

NO-DEAL

Brexit survival guide

The UK will automatically leave the EU without a deal on 29 March 2019

New customs and VAT obligations
will hit 145,000 UK businesses

What tactics and HMRC schemes
can reduce the trade friction?



Contents

1	Introduction Brace for a fundamental rupture	Page 3
2	Can a no-deal Brexit be stopped?	Page 5
3	No-deal Brexit checklist Actions to mitigate customs and VAT friction	Page 6
4	Regime change Leaving the Customs Union, Single Market and EU VAT systems	Page 8
5	Detailed options to reduce trade friction	Page 12

Customs:

- 5.1 New customs declarations processes
- 5.2 Grants for Brexit customs training and IT upgrades
- 5.3 Import licences
- 5.4 Duty relief schemes:
 - Approved customs warehouses
 - Inward processing
 - Duty suspension
 - Temporary admission
- 5.5 Binding Tariff Information decision
- 5.6 Authorised Economic Operator
- 5.7 Customs Freight Simplified Procedure
- 5.8 Customs Comprehensive Guarantee

VAT:

- 5.9 E-commerce goods VAT registration obligations
- 5.10 B2C digital services VAT obligations
- 5.11 Requirements to appoint VAT fiscal representatives
- 5.12 End of Supplementary VAT reporting
- 5.13 How to reclaim VAT incurred

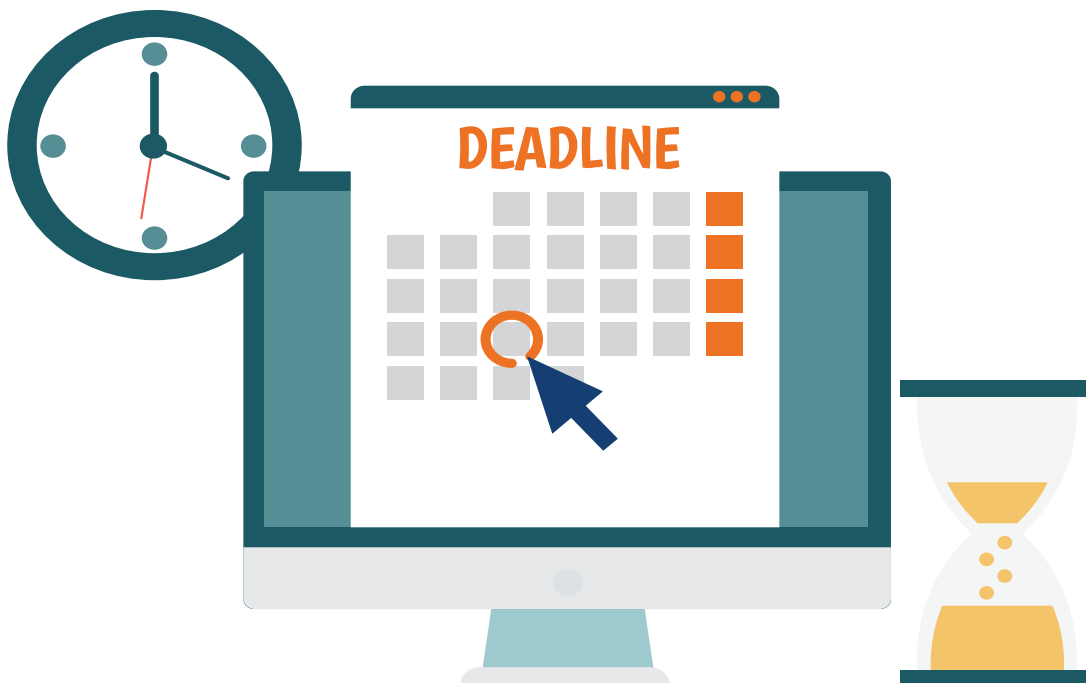


Introduction

Brace for a fundamental rupture

The UK will leave the European Union at 11pm (GMT) on 29 March 2019. This will be without any agreement on its exit terms or future trading relations ('no-deal Brexit') with the remaining EU members ('EU27') or rest of the world. This may now only be reversed in four ways, see Section 2.

This guide explains how over 145,000 businesses will be impacted by new customs and VAT obligations and costs. It includes a no-deal Brexit checklist, with details of actions businesses can take now to mitigate the new trade frictions and tax liabilities.



UK on course for no-deal EU exit

A no-deal Brexit will mean a monumental rupture with the current EU trading arrangements UK businesses currently trade under. The UK's terms of trade with the rest of the world will also undergo a major change as the UK will no longer benefit from preferential tariffs negotiated by the EU on its behalf.

