

## VAT Aspects of Brexit

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IFA Conference

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## VAT – Introduction (1/4)

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**Assumption: “hard” Brexit (no deal)**

**VAT will survive Brexit. Will the UK survive Brexit?**

VAT will not be abolished by the UK because:

- ✓ Replacing it by another tax (e.g. sales tax) would require an enormous effort
- ✓ VAT proceeds are hugely important (25% of all taxes; €178 billion in 2015)

VAT is a EU tax, the rules of which require unanimity among the Member States.

Upon Brexit, the UK will gain VAT sovereignty !

## VAT – Introduction (2/4)

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The UK will no longer be bound by the EU VAT rules, i.e. VAT Directives, VAT Regulations and case law of the Court of Justice of the EU

Examples:

- ✓ The UK could apply the Independent Group of Persons VAT exemption to the financial sector (contrary to the Court of Justice judgments of 21 September 2017)

**UK will be free to determine its own VAT rates, its own VAT exemptions, its own VAT options, etc.**

## VAT – Introduction (3/4)

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UK will not have to wait to implement changes until all EU Member States agree – cf. unanimity required at EU level in tax matters – which is a frustratingly slow process (e.g. application of reduced/zero rates to e-books)

- ✓ EU Member States may envy in this respect the UK ...

UK VAT is likely, however, to be aligned with EU VAT, especially regarding place of services/goods rules : otherwise risk of double VAT/no VAT

Also: bonus on exit from the EU: UK will no longer have to contribute to the EU Institutions

## VAT – Introduction (4/4)

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Part of the taxes levied by member states (e.g. 20% customs duties; 0.3% of the VAT base; so-called “own resources”) have to be paid to the EU (UK: 4.3 billion € in 2015)

Being outside the EU has thus some advantages (see VAT and goods and VAT and services) but also major disadvantages, mainly additional red tape (see VAT and goods and VAT and services)

Note: some parts of the UK (Guernsey, Jersey & Gibraltar) have not been part of the EU VAT territory. The UK will join these parts (in case of a no deal) but will continue to levy VAT (whereas Guernsey, Jersey & Gibraltar do not have VAT – VAT paradises)

## VAT – Transactions on goods and movement of goods (1/19)

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### 1. B to B

A UK business sells goods to a Belgian business and the goods are transported to Belgium

### 2. B to C

A private Belgian person buys goods from a UK business and the goods are transported to Belgium

### 3. Exemptions on importations

### 4. UK small businesses

## VAT – Transactions on goods and movement of goods (2/19)

Brexit would mean:

- ✓ UK becomes a **Third-party country** to the EU, just like the US, China, Myanmar etc.
- ✓ All goods **imported** in Belgium from the UK will be subject to import VAT
- ✓ VAT exemption for goods exported outside the EU

→ **IMPORT VAT IS APPLICABLE ON THE PRICE + CUSTOMS DUTIES**

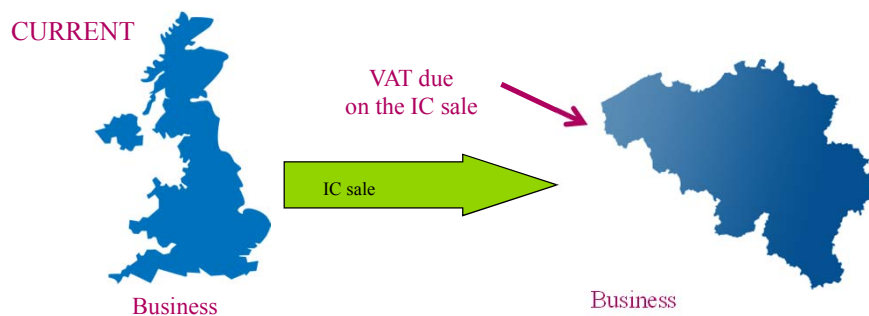
→ including goods imported for free

→ **exemptions**

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### 1. B to B (3/19)

A UK business sells goods to a Belgian business and the goods are transported to Belgium



- ✓ Exempt intra-community supply of goods in the UK
- ✓ Taxable intra-community acquisition of goods in Belgium

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## Linklaters

### 1. B to B (4/19)

A UK business sells goods to a Belgian business and the goods are transported to Belgium

#### Note:

How to evidence the validity of a UK VAT number for intra-community supplies of goods (or services) rendered in the UK in 2018 upon a VAT audit in 2020 (as of 31 March 2019 the EU VIES system will no longer allow to check such validity)?

