



Preparation for a "No Deal" Brexit

KPMG

Wednesday 16 January 2019





Overview



Brian Daly, KPMG Head of Brexit in Ireland

Events in the UK in the last 24 hours make predicting what will happen next on Brexit almost impossible.

That said, we strongly recommend that businesses North and South are prepared, as far as possible, for a no deal Brexit on 29 March 2019.

We have set out below recommended actions for businesses to take across various areas:

- VAT and Customs
- People, mobility and citizens' rights
- Transaction and Cash Flow impact
- Data
- International Financial Services

It is important to note that the European Commission has stated that *“The Commission will support Ireland in finding solutions addressing the specific challenges of Irish businesses”* BUT *“Contingency measures **will not** remedy delays that could have been avoided by preparedness measures and timely action by the relevant stakeholders.”*

We have also set out below links to various communications from the Irish government, the UK government and the European Commission on their Contingency Action Plans for the event of a No Deal Brexit.

[Irish Government Contingency Action plans – 19 December 2018](#)

[European Commission Contingency Action plans - 19 December 2018](#)

[European Commission Contingency Action plans - 13 November 2018](#)

[UK government Partnership pack: preparing for changes at UK border - 21 December 2018](#)

To view KPMG's previous analysis of the matters covered in the UK Withdrawal Agreement and the European Commission's, 13 November 2018 Contingency Action plans, click on the link below;

<https://assets.kpmg/content/dam/kpmg/ie/pdf/2018/11/ie-brexite-implications-november.pdf>

VAT and Customs – Preparing for a No Deal Exit



‘No Deal’ Issues	Action required now – 16 January 2019
<p>“Impact on supply chain”</p> <p>In the event of a No Deal Brexit there will be an impact on supply chains from both a tariff (Duty) and non tariff perspective (potential delays, customs clearance requirements, additional checks on goods e.g. food/animals etc).</p>	<p>“Review supply chain”</p> <p>It is essential for Businesses to review their supply chains to understand the movement of goods into and out of the UK and the potential for disruption to supply chains caused by Brexit and consider actions to mitigate this disruption. The review should be undertaken from both a tariff and non tariff perspective.</p>
<p>“Customs clearance”</p> <p>In the event of a No Deal Brexit, customs declarations will be required to move goods from Ireland to the UK and vice versa. Both “import” and “export” declarations will be required.</p>	<p>“Obtain an EORI number”</p> <p>To operate within a customs regime, importers of goods need to be customs registered. If not already registered, an application should be filed with Revenue / HMRC via Revenue’s Online Service (ROS) / HMRC Online for an EORI (Customs) number.</p> <p>“Engage with a customs clearance agent/broker”</p> <p>Most declarations are filed by customs agents/brokers on behalf of traders. Business should engage with agents/brokers and agree a “pricing schedule” for filing declarations.</p>
<p>“Customs Duty impact”</p> <p>In the event of a No Deal Brexit Customs Duty will apply to the import of many goods from the UK into Ireland and vice versa. Unlike VAT which is recoverable by many businesses Customs Duty is not recoverable and will represent an additional cost of import.</p>	<p>“Collate and assign tariff classification codes”</p> <p>The rate of Duty arising on goods depends on the classification of the particular goods and all goods should have an assigned commodity code. Business should collate and confirm commodity codes for all goods imported from the UK to Ireland and vice versa. These codes will be needed in Customs declarations and will drive the Duty arising on the import of goods. Incorrectly classifying goods can lead to a Customs Duty (and related to this a VAT) underpayment. The commodity code will also indicate whether there are any reliefs from Duty applying and any licencing requirements.</p> <p>“Valuation”</p> <p>Business should determine the Customs valuation of their imports as this will drive the Duty and in turn VAT cost associated with the import of goods. There are specific rules which apply for valuing the import of goods for Customs purposes.</p> <p>“Origin”</p> <p>Business should also document the origin of goods which is required for filing customs declarations and determining, for example, whether additional duties could apply or reliefs could be available. There are specific rules for determining the origin of goods for customs purposes.</p>

If you would like to discuss the implications of Brexit on your business, please contact your usual KPMG contact, or:



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VAT and Customs – Preparing for a No Deal Exit