The major trading changes for goods moving across the UK and EU27 borders, and their impact on UK businesses, include:



Tariffs

- Exporters to the EU27 become liable to WTO Most Favoured Nation standard rates as opposed to current nil EU duties
- Importers from the EU27 will have to pay WTO rates unless the UK opts to drop tariffs on all EU and non-EU imports uniformly



Customs clearance

- Exporters and importers will be obliged to complete customs declarations for the first time
- EU imports will face inspections for customs, VAT and regulatory compliance for the first time



VAT

- Sellers of low sales volumes of B2C goods to EU27 consumers will have to VAT register in more countries or cease selling in those territories
- Sellers of goods to EU27 consumers and businesses will have to appoint fiscal representatives in most EU states
- UK companies without EU registrations will lose access to the online EU VAT recovery facility

Plan now to reduce the no-deal friction and risks

Whilst these changes will be historic, businesses can start planning and acting now to reduce much of the friction and liabilities that will be generated by a no-deal Brexit. This includes many schemes and cash grants being provided by HMRC. This guide provides details of these measures and relief in Section 5.

2 Can a no-deal Brexit be stopped?

Following the UK's March 2016 triggering of its Article 50 EU exit notice, it set the date for Brexit as 29 March 2019. This is the default position today by automatic operation of public international law: EU treaties will cease to apply to the UK; and the UK's 1972 European Communities Act will be repealed.

After this date, the EU27 will subsequently trade with the UK as a 'third country' as it does today with the rest of the world.

This path may now only be changed before Brexit in four ways:

1. The UK and EU parliaments vote to approve the Withdrawal Agreement between the UK and EU27 governments. The UK will still legally leave the EU institutions but would have a 21-month transition period to December 2020 where trading arrangements for customs and VAT would remain unchanged.
2. The UK revoking its Article 50 exit notification. This may be done unilaterally, without the consent of the EU27, based on the 10 December 2018 European Court of Justice ruling on the matter. However, a Brexit revocation must be final or a new mandate would be required for the UK to be seen to be acting in good faith.
3. The EU and UK agreeing to a short extension of the Article 50 exit date. This is likely to be to the end of June, the lengthiest extension the EU is likely to offer given other EU issues. However, the EU is unlikely to agree to this unless there is a clear plan for a UK general election or second Brexit referendum.
4. The EU and UK sign a modified Withdrawal Agreement with a new Brexit date. This would still require a successful UK parliamentary vote on a modified Withdrawal Agreement.



3 No-deal Brexit checklist

Actions to mitigate customs and VAT friction

CUSTOMS DECLARATIONS



- ✓ Map out your supply chains to identify goods movements that will become imports or exports to the EU27. You will also need to understand delivery Incoterms and their implications for changing VAT and customs obligations
- ✓ Clarify which party will become the 'importer of record'
- ✓ Apply to HMRC for an EORI Number (Economic Operator Registration and Identification) to declare on EU27 export/import declarations
- ✓ Appoint a customs agent
- ✓ Apply for HMRC customs declarations training and IT improvement grants
- ✓ Check if you will require an import or export licence from any government departments
- ✓ Select the right customs procedure code for your goods
- ✓ Check your freight forwarder has the right information to clear your shipments

TRADE TARIFFS



- ✓ Classify your products and potential tariffs via HS codes
- ✓ Evaluate customs bonded warehousing or duty relief schemes
- ✓ Contact HMRC for a Binding Tariff Information decision
- ✓ Review applying for Authorised Economic Operator status for speedy customs clearance
- ✓ Consider the Customs Freight Simplified Procedure for simplified declaration and clearance
- ✓ Execute a Customs Comprehensive Guarantee to access customs simplifications and relief schemes

VAT LIABILITIES

VAT

- ✓ Consider the option for new VAT registrations to recover import VAT
- ✓ If selling B2C goods under EU distance selling thresholds, apply for new EU VAT numbers
- ✓ If using B2B triangulation and commissionaire simplifications, investigate if you will need new VAT registrations
- ✓ Check which EU27 countries require you to appoint a VAT fiscal representative
- ✓ Apply for a new EU MOSS registration for B2C digital services
- ✓ Submit any last VAT reclaims on the HMRC portal for EU VAT incurred up until 29 March 2019



GOODS REGULATIONS

- ✓ Check if your pan-EU trademark coverage protects your UK position
- ✓ Verify that your exports will still have EU regulatory certification, and what new applications will be required



