

# Dr. Brexit - Webinar by The Hague Business Agency with Blue Turtle Tax and FD Legal Services

Building community and collaboration across sectors to address today's challenges

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# Program

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- 1 Introduction – Philip Mulder, The Hague Business Agency
- 2 Brexit implications on VAT, Customs, Supply Chain, Digital Services – Guy Nguyen, Blue Turtle Tax
- 3 Brexit implications on Commercial contracts, GDPR, CE marking - Famke van Dam, FD Legal Services
- 4 Q&A



**Duy Nguyen**  
Owner  
Blue Turtle Tax



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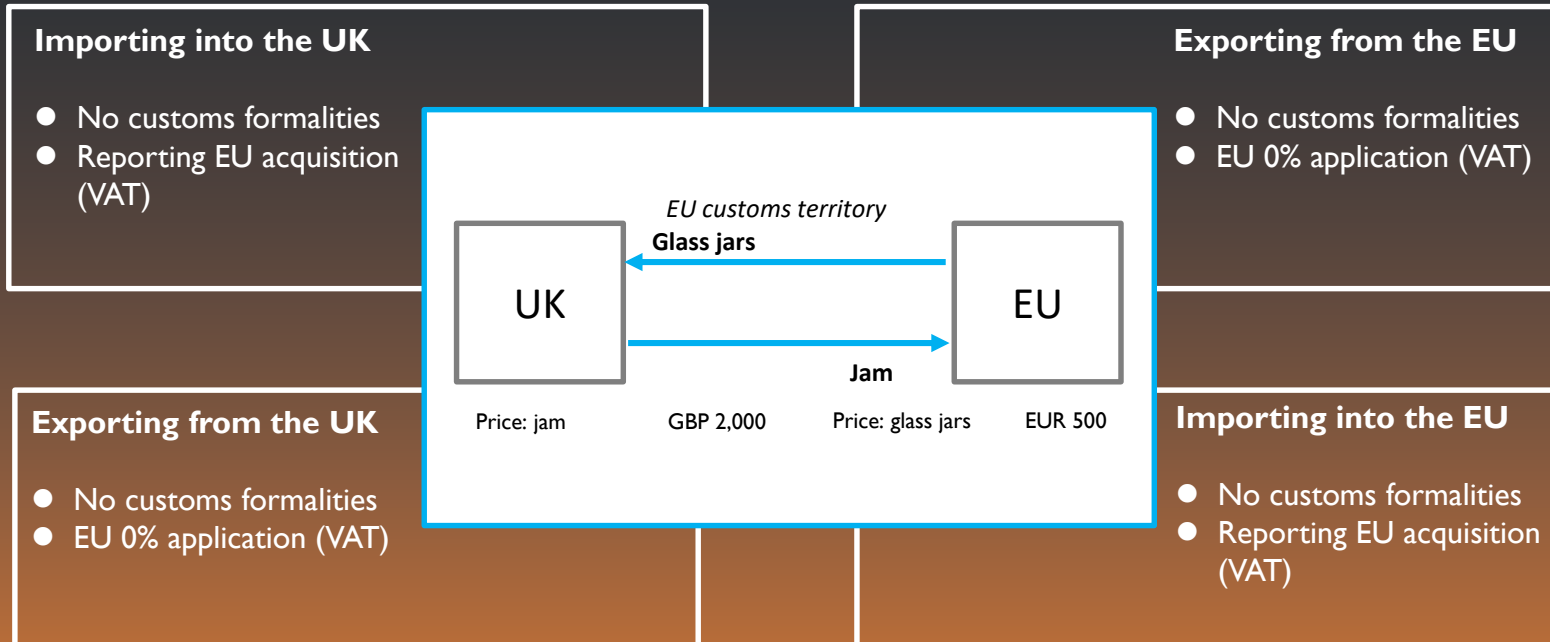
**Duy Nguyen**  
Owner Blue Turtle Tax