‘No Deal’ Issues	Action required now – 16 January 2019
<p>“Import VAT cost”</p> <p>In the event of a No Deal Brexit standard rate VAT (currently 23% for ROI) will apply to the import of many goods from the UK into Ireland and will be payable at the time of import of the goods into Ireland unless reliefs apply.</p> <p>In the event of a No Deal Brexit, VAT (currently at a rate of 20% in the UK) will apply to the import of goods from the EU and will be payable at the time of import of the goods unless reliefs apply.</p>	<p>“Quantify the potential VAT cash flow impact”</p> <p>Irish businesses should quantify the potential cash flow impact of a No Deal Brexit and explore options to manage the impact such as setting up a VAT and Duty payment deferment account, as discussed in more detail below.</p> <p>The UK government has announced that in a No Deal scenario it will introduce postponed accounting for import VAT on goods brought into the UK. This means that UK VAT registered businesses importing goods to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the time that the goods arrive at the UK border.</p>
<p>“Import VAT and Duty impact”</p>	<p>“Deferment account”</p> <p>To assist in mitigating the impact of a No Deal Brexit businesses can apply to Revenue for a VAT and Duty deferment account so that the payment of VAT and Duty can be deferred to the 15th day of the month following the month of import of the goods. The lead in time to obtain such approval can be at least two months.</p> <p>“Use of Customs reliefs”</p> <p>There are certain customs reliefs which can defer the payment of import VAT and Duty on goods brought into Ireland from the UK (and vice versa) or facilitate the processing of goods in Ireland which are to return to the UK post processing without a Duty cost arising. Businesses should explore the extent to which available customs reliefs such as inward processing relief, Customs warehousing or procedures such as transit could assist in mitigating the potential impact of a No Deal Brexit.</p> <p>“Contracts and Incoterms”</p> <p>Business should review their contracts with suppliers and customers and especially Incoterms. Incoterms or trade terms inform parties what to do with respect to the carriage of goods from buyer to seller, and who is responsible for export & import clearance and payment of VAT and Duties. They also explain the division of costs and risks between the parties.</p> <p>“Impact on ERP/finance system”</p> <p>Businesses should assess what changes may be required to their ERP (Enterprise Resource Planning) or finance systems to cater for a changed VAT and Customs Duty accounting regime in a No Deal Brexit scenario.</p>
<p>“Non tariff costs”</p>	<p>“Authorised Economic Operator “</p> <p>Authorised Economic Operator (“AEO”) or, sometimes referred to as, trusted trader status can assist in obtaining priority clearance and mitigate the risk of border delays. Businesses should consider whether AEO could assist in mitigating the non-tariff impact of Brexit. This involves an application to the Irish Revenue / HMRC and the lead in time to obtain AEO status can be six to twelve months.</p>

People, mobility and citizens' rights - Preparing for a No Deal Exit

'No Deal' Issue(s)	Action required now – 16 January 2019
<p>UK Nationals will be subject to the general rules that apply to third country nationals in the EU26 (an EU country other than Ireland)</p>	<p>The Common Travel Area and associated rights between the UK and Ireland will continue to operate and apply to Irish and UK nationals. Therefore Irish nationals can continue to enter and work in the UK, and vice versa, without restriction.</p> <p>However, the reaction of each of the remaining EU26 will vary. As a consequence, you should investigate the administrative processes that your British employees working in the EU26 will have to take to enable them to evidence their right to continue to live and work in that Member State. You should also consider how you would like to assist your employees with obtaining this evidence.</p>
<p>Every EU26 Nationals in the UK will be required to make an application under the UK's "Settlement Scheme" by 31 December 2020</p>	<p>Each of your EU26 National employees, who are based in the UK, will have to make an application under the UK's Settlement Scheme, to evidence their right to live and work in the UK. The scheme will open on 21 January 2019 and will go ahead regardless of whether a withdrawal agreement is ratified. Businesses should gauge their exposure to Brexit by conducting an immigration audit and make a plan to assist employees to make an application to remain in the UK under the scheme.</p>
<p>"Free Movement" of EU citizens to the UK will end</p>	<p>It is unclear what UK immigration policy will replace "Free Movement" in so far as EU citizens are concerned after exit day should a No Deal Brexit arise. However, businesses should be aware that there may be restrictions and related visa costs with sending British workers to the EU26 Member States and EU26 workers to the UK after 29 March 2019, and factor this into financial and staff resourcing forecasting.</p>

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Financial and Cash Flow Impact – Preparing for a No Deal Exit

