

Publications

BREXIT - OVERALL IMPACT - A Portuguese Perspective

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INTRODUCTION

On February, 1st of 2020, the United Kingdom formally abandoned the European Union and the European Atomic Energy Community (Euratom), having reached an agreement with the European institutions regarding the exiting terms.

The official Exiting Agreement was published on the EU Official Journal on the past January 31st and the transitional period began on the 1st day of February, lasting until the end of the present year (31.12.2020). Said agreement predicts, however, the possibility to expand the transitional period for one or two more years.

Although the UK has formally exited the EU, it is still tied to both the customs union and the European single market until 31.12.2020. Therefore, until this date, the UK will continue to apply the EU law and the international agreements celebrated by the EU will still bind the UK.

It is worth mentioning that the Portuguese Government had already regulated the transitional period in case there was no Agreement, namely with the Law no. 27-A/2019, which approved contingency measures regarding UK nationals that had established residence in Portugal, and with the Decree-Law no. 147/2019, which regulated contingency measures aiming Financial Services and Social Security.

INDIVIDUALS

Residence

As mentioned above, this law approved contingency measures to be applied in case the UK left the EU without any agreement, and it aimed UK nationals living in Portugal when the UK left the EU.

It sets out that British citizens who have established their residency rights prior to the date of exit of the UK from the EU, will continue to enjoy those rights. Residency rights for first time residents are established by obtaining an EU Residency Certificate from the Town/City Hall of domiciliation.

The information contained in such certificate is transmitted to the Portuguese Immigration and Border Authorities (SEF). During the transition period, British citizens can continue to exercise their rights to live and work in Portugal.

However, British citizens who will not have officially established those residency rights before 31st January will have until 31st December 2020 to establish those rights, provided that they can produce evidence of Portuguese residency at the time of Brexit e.g. a tax return, a property deed, a rental

agreement or an employment contract (this will be assessed on a case basis).

In the meantime, SEF indicated that whilst these visas will have to be renewed, the documentation which is normally required for third country nationals will be waived, nevertheless without any specific details on the procedure yet.

After this date, to the UK nationals, and their family, living in Portugal for less than 5 years, it is granted a temporary residency authorization. If they have, on the other hand, lived in Portugal for 5 years or longer, it will be granted a permanent residency authorization. British citizens who do not establish residency or who are unable to prove that they established residency in Portugal before 31st January 2020 will have to apply for a residency permit as any other third country national. In Portugal they will be able to use the regimes of the Golden visa, employment visas and investment/retirement visas, through investment activities, namely in real estate, and capital transfers or job creation.

The regime for Non-habitual Residents in Portugal, designed to attract qualified professionals, people with high net worth and foreign pensioners, is now gaining a renewed interest.

Electoral and political rights

The Law safeguards, until the term of office, current terms of British nationals that were elected for bodies of local authorities, a political right that is attributed by the Treaties to Union citizens residing outside of their Member State of origin.

Higher education

The Law provides that British nationals and their family members enrolled in Portuguese universities prior to the United Kingdom's exit from the European Union, as well as those that enrol until 31 December 2020, will not be considered as international students until the end of the relevant study cycle.

Social security

Regarding the entitlement to benefits provided in Regulation (EC) 883/2004, on the coordination of social security systems, invoked by a person having fulfilled the insurance period in the United Kingdom, the Law establishes that insurance periods fulfilled in a mandatory social security scheme in the UK are accounted for until the date of withdrawal and that the relevant periods and benefits are calculated pursuant to the applicable EU law rules.

Professional activities

The Act provides that British nationals authorized to practice, for a certain period, a professional activity maintain such right after withdrawal. As to the recognition of professional qualifications, British nationals that at time of withdrawal practice in Portugal a professional activity in accordance with the applicable law maintain the right to said recognition, in accordance with Directive 2005/36/EC on the recognition of professional qualifications.

These safeguards are also applicable to the requests for authorisation to practice a professional activity, as well as to the requests for recognition of a professional qualification submitted before withdrawal.