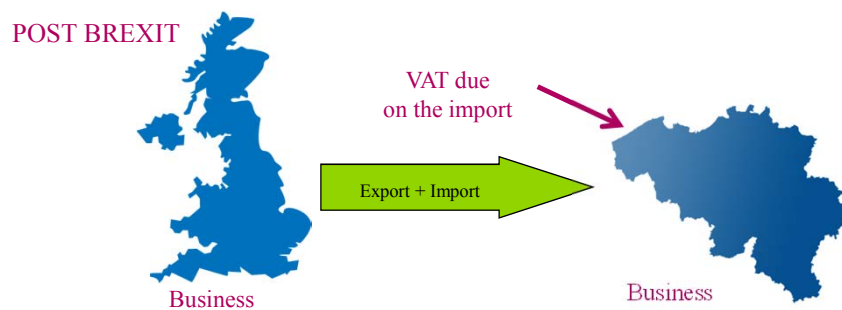
Take a print screen of the VIES screen when consulting the validity of the UK VAT number (FAQ website of the Ministry of Finance). Recommendation of the Ministry of Finance: suspend temporarily during March/April 2019 transactions with and in the UK !!!

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## Linklaters

### 1. B to B (6/19)

A UK business sells goods to a Belgian business and the goods are transported to Belgium



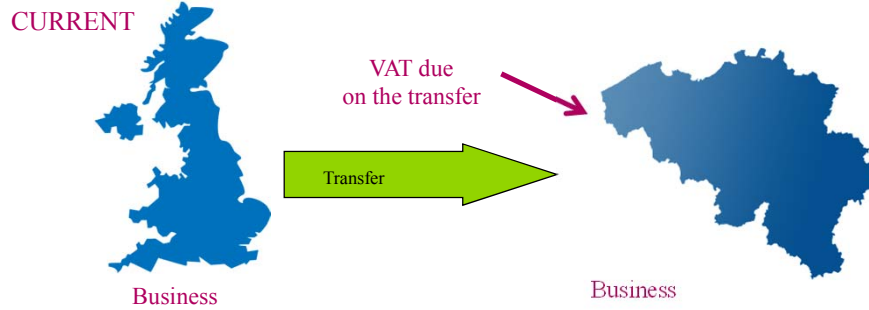
- ✓ Exempt export in the UK (assumption)
- ✓ Taxable import in Belgium (assuming the import is effectively cleared in Belgium)
- ✓ **THE VAT TAXABLE BASIS INCLUDES THE CUSTOMS DUTIES**
- ✓ Customs formalities and controls will replace the «European Sales listing» and «Intrastat» → Potentially slowing down of the transactions
- ✓ Note: Simplification measure for triangular sales can no longer be used by a UK business

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Linklaters

1. B to B (5/19)

A UK head office transfers goods to its Belgian branch



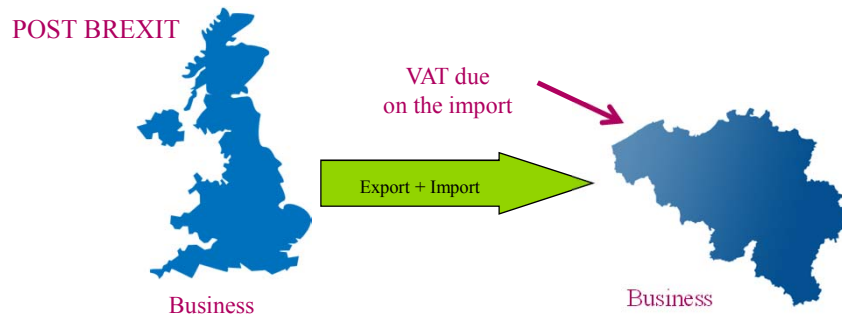
- ✓ Exempt transfer of goods in the UK
- ✓ Taxable transaction assimilated to an intra-community acquisition of the goods in Belgium