'No Deal' Issue(s)	Action required now – 16 January 2019
UK Creditor and Debtor Management	<p>Introduce strategies to ensure your continued ability to make payments. Proactively follow up with UK based creditors and debtors and agree priorities.</p> <p>Consider location of bank accounts and forecast anticipated receipts and payments.</p>
Inventory and Order Management	<p>Consider whether deliveries can be shipped prior to 29 March 2019 and whether key raw materials can be stored to avoid transport uncertainties.</p> <p>Consider additional administration requirements and resources that may be required to deal with new border arrangements (see VAT and Customs for further details)</p>
Currency and FX Management	<p>Consider Sterling exposure and mismatches between assets and liabilities.</p> <p>Are contracts being structured in Sterling? Can these be hedged? Are debt and liabilities appropriately hedged?</p> <p>Consider profitability of sterling based contracts and whether currency clauses need to be inserted</p>
Treasury, Financing and Forecasting	<p>Capital markets may experience shocks.</p> <p>Ensure sufficient liquidity is in place including debt and revolving credit facilities in advance of 29 March 2019 to withstand potential shocks.</p> <p>Review covenant calculations and headroom to pre-empt breaches as a result of earnings and FX weakness and engage with lenders.</p> <p>Review cashflow forecasts and consider currency assumptions and whether updating is required</p> <p>Consider preparing various scenario analyses to factor in possible weakening of sterling in coming months</p>
Customer Management	<p>Consider key clients and their exposure to No Deal risks. Are credit terms and limits appropriate?</p> <p>Proactively engage to discuss.</p> <p>Consider profitability and pricing of contracts in the UK and whether adjustments are required to avoid losses</p>
Investments / Project Financial Close	<p>Consider timing of key investments and projects. Where possible bring forward closing-dates for key financial and legal documents. Consider the most appropriate legal jurisdiction for all such documents.</p>

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Data – Preparing for a No Deal Exit

'No Deal' Issue(s)	Action required now – 16 January 2019
<p>The UK (including Northern Ireland) will become a “third country” for the purposes of the General Data Protection Regulation (EU) 2016/679 (“GDPR”) after 29 March 2019 if there is a No Deal Brexit.</p> <p>This means that the legal framework governing transfers of personal data from organisations established in the EU to organisations established in the UK will change as transfers of personal data to the UK will be subject to the rules on international transfers to third countries provided for in the GDPR and other EU directives and regulations.</p> <p>Organisations need to prepare now to ensure they have appropriate safeguards in place to allow data flows to the UK to continue after 29 March and to prevent a No Deal Brexit having a detrimental impact on their business. To date, the EU Commission has stated that the adoption of an adequacy decision, which would permit transfers of personal data to the UK, is not part of the Commission’s contingency planning.</p>	<p>Review Data Flows: Organisations established in the EU that are transmitting personal data will need to review their personal data flows and seek to isolate personal data that is being transmitted to and processed in the UK. The contracts underlying these transfers should also be reviewed. These transfers will, after 29 March 2019, be considered “restricted transfers.”</p> <p>Actions: Once restricted transfers have been isolated, there are a number of options available to organisations to lawfully transfer personal data to the UK:</p> <ul style="list-style-type: none"> (a) the parties to a contract involving restricted transfers may insert model Standard Contractual Clauses (approved by the European Commission) in the contract which will provide the appropriate safeguards to permit the transfer of personal data to the UK; (b) where restricted transfers are being made between entities within a multinational group of companies, or groups of enterprises engaged in a joint economic activity, an application may be made to the competent data protection authority (ies) for binding corporate rules (“BCRs”) to be adopted by the group, that will provide the appropriate safeguards. BCRs are legally binding internal rules, similar to codes of conduct, which set out the group’s common data processing standards; (c) consider whether the restricted transfers would fall within one of the derogations provided in the GDPR namely, where explicit consent to the restricted transfer is provided by the owner of the personal data, where the restricted transfer is necessary for the performance of a contract or where the restricted transfer is required for reasons of public interest, public security or the exercise of legal claims; (d) update the company/group Privacy Notice and other relevant documentation (including any clauses relating to consent) to include the granting of permission to transfer personal data to a third country, as defined under the GDPR.
<p>The UK has stated that it will treat data protection laws in the EU as equivalent to UK laws in the event of a No Deal Scenario.</p>	<p>For this reason the transfer of data from businesses operating in the UK to businesses in the EU should not be impacted in the event of a No Deal Brexit.</p>

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International Financial Services – Preparing for a No Deal Exit