SYSTEMS

- ✓ Check if your billing systems are able to support logistics, pricing and delivery terms changes
- ✓ Clarify which customs declarations / VAT filings can be automated or will need manual completion



COMMERCIAL CONTRACTS

- ✓ Review contracts with EU suppliers or customers to verify implications if not UK law
- ✓ Confirm which parties become responsible for new duties or VAT liabilities



No-deal Brexit

Three concerns for your VAT strategy

1. E-commerce companies may need new VAT registrations to continue selling
2. Any business with existing foreign registrations will be required to upgrade to fiscal representation agents in 19 of the EU27
3. Any VAT reporting software will need upgrading for new place-of-supply and filings rules

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4

Regime change

Leaving the Customs Union, Single Market and EU VAT systems

What EU structures govern the existing customs and VAT rules for trade between the UK and EU27? What will the effects be of a no-deal Brexit? This section provides 'Explainers' on the principal EU customs and VAT rulebooks, the effects of a no-deal Brexit and the resulting move to World Trade Organization (WTO) terms.

explainer: EU Customs Union - the ending of zero tariffs

The EU Customs Union (CU) has removed border checks, customs declarations and tariffs on goods moving between member state frontiers. It was established in 1968 by the founding members of the current EU. Today, in addition to the EU member states, the CU includes: Turkey, Andorra, Monaco and San Marino.

Imports from outside the CU into any country are subject to 'common external tariffs' which have been negotiated by the EU with the rest of the world via Free Trade Agreements (FTA). The EU member states where the goods are initially imported into are required to collect these tariffs. Collecting states retain 20% of the tariffs, and the balance is due to the EU as a contribution to its budget. Services are excluded from the CU since they are exempt from tariffs.

Effect of a no-deal Brexit

Following a no-deal Brexit, the UK will leave the CU. This will make any UK sales to the EU27 and other members of the CU liable to the common external tariffs for the first time. These are irrecoverable costs for importers. Initially, since the UK will not have a FTA with the EU, this will be at World Trade Organization 'Most Favoured Nation' standard rates.



WORLD TRADE ORGANIZATION

EXPLAINER: Trading on WTO Terms – new tariffs rules

The World Trade Organization (WTO) is an association of over 160 countries. It has a number of functions to promote free and fair trade between its members. This includes: setting the rules of global trade; providing a court in the case of disputes involving member states; and providing a forum for individual countries to negotiate FTAs with each beyond WTO rules.

The UK is a member of the WTO but has mandated the EU to negotiate its terms of trade for the past forty years, including setting preferential rates of tariffs and other duties for exports and imports.

Effect of a no-deal Brexit

Following a no-deal Brexit, the UK will lose the preferential EU-negotiated rates and conditions, and will trade with the EU27 and rest of the world on standard WTO terms. This will mean the UK will have to abide by two key WTO free-trade principles on customs and other free-trade restrictions:

1. Most Favoured Nation (MFN) equal treatment at borders for imports, applying the published WTO MFN tariff rates on goods ('Bindings') at equal levels to any country, EU or non-EU.
2. National Treatment providing no special advantages or conditions to domestic goods over imports.

In the short term, switching to MFN standard rates will mean the imposition of tariffs on UK exports sold to the EU as opposed to the current zero rates. The UK is free not to impose similar retaliatory tariffs. However, if it does so, then it must also drop existing tariffs to the rest of the world to zero. In the long-term, the UK will be able to negotiate FTA's with the EU and other countries to lower or zero customs duty rates. The UK's Taxation (Cross-border Trade) Act has created regulations for this, and the ability of the government to negotiate new, preferential rates in future FTAs.

EXPLAINER: EU VAT regime – loss of multiple filing simplifications

All EU states are exclusive members of the EU VAT regime. Through the EU VAT Directive (law), this mandates harmonised VAT treatment and reporting rules to minimise tax friction when selling goods and services across the EU. However, since full harmonisation remains incomplete, UK (and other EU) companies selling goods cross-border may still have to VAT register on a country-by-country basis. This includes having to file periodic submissions, including: VAT returns; Intrastat; EC Sales listing; and other local submission e.g. SAF-T and Control Statements. UK businesses that incur EU VAT in other states, but who are not VAT registered, may currently recover the VAT via HRMC's reclaims web portal.

Effect of a no-deal Brexit

The UK will exit the EU VAT regime following a no-deal Brexit, and will no longer be required to transpose the EU VAT Directive rules into the UK VAT Act. It will also no longer be subject to the European Court of Justice VAT rulings.