Health

The Law provides that British nationals residing in Portugal at the time of withdrawal continue to be beneficiaries of the Portuguese National Health Service. Additionally, British nationals staying temporarily in Portugal retain until 31 December 2020, on presentation of a valid passport and the payment of the fee applicable to Portuguese users, the right to receive healthcare services within

the framework of the Portuguese NHS. In that case, the costs are borne by the Portuguese NHS and billed to the United Kingdom on the terms established under future negotiations.

The Act does not apply, however, to cases of “medical tourism”, that is cases where British nationals travel to Portugal with the objective of receiving medical treatment.

Driving licences

Finally, the Law establishes that British nationals and their family members must exchange their driving licences until 31 December 2020, a rule which derogates the deadline established under the Driving Code.

Finally, as for Tourism, Portugal is committed to ensuring the greatest possible stability in the travels of British tourists and to reinforcing the image of Portugal as a tourism destination in the UK, notably through information initiatives with British tourism operators and by creating information channels and online information services directed at British tourists.

COMPANIES

This legal document defined contingency measures to be applied in case the UK left the EU without any agreement regarding credit institutions, investment companies and management entities based in the UK that are authorized to provide services and investment activities or services involving collective investment undertakings in Portugal, temporarily until December 31, 2020, as well as it recognizes and maintains social security rights in said period.

It had the goal to provide the necessary time for those companies to cease all work in progress and associated investments or, if they wish to continue operating in Portugal, to instruct the respective authorization process, presenting the procedure and required documents to do so.

Similarly, it regulates contingency measures for contracts related to the deposits receptions or other repayable funds, payment and electronic money issuing services subject to the supervision of the Portuguese Central Bank, services next to bank clients and insurance contracts, covering risks located in Portuguese territory or in which Portugal is the Member State of the commitment.

Taxation of dividends, interests and royalties

The Double Taxation Convention in force between the UK and Portugal does not grant the same tax elimination effect as that granted by the European Directives on direct taxes, applied mainly to groups of companies, and also allows withholding taxes on the payment of dividends interest and royalties, thus, companies with cross-border investments should verify the potential risk and impact of such a change.

Portugal remains attractive for investment by allowing companies to benefit from the participation exemption regime which should apply due to the Double Taxation Convention to profits and reserves distributed by an entity resident in Portugal. Furthermore, a company based in Portugal may choose to exclude the profits and losses of a foreign permanent establishment, separating foreign and domestic profits for taxation purposes.

In its Preparation and Contingency Plan (that can be looked up at <https://www.portugal.gov.pt/pt/gc21/comunicacao/documento?i=plano-de-preparacao-e-de-contingencia-para-a-saida-do-reino-unido-da-uniao-europeia>) the Government announced a set of measures in order to assist Portuguese companies to prepare for the withdrawal of the UK, including:

- Holding information sessions with businesses in sectors not yet covered by the Agency for

- Investment and External Commerce of Portugal (AICEP) seminars;
- Publishing informative pieces in the UK specialized press;
 - The organization of a second high-profile economic forum in London;
 - Setting up “Brexit Helpdesks” in AICEP Export Shops;
 - Setting up a Contact Centre and AICEP’s Digital Service tool to provide support and clarification on implementing measures related to Brexit;
 - Consultations with entrepreneurial, commercial and industrial associations.

The Government also plans several measures to attract investment and to promote Portugal in the British market, in particular the creation of “Brexit Helpdesks” in the existing one-stop legal registration offices (Espaços Empresas) in Portugal for UK companies wishing to relocate their headquarters or open subsidiaries in Portugal.

CONCLUSIONS

Even though the UK has already formally left the EU, during the transitional period, the UK continues to integrate the European single market and has to apply the principles stemming from the EU's 4 fundamental freedoms.

In this period, it will be negotiated a future Partnership and Free Trade Agreement between the UK and the EU. In this regard, the European Commission has stated that it is necessary to ensure an equal level playing field between the two parties, guaranteeing that the UK does not place itself in a situation of competitive advantage over the EU. Without an agreement or an extension a Hard Brexit will mean that in most areas no international regulations will be in force, and although for example the GATT/WTO provisions may provide some solutions to the commercial activity most interactions between the UK and the UE will not be provided for.

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