

REAL ESTATE INVESTMENTS IN POLAND AFTER BREXIT

Q&