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Linklaters

1. B to B (7/19)

A UK head office transfers goods to its Belgian branch



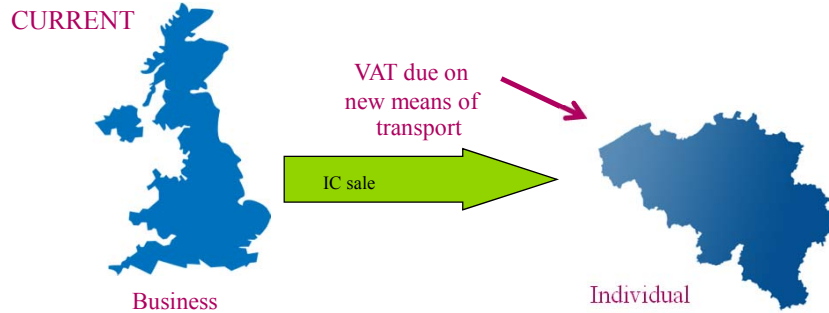
- ✓ Exempt export in the UK (assumption)
- ✓ Taxable import in Belgium
- ✓ The transfer/non transfer regime does consequently no longer apply, including the simplification regime for e.g. goods sent in consignment

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## Linklaters

### 2. B to C (8/19)

An private Belgian person buys new means of transport from a UK business and the goods are transported to Belgium



VAT is due in Belgium on «new» means of transport:

- ✓ **Cars and motorbikes** of less than 6 months and less than 6,000 kilometres
- ✓ **Boats** of less than 3 months and less than 100 hours of navigation
- ✓ **Airplanes** of less than 3 months and 40 hours of navigation

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## Linklaters

### 2. B to C (9/19)

A private Belgian person buys goods from a UK business and the goods are transported to Belgium



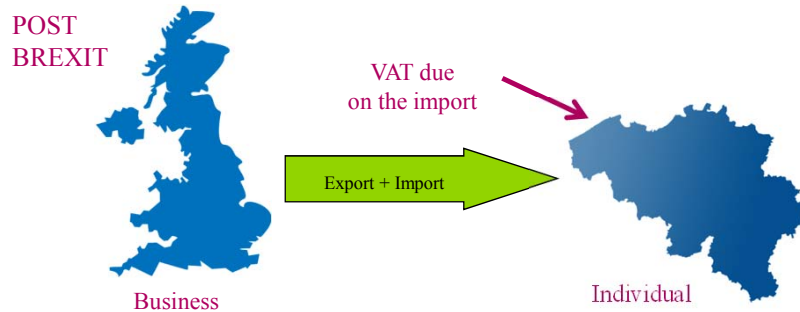
- ✓ Belgian VAT is due if the distance sales regime applies, i.e.
  - ✓ if the supplier takes care of the transport of the goods **other** than new means of transport/goods subject to the margin scheme/goods installed by the supplier etc.; and
  - ✓ the seller sells for more than € 35,000 per year to private Belgian persons or has opted to submit its sales to Belgian VAT.
  - ✓ PS: No threshold for exise goods.
- ✓ UK VAT is due when the buyer takes care of the transport of the goods other than means of transport, etc.