As a result, UK businesses will lose a number of simplifications on EU VAT reporting and recovery that are not available to third countries. Details of the extra VAT registration filings and manual reclaims obligations are provided in Section 4. This includes obligations for more VAT registrations, appointing fiscal representatives in most states and losing access to the HMRC VAT reclaims portal.

For the first time, UK importers will have to pay 20% UK import VAT to clear goods into the UK for the EU27. This VAT is recoverable through a UK VAT return. The UK government has already indicated that it will introduce a deferred accounting scheme for all imports, UK and non-UK, allowing importers to postpone the import VAT to their next VAT return. It will be reported under the 'reverse charge' rule, meaning there will be no cash payment.

EXPLAINER: Leaving the Single Market

The UK is a member of the EU's Single Market (SM), which includes all EU member states plus Iceland, Liechtenstein, Norway, and Switzerland. The SM was created in 1993 when the European Union superseded the European Community. It launched the process of regulatory harmonisation and removal of physical impediments to free trade and the movement across EU borders of: goods; services; capital; and people. The aim was to fuel economic growth by stimulating competition and trade to improve efficiency and quality, and deliver lower prices for businesses and consumers.

Effect of a no-deal Brexit

Following a no-deal Brexit, the UK will regain control over EU immigration – it already controls immigration from non-EU states. The UK will also no longer be obliged to follow the regulations and standards required of the EU on its goods and services. This could enable the UK to strike more flexible and deeper FTA's with many non-EU countries which have been unable to negotiate EU agreements to-date, e.g. US and India. The UK will look to negotiate an early FTA with the EU.

Exiting the SM will however restrict UK exports to the SM countries. These 'non-tariff' barriers will limit trade via:

- Product standard obligations that could mean goods or services may no longer be freely sold to EU27 businesses and consumers
- Licencing and quota limits
- Delays through additional border controls and inspections
- Loss of passporting on financial services
- Immigration controls and skills risks



5 Detailed options to reduce trade friction

This section provides more details on the new customs, and VAT following a no-deal Brexit. In addition, outlines of the many HMRC schemes and grants available to help reduce the new liabilities and friction that will arise for UK businesses trading with the EU27 and the rest of the world.

5.1 Customs process after a no-deal Brexit

Whilst still part of the EU, an estimated 145,000 UK businesses buying and selling goods within the Customs Union (CU) do not have to complete any customs paperwork when moving goods across CU borders. In the event of a no-deal Brexit, customs declarations will become mandatory for all imports and exports with the EU27.

Customs declarations process

Companies which have never had to complete customs declarations should now follow the steps below to be ready for a no-deal Brexit:

- Apply to HMRC for an Economic Operator Registration and Identification Number (EORI). This unique number is required on all customs paperwork to identify the company as the importer or exporter of record. More details below.
- Familiarise themselves with Single Administrative Documents (SAD), form C88, which must be completed for each import, export or transit of goods. The SAD captures goods information including:
 - Commodity code, which can be identified using HMRC's free online tool;
 - Import value of the goods for customs duties and VAT, and is usually the sales value plus packaging and delivery costs; and
 - Customs procedure code. This clarifies plans for the goods e.g. going into free circulation; being only temporarily imported; or held under duty suspension.
- Determine if they will submit SADs manually or online at HMRC's CHIEF system.

Businesses can carry out the above process themselves, and there are Brexit customs grants now available for declarations training and software investment. Or they may have an agent – generally the freight forwarder – complete the documentation for them.



5.2 Grants for Brexit customs training and IT upgrades

UK established businesses may now apply for training and IT investment grants to help them prepare for the post-Brexit customs declarations processes. These non-refundable cash payments are available for businesses that sell or buy in the EU and therefore will be required to complete complex customs declarations and tariff calculations. Customs agents may also apply for the grants to help them prepare to serve their own customers. Grants include:

1. Training grants are available to cover up to 50% of customs training for staff, and are limited to £750 per employee. The funding may be used to organise internal training or for attendance on external courses which the government will require details of. Grants are only available for small businesses.
2. IT investment grants to purchase or upgrade external or in-house customs declaration software. The grant is limited to £200,000 per company, and covers any purchased training.

5.3 Import licence

Most goods imported from the EU do not need an import licence. This will continue after a no-deal Brexit. Various departments across the UK government control the issuance of licences for certain sensitive goods, or for sales to a number of listed countries. Licences serve to ban, impose quotas or merely act as part of ongoing surveillance of certain trade flows. Licensing is co-ordinated by the Import Licensing Branch of HMRC, which provides guidance on restrictions applied by the UK and UN. Importers should also consult the Open General Import Licence list, which lists national import controls.



