



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Mairéad Warren de Búrca is a Managing Director with Alvarez & Marsal Taxand UK LLP. She brings 20 years of experience in Indirect taxes, specialising in VAT, working with both multinational and domestic companies.

As well as providing VAT advisory services in relation to land and property, manufacturing, and the services industry, she specialises in mergers and acquisitions, business restructurings and insolvencies across all industry sectors. More recently Mairéad has been advising clients on Customs warehousing, IPR and all matters Brexit related.



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Laurent Lattmann is a certified fiduciary. His career started in the indirect tax department of Ernst & Young in 1994 and he joined Tax Partner in 1997. Laurent was promoted to Partner in 2008.

He has broad experience with Swiss and International indirect taxation and advises Swiss and multinational clients in numerous industries, including the financial, insurance and real estate sectors.



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Marc Brocardi is a partner of Arsene Taxand in France.

He leads the Customs team, which performs both advisory and litigation works for domestic and multinational firms in all matters managed by Customs Authorities in France (Customs duties, excises duties, green taxes, export control...).

The team is active in various sectors and its expertise also includes supply chain reorganisations.