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Linklaters

2. B to C (10/19)

An private Belgian person buys goods (including new means of transport, etc.) from a UK business and the goods are transported to Belgium



- ✓ Exempt export in the UK (assumption)
- ✓ Taxable import in Belgium (assuming the import is effectively cleared in Belgium) with some **exemptions**
- ✓ **THE VAT TAXABLE BASIS INCLUDES THE CUSTOMS DUTIES**

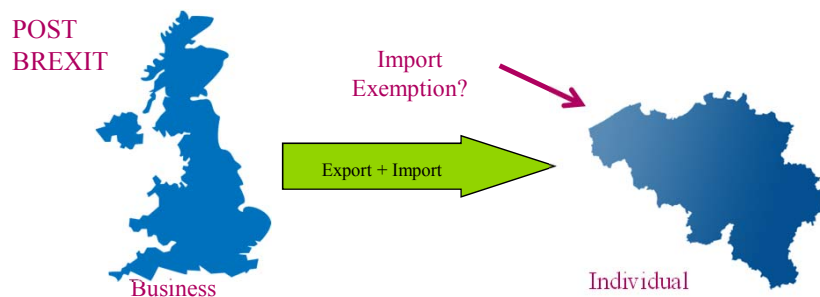
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Linklaters

Exemptions on importation (11/19)

Currently : no importation so no import VAT

3 (1): Belgian travellers : exemption on import of goods in personal luggage



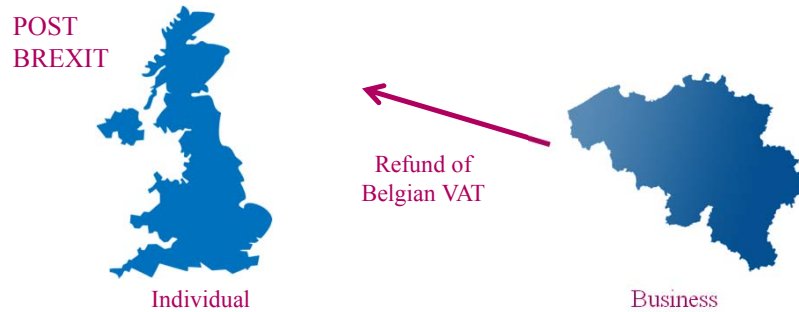
Exemption from import VAT of «non-commercial» goods in the personal luggage

- ✓ Goods for non commercial use
- ✓ Total value of the goods may not exceed certain thresholds: € 430 for air travellers, € 300 for other travellers and € 175 for travellers younger than 15 years) and quantitative limits (tobacco, alcohol)
- ✓ Possibility of «tax free» shopping? No VAT in the UK (?) and no VAT in Belgium

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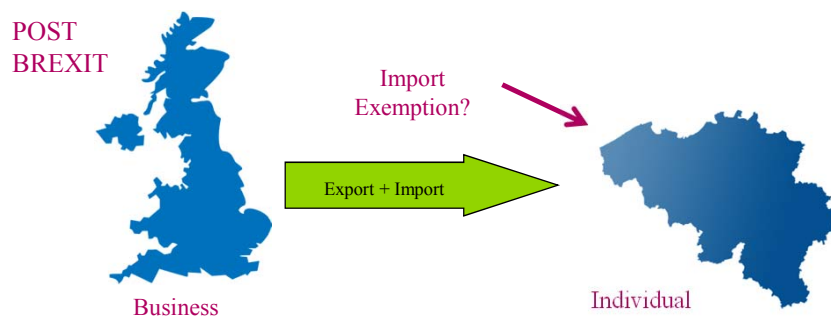