5.4 Import duty reliefs to cut or suspend payments

There are a number of situations where the new customs due after Brexit may be reduced or payment delayed. You should check the procedures you are currently processing goods under as they may qualify for these reliefs with simple planning. The scenarios and related procedures include:

- HMRC-approved customs warehouse, where your goods may be held without clearing into free circulation in the UK and incurring import duties and VAT liabilities. In such typically third-party facilities, you may still sell / buy the goods before exporting or clearing into the UK – at which time any duties become due.
- Inward processing of goods, when goods are brought into the UK for local processing or finishing, and then exported to another country
- Duty suspensions and tariff quotas, which give temporary duty suspension on raw materials, components and semi-finished products which cannot be located elsewhere in the UK.
- Temporary Admission procedure which covers samples, professional equipment or materials for exhibition and auction.

5.5 Binding Tariff Information decision – assurance on your duty liabilities

To ensure you have certainty on your potential no-deal Brexit tariff liabilities, you can apply now to HMRC for binding commodity code classifications. These last for three years, and will ensure you can reliably determine any tariffs due on imports from any EU or non-EU country. This can be included in the SAD customs declarations.

To obtain a decision, you will need to have already secured your EORI number, and provide details of your goods, include brochures etc.





5.6 Applying for Authorised Economic Operator status

The UK, EU and many other countries provide an optional 'speedy-boarding' import certification for companies to help them reduce customs procedures and times to import and export goods. Authorised Economic Operator (AEO) status is only available for long-term active traders. The benefits of AEO status include:

- Simplified safety and security declaration paperwork (ENS)
- Reduced physical and paperwork checks by customs of your transactions
- Goods being fast-tracked through customs
- Reduced bonds and guarantees

You may obtain AEO certification from HMRC, and must demonstrate water-tight goods handling and security procedures, record keeping and financial solvency.

5.7 Customs Freight Simplified Procedure (CFSP) - recreating pre-Brexit clearance

CFSP moves the customs clearance process for goods from the point of entry into the UK to a monthly declaration report submitted to HMRC. It provides for simplified import entry procedures, including mostly instant clearance at customs. This effectively comes close to reinstating the pre-Brexit free movement process for EU goods transfers. CFSP may be used in conjunction with approved bonded warehouses.

To gain CFSP status, a monetary bond (see below) is required to be deposited with HMRC. Although this is reduced in the case of AEO status.

5.8 Customs Comprehensive Guarantee – to settle import duties and VAT payments

A Customs Comprehensive Guarantee is an agreement with HMRC to cover potential duties and VAT liabilities on imports. It is required to obtain HMRC's permission to use a range of customs authorisations and approvals, including: Temporary Admissions; Inward Processing Relief; Temporary Storage; Customs Freight Simplified Procedure; and Customs Warehousing.

VAT

5.9 E-commerce goods VAT registration obligations

After Brexit, an estimated 27,000 UK online sellers of goods to EU27 consumers will no longer be able to declare and pay the VAT via their UK VAT return in countries where they are below the annual distance selling threshold. This threshold is €35,000 per annum per country for the EU27, except for the Netherlands and Germany where it is €100,000. After a no-deal Brexit, these sellers must either register in each country and pay VAT, or block resident customers.

To avoid this loss of registrations simplification, sellers could move and hold stock to one state in the EU27. The Netherlands or Belgium may be best given their large ports and excellent transport connections to the rest of the EU27. They would be required to VAT register in this country, but would then be re-entitled to the distance selling threshold for sales to other EU27 countries if the stock is supplied from this new location. In this way, a no-deal Brexit would only require one new VAT registration.

5.10 B2C digital services VAT obligations

Since 2015, providers of digital services have been able to report sales to consumers across the EU via a special, single filing known as the Mini One-Stop-Shop (MOSS) return. This is completed on HMRC's online platform, and then the funds are redistributed by HMRC to the appropriate EU27 government. Aside from UK-resident businesses, non-EU businesses have used the UK MOSS return to report their digital sales to the UK and the rest of the EU.

EU MOSS will end in the UK following a no-deal Brexit. Instead, UK providers will have to complete a single MOSS registration in any EU27 country, and then report in this way. Ireland may be the best jurisdiction given the shared English language. Non-EU businesses that used the UK MOSS regime will have to do the same. Both UK and non-EU businesses will have to report digital sales to UK consumers through their UK VAT returns.