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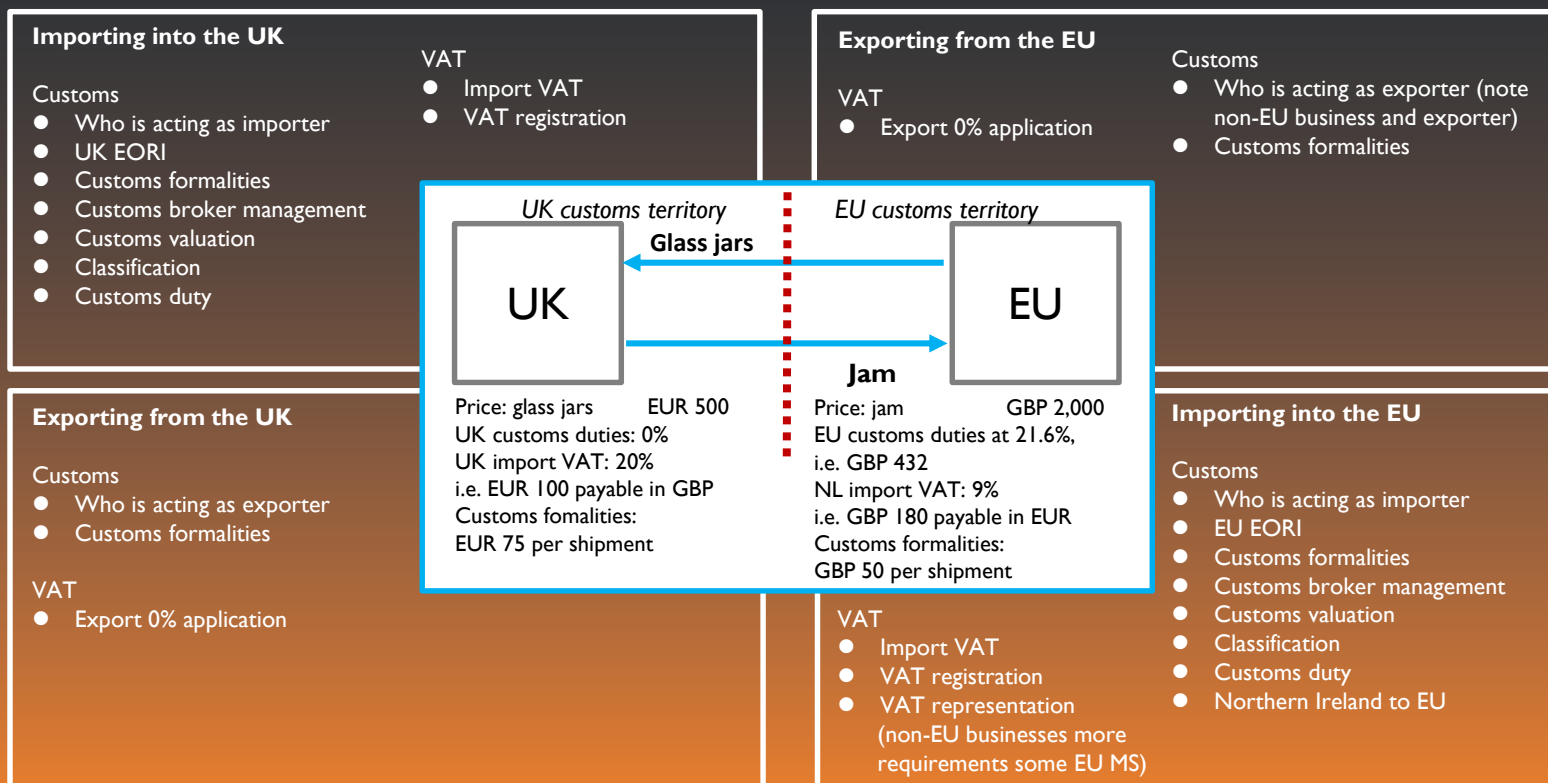
# Case I: NL-UK trade customs and VAT