'No Deal' Issue(s)	Action required now – 16 January 2019
<p>Withdrawal of the EU Passport for Financial Services firms (European Commission Contingency Action Plan)</p> <p>If the Withdrawal Agreement is not ratified, financial operators established in the United Kingdom will lose, as of the withdrawal date, the right to provide their services in the EU27 Member States under EU financial services passports.</p> <p>UK Temporary Permissions Regime (Banking/Asset Management/Insurance)</p> <p>As of 7 January 2019, UK authorities are accepting formal notifications from EEA firms and funds that may wish to make use of the Temporary Permission Regimes. This notification window will close on 28 March 2019 and firms that have not submitted a notification prior to 29 March will be unable to continue accessing the UK market on the same basis as currently.</p> <p>Further, fund managers that have not submitted a notification for a fund will be unable to use the temporary permissions marketing regime for that fund. They will not be able to continue marketing that fund in the UK on the same basis as they did before exit day.</p> <p>Temporary and conditional equivalence: safeguarding financial stability (Market Infrastructure)</p> <p>The European Commission has adopted a 12 month equivalence decision for UK Central Counterparties as well as a 24 month equivalence decision for UK central securities depositories, in order for EU 27 entities to fulfil their legal obligations and put a viable alternative in place.</p> <p>The Commission also adopted two delegated Regulations facilitating novation, for a fixed period, of certain OTC derivatives contracts with a counterparty established in the UK to replace that counterparty with a counterparty established in the Union. This allows such contracts to be transferred to an EU27 counterparty while continuing to be exempt from the clearing and margining obligations under the European Market Infrastructure Regulation (EMIR).</p>	<p>Impact Assessment on inability for UK firms to utilize the EU passport</p> <p>The Central Bank of Ireland has stated that they expect firms to ensure they have robust contingency plans in place to minimise the impact on customers, investors and markets.</p> <p>Firms should perform an impact assessment which enables them to identify whether they have an EU-passport related reliance on a UK financial services firm. Where such reliance exists, firms should continue to take all the necessary steps to mitigate the loss of that passporting ability.</p> <p>Client Communications:</p> <p>Firms should, in accordance with their Brexit contingency plans, actively inform their clients about the steps they have taken and how they are implementing them.</p> <p>The European Securities and Markets Authority (ESMA) recently reminded firms that will be impacted by Brexit that they should ensure that they provide clear information to clients whose contracts and services may be affected by Brexit. ESMA also noted that relevant information should be provided as soon as possible, and should cover at least the following areas:</p> <ul style="list-style-type: none">• Impact of UK departure for the given firm and its business, and the implications this has for the relationship between the client and the firm;• Actions the firm is taking such as organisational arrangements to deal with client inquiries;• Implications for clients of any corporate restructuring and, in particular, any relevant changes to contractual terms; and• Contractual and statutory rights of clients in these circumstances, including the right to cancel the contract and any right of recourse, where applicable.

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Our Brexit team

Don't delay. Planning for Brexit means understanding the implications and opportunities for your business today. Our team of Brexit experts are already working with businesses North and South to make sure they are Brexit ready.

Policy and Business Strategy



Brian Daly leads our Brexit Team – working with clients, government and representative bodies to develop solutions to Brexit threats and opportunities.

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Kieran Wallace is our Head of Private Enterprise with a deep knowledge of the issues confronting Irish business and with a pragmatic approach to Brexit matters.

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Darina Barrett is our Head of FS Markets – working with Financial Services clients to understand and plan for a post Brexit environment and the opportunities Ireland can deliver for FS clients.

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Johnny Hanna is our Head of Tax in Northern Ireland. Johnny works on cross-border and cross-channel tax and trade issues - working with clients on solutions to the complexity that Brexit can cause.

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Supply Chain & Transformation



Owen Lewis is a partner in our Management Consulting team with over 10 years' experience at Toyota and can assist businesses with Brexit related supply chain issues and transformation projects.

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VAT & Customs



Glenn Reynolds is a partner in KPMG's indirect tax and customs practice with extensive experience in helping businesses analyse the customs and VAT costs Brexit may trigger.

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Frankie Devlin is a resident partner in KPMG Belfast's indirect tax and customs practice with extensive experience in helping businesses analyse the customs and VAT costs Brexit may trigger.

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Our Brexit team (continued)

People and Immigration



Eoghan Quigley leads KPMG's global mobility practice in Ireland – helping business with the challenges Brexit bring to managing people around the world.

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Aoife Newton is an expert in employment law and immigration matters – two of the areas most impacted by Brexit.

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Financial Services Regulation



Eric Cloutier is the head of regulatory banking in KPMG in Ireland with over 17 years' experience advising regulators, stakeholders and banks across 25 countries.

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Niamh Mulholland joined KPMG from the Central Bank of Ireland where she was a policy advisor to senior management, primarily in the area of investment management.

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Financial and Business Impact



Gillian Kelly leads a team of financial modelling experts providing Scenario Analysis services to clients building Brexit scenarios into their business models.

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Andrew O'Leary leads a team that provides cash and working capital performance improvements for clients across various sectors impacted by Brexit.

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Data Protection



Aisling Brennan specialises in the area of data protection and in particular GDPR which came into force in 2018 with Brexit related implications for Irish business.

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David Collins works in our Data and Analytics team, helping our clients to address their data challenges including Data Management, GDPR compliance and Business Intelligence.

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Your usual KPMG contact can also work with you to plan for Brexit and introduce you to other members of the KPMG Brexit Team with the experience and expertise needed to support your business.



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