5.11 Requirements to appoint VAT fiscal representatives

19 of the EU27 states oblige non-EU companies to appoint special tax agents, fiscal representatives, when they VAT register in their countries. Fiscal representatives are liable for the missing VAT of their clients and so typically demand a bank guarantee or escrow deposit from the client. These are usually equal to one quarter of the annual VAT payments.

After Brexit, UK companies will have to find fiscal representatives for each of the relevant 19 countries where they are VAT registered.

Alternatively, UK companies can form a trading pass-through subsidiary in one of the EU27 so they effectively are viewed as an EU VAT resident. Generally, this becomes cost-effective if businesses have more than four foreign VAT registrations.

5.12 End of Supplementary VAT reporting

UK businesses shipping goods and providing services to the EU are subject to additional VAT-related UK reporting, including Intrastat and EC Sales Listing. After Brexit, this will no longer be required. They will be replaced by Single Administrative Documents (SAD), Extrastat and Entry Summary Declarations at the port of arrival.

There are off-the-shelf software packages to help with this new reporting, and grants from HMRC towards the cost – see above. Alternatively, businesses can ask their freight forwarder to complete the declarations.

5.13 How to reclaim EU VAT incurred

Currently UK businesses that suffer EU VAT on business-related expenses may recover this. If they do not have a local VAT registration to submit the input VAT, they can instead file an '8th Directive' online claim with HMRC. This covers VAT from any EU27 country.

Post Brexit, UK businesses will have to switch to the paper-based '13th Directive' claim system that non-EU businesses use today. This takes considerably longer to complete and includes paper copies of invoices. The last 8th Directive claim date for UK companies will be 29 March 2019. Although these will not have to be submitted until June 2020 as an annual claim.

5.14 Loss of Low Value VAT and Customs exemption

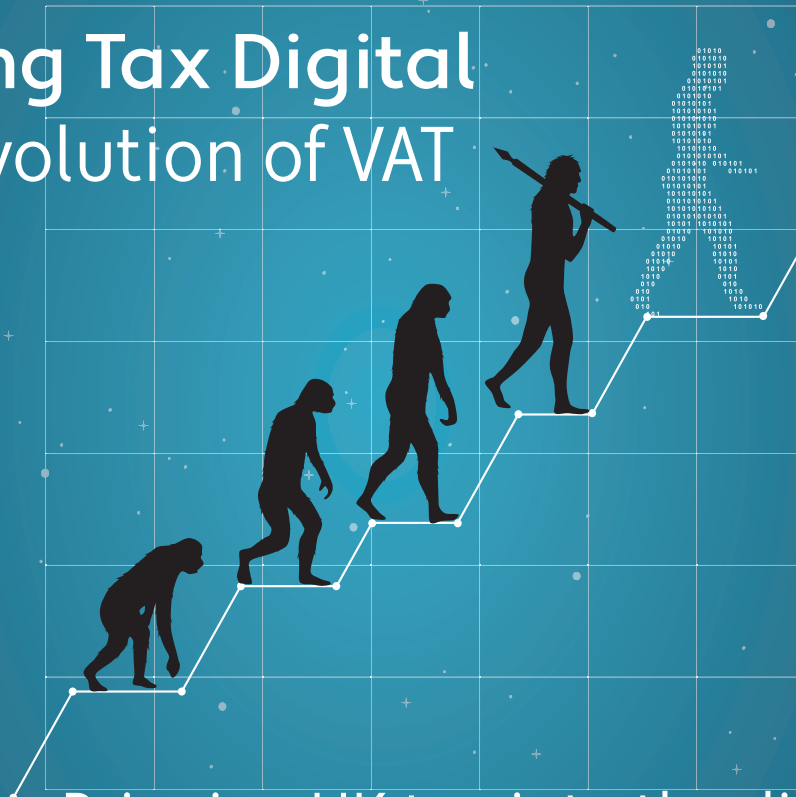
Currently, as part of the current EU VAT rules, one small value package of goods below £15 being imported into the UK from outside of the EU27 are VAT and customs exempt.

After a no-deal Brexit, the UK government is withdrawing the exemption for imports from either the EU27 or the rest of the world. Instead, for parcels under £135, a technology-based solution will allow VAT to be collected from the overseas importing business selling the goods into the UK. UK businesses can declare the import VAT in their regular UK VAT return.



Making Tax Digital

The evolution of VAT



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