**NOW**



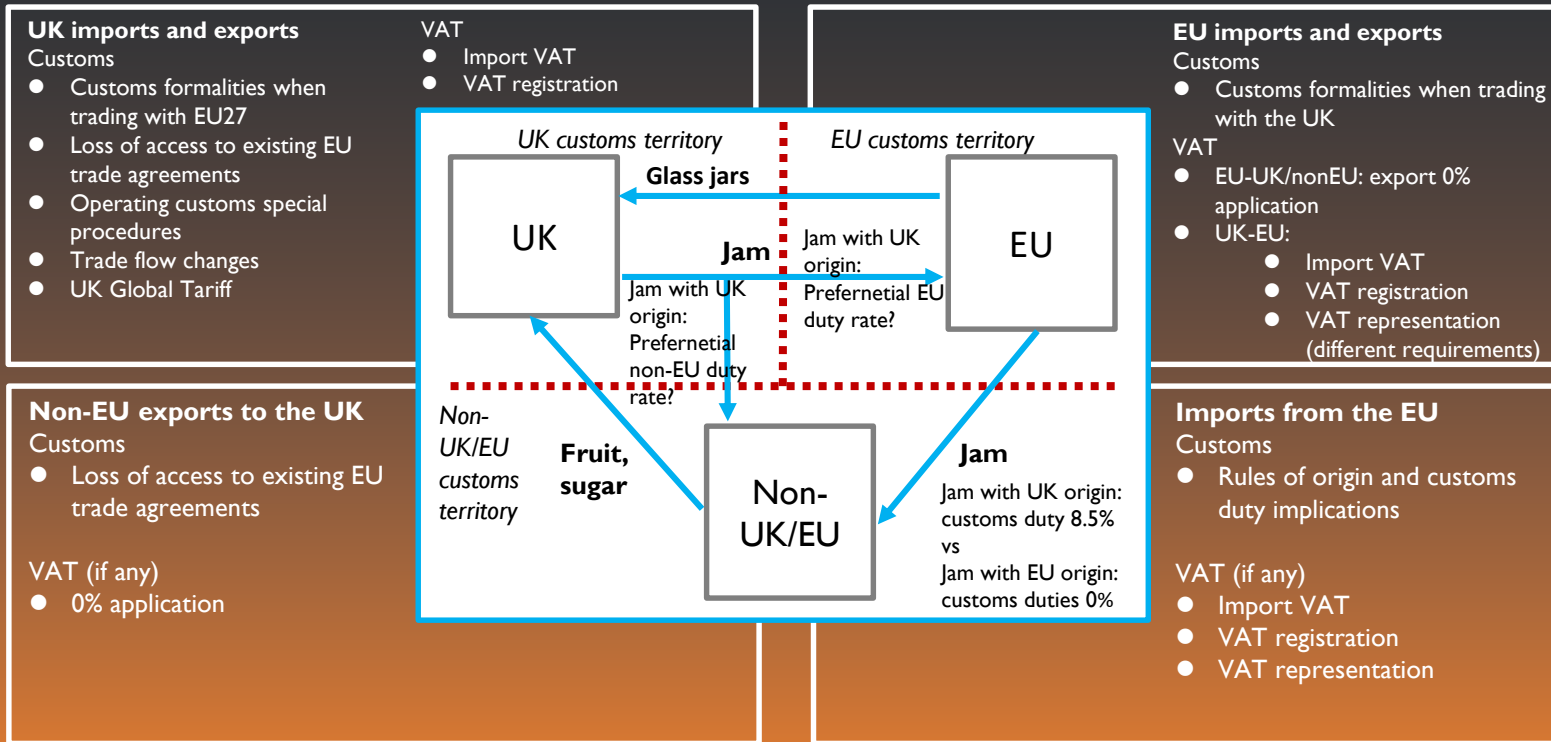
# Case I: NL-UK trade customs and VAT

From 01-01-2021



# Case 2: non EU-UK-EU customs and VAT

From 01-01-2021



## IMPORTANT: Summary

- Customs formalities & customs brokers
- EU EORI (EU customs identification number)
- No export and no access to EU FTA for non-EU
- Special procedures might work but comes with cost
- Assess: (1) Valuation (2) Tariff qualification (3) Origin
- VAT registrations
- Special procedures optimizing VAT cashflow (i.e. article 23 in NL)
- Various EU countries require VAT Representation and bank guarantee



# Case 3: E-commerce Europe

## Current rules (Nov 2020)

1. No customs borders, no duty, no customs formalities
2. VAT due

## Brexit impact 1-1-2021

1. Customs borders →  
duty due (exception for goods < EUR 150 or GBP 135) and  
customs formalities required (higher costs less margin)
2. VAT due Exception for goods < EUR 22

## New EU e-commerce rules 1-7-2021 (N/A for UK)

1. Customs borders →  
duty due (exception for goods < EUR 150 or GBP 135) and  
customs formalities required (higher costs less margin)
2. VAT due (no exception anymore for goods < EUR 22)