### 3 (1): UK travellers : refund of Belgian VAT (12/19)



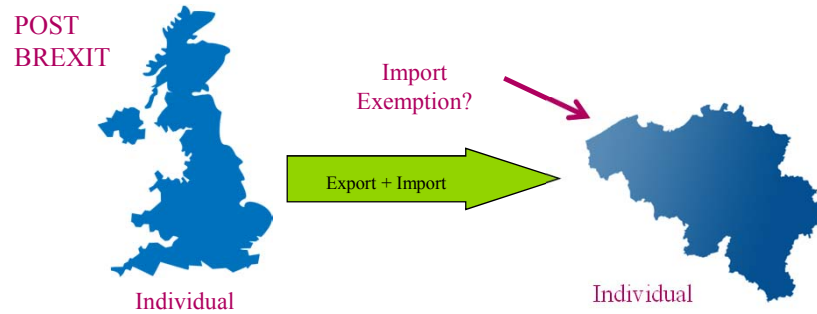
- ✓ Travellers resident outside the EU
- ✓ Export within 3 months of the non-commercial goods in the personal luggage of the traveller
- ✓ Copy of the invoice or of a document in lieu thereof validated by the customs authorities.
- ✓ Global value of the goods should be more than € 50

### 3 (2): Exemption on import : small value consignments (13/19)



- ✓ Exemption from import VAT of small value consignments the global value of which does not exceed € 22 (planned to be abolished in 2021).
- ✓ Small consignments to the UK would not be exempt from import VAT

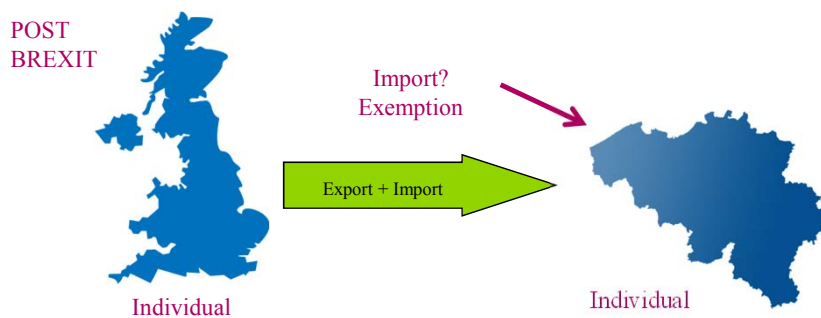
### 3 (3): Exemption on import : non commercial dispatch (14/19)



- ✓ Exemption from import VAT on the importation of goods sent by a non-EU private person to an EU private person, occasionally, for free, in the context of family/private relationships
- ✓ Maximum value of € 45/Quantitative limits for alcohol and tobacco products, coffee and tea

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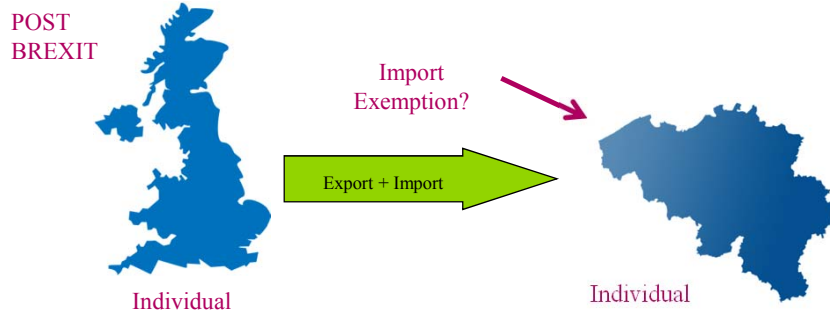
### 3 (4): Exemption on import :moving of place of residence (15/19)



Exemption under certain conditions from import VAT on the importation of personal goods

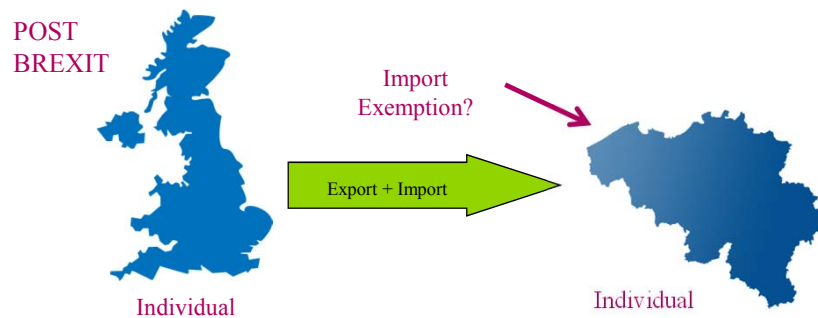
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### 3 (5): Exemption on import : moving of place of residence (wedding) (16/19)



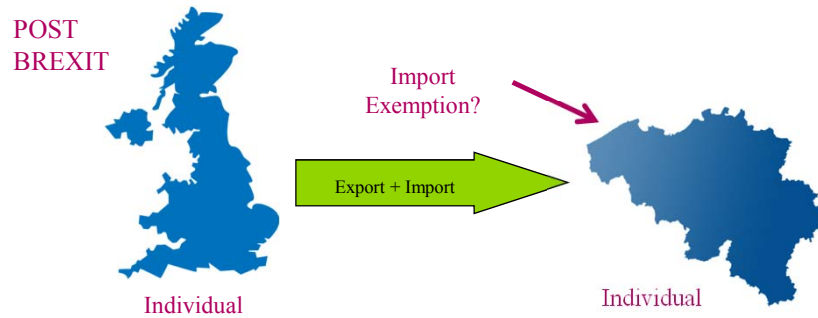
Exemption under certain conditions from import VAT on importation of wedding trousseau and movable goods, including new goods

### 3 (6): Exemption on import: inheritance (17/19)



Exemption under certain conditions from import VAT on the importation of personal goods inherited

### 3 (7): Exemption on import : studies (18/19)



Exemption from import VAT on trousseau, normal furnishing of a student house and goods necessary for the studies if imported by a student registered with a school to follow courses on a full time basis

### 4. UK small businesses (19/19)

3m UK small businesses currently exempt from paying VAT (turnover < 85.000 pounds) will have to start paying (import) VAT on sales to EU customers.

## VAT - Services (1/12)

Assumption : EU VAT rules on services do not change after Brexit

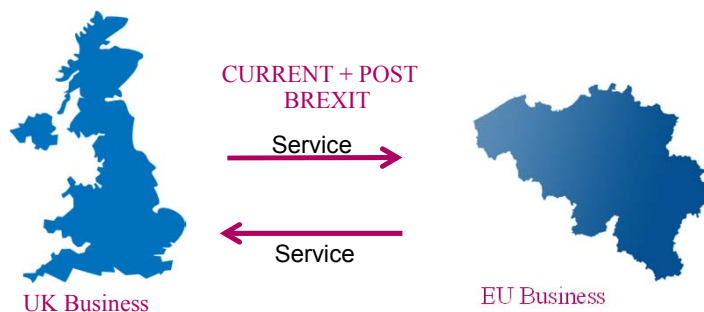
Focus: Cross-border services between the UK and the EU

**What will be the impact on services when UK is no longer within EU ?**

The impact can be neutral, positive or negative, depending on the case

## VAT – Services (2/12)

Neutral Impact: B to B services



Only technical difference (from EU perspective): no need to mention UK VAT number on invoice – but supplier should be able to prove that it is a B to B service  
Assuming the UK will maintain B to B place of supply of service rules

## VAT - Services (3/12)

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### **Negative Impact** (for both goods and services)

- ✓ Procedure for reimbursement of VAT will be more cumbersome for UK businesses (Directive 2008/9 – VAT refund – versus 13th VAT Directive)
- ✓ Quid for recovery of UK VAT by Belgian businesses?
- ✓ Appointment of VAT representative will be required for UK businesses when they become liable to Belgian VAT (currently they can apply for a direct VAT registration). Consequences on application of reverse charge system and VAT liability (cfr. e.g. Article 51, §2, 5° VAT Code)

### **Negative Impact** (services)

- ✓ E-commerce: After Brexit, UK e-commerce suppliers will need to register in all EU member states where they make e-supplies to private customers or register in one member state and apply the MOSS system (whereas a UK VAT taxpayer can now apply the MOSS system in the UK) and Belgian e-commerce suppliers will have to register in the UK for e-supplies to private customers in the UK

## VAT - Services (4/12)

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### **Positive Impact**

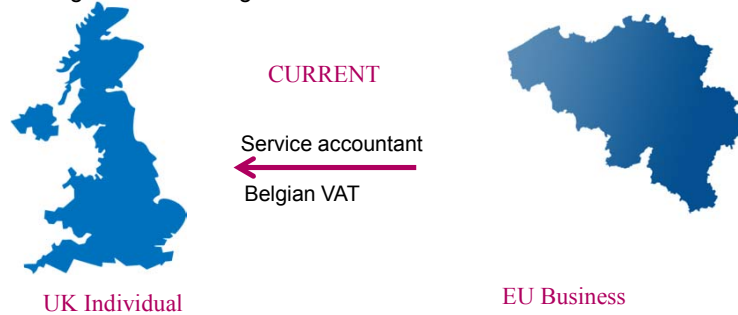
B to C services

After Brexit, some B to C services by EU suppliers to UK customers will be zero rated

## VAT – Services (5/12)

### Positive Impact

Examples: legal services, engineering services, consulting services, accounting services, provision of information, data processing and advertising

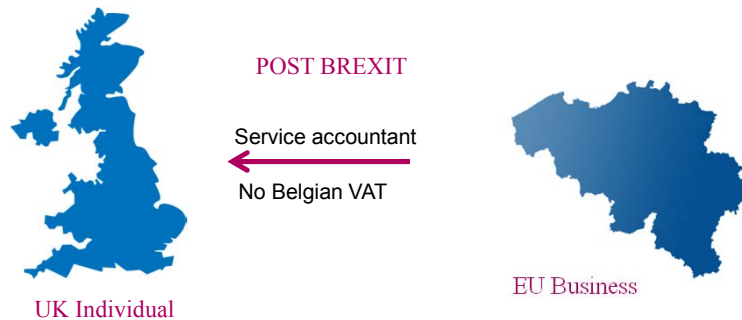


Example: a Belgian accountant renders a service to a UK private client  
Currently: Belgian VAT applies

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## VAT – Services (6/12)

### Positive impact



After Brexit: no Belgian VAT (but perhaps UK VAT depending on UK VAT rules)

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## VAT – Services (7/12)

### Positive Impact

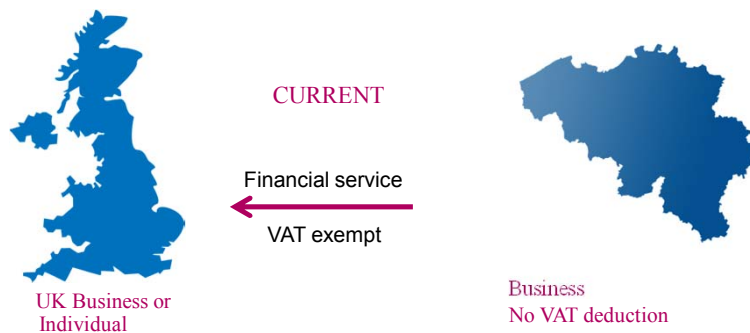
Financial and insurance services (B to B, and B to C)

Will be zero rated after Brexit, i.e. input VAT will be deductible

## VAT – Services (8/12)

### Positive Impact

Example: A Belgian bank grants a Loan to a UK bank / individual



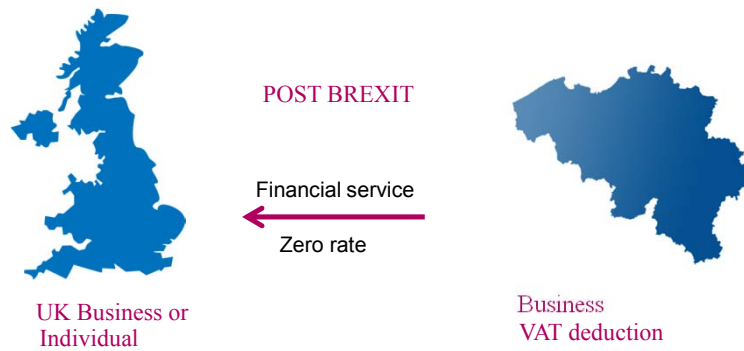
Before Brexit: input VAT of Belgian bank **not deductible**

Example of input VAT: VAT on lawyers' fees for the drafting of the loan agreement for the Belgian bank



## VAT – Services (9/12)

### Positive impact

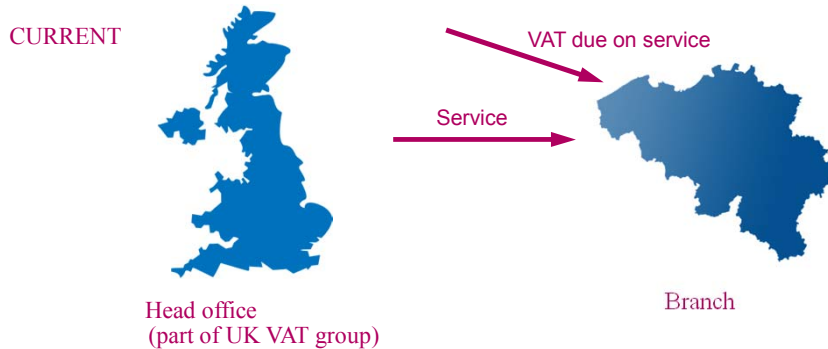


After Brexit: input VAT of Belgian bank is **deductible**

## VAT – Services (10/12)

### Positive Impact

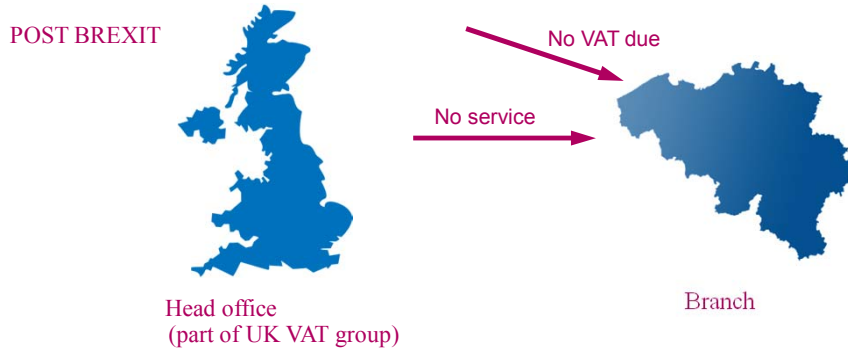
Application of Skandia judgment  
UK head office that is part of VAT group in the UK renders a service to its Belgian branch



## VAT – Services (11/12)

### Positive Impact

Skandia judgment does no longer apply  
UK head office that is part of a VAT group in the UK renders a service to its Belgian branch



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## VAT – Services (12/12)

Application of the use and enjoyment rule for determining the place where transport services are deemed rendered

### Example:

A Belgian business has a UK transporter transport goods from London to Manchester

**CURRENT:** Belgian VAT is due on the transport services

**POST BREXIT:** Transport service deemed rendered outside Belgium. No Belgian VAT is due

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## Conclusion on VAT (1/2)

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### Negative

- ✓ VAT to be paid on customs borders (red tape + prefinancing cost – but can be avoided by authorisation ET 14.000)
- ✓ Red tape: VAT representative / VAT reimbursement
- ✓ E-commerce

## Conclusion on VAT (2/2)

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### Positive

- ✓ VAT sovereignty (for the UK)
- ✓ Contributions (own resources) to the EU are stopped (for the UK)
- ✓ Some B to C services
- ✓ Input VAT recovery on financial services
- ✓ VAT-free tourism
- ✓ Skandia judgment no longer applicable vis-à-vis the UK

Any Questions ?

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