# E-commerce UK → NL (EU)

UK → NL 21% VAT NL EU duty 8% (assumption)	Product A: EUR 200	Product B: EUR 100	Product C: EUR 20
Customer price	<b>EUR 242</b>	<b>EUR 121</b>	<b>EUR 24.20</b>
Current rules	VAT NL 21% No duty	VAT NL 21% No duty	VAT NL 21% No duty
Customer price	<b>EUR 258</b>	<b>EUR 121</b>	<b>EUR 20</b>
Brexit 1-1-2021	VAT NL 21% Duty 8%	VAT NL 21% No duty	No NL VAT No duty
Customer price	<b>EUR 258</b>	<b>EUR 121</b>	<b>EUR 24.20</b>
New e-commerce VAT and customs rules 1-7-2021	VAT NL 21% Duty 8%	VAT NL 21% No duty	VAT NL 21% No duty



# One-Stop Shop (OSS) compliance EU

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1. UK companies cannot use OSS in UK for services anymore per 2021
2. UK companies need to register in all EU customer countries for B2C services sales or appoint a VAT intermediate/representative in a country to apply the OSS in that respective country
3. There are 2 OSS regimes, one for EU and one for non-EU companies.  
For sales of goods:
  - EU companies no invoice obligation
  - Non-EU companies must issue correct invoices according to the local invoicing rules of the B2C customer (potentially 27 countries)
4. B2C goods sales via platform, platform is liable for VAT
5. New rules for B2C goods sales applicable for goods < EUR 150



## IMPORTANT: EU vs non-EU

As UK becomes non-EU be aware that certain customs & VAT applications change e.g.:

- Various EU countries require VAT representation and bank guarantees for non-EU companies
- Non-EU OSS comes with EU27 invoice requirements
- A non-EU company cannot act as EU exporter
- Non-EU has no allowance to EU FTA framework
- Indirect customs representation required for non-EU



## IMPORTANT: lead times

We see in practice that lead times at UK and EU tax authorities have become long due to Brexit

In our experience it is feasible to set up a full operational NL business within 4-6 weeks

Recommendation is to act as soon as possible to be ready per January 2021. December is a short month, also for tax officers





# Famke van Dam

Lawyer FD Legal Services

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# Legal aspects

- Commercial contracts
- GDPR
- CE marking

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# Commercial contracts

- Termination / continuation  
Is Brexit a reason to terminate or renegotiate ?
- Territory  
Any references to the EU or EEA ?
- Disputes  
Applicable law, jurisdiction, enforcement of judgments
- Regulatory compliance  
“All applicable laws and regulations”

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# CE marking post Brexit

- After Brexit, any product supplied into the EU (by any manufacturer based anywhere in the world, including the UK) will still need to bear the CE mark, if that product currently needs to be CE marked.
- For products that will be placed on the UK market after Brexit, the CE mark can continue to be used for a time-limited period to show compliance with applicable UK regulations.
- For the UK only, the UKCA mark can be used to show compliance with applicable UK Regulations. The UKCA mark will not be recognized in the EU.
- For products placed on both the UK and EU market, both the UKCA mark and the CE mark will be needed

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# CE marking checklist

- Check which rules apply: is CE marking required for your product category?
- Check if you need to change your conformity assessment
- Check whether your UK notified body is taking steps of its own, so that you can continue to export to the EU without needing to find a new EU notified body yourself
- If you use an authorised or responsible person, check whether you need an EU based one
- Check whether your legal responsibilities are changing (manufacturer – distributor-importer).

# Data protection after Brexit

- After the transition period, transfer of personal data to the UK will not be treated as sharing of data within the Union. It will need to comply with the relevant Union rules applicable to transfers of personal data to third countries.
- If your organisation operates in the EEA, you will need to comply with both UK and EU data protection regulations at the end of the transition period. You may also need to appoint a representative in the EEA.
- Your best preparation for data protection at the end of the transition period is to comply with the GDPR now.
- You will need to comply with the UK data protection regime for your activities in the UK.
- If you have offices, branches or other establishments in the EEA, your European activities will be covered by EU law.
- If you are only based in the UK but you offer goods or services to individuals in the EEA, or monitor the behaviour of individuals in the EEA, you will still need to comply with the EU data protection regime in relation to these activities.

# Data protection after Brexit

- There are different ways to comply with the rules applicable to transfers of personal data to third countries.
- Aside from the possibility of an “adequacy decision” which is not in place for the UK yet, transfers are possible on the basis of “appropriate safeguards” and “derogations”.
  - 1) Standard protections clauses adopted by the Commission
  - 2) Binding corporate rules
  - 3) Codes of conduct and certification.

Finally in the absence of an adequacy decision of the Commission or of appropriate safeguards a transfer may take place on the basis of so-called “derogations” which allow transfers in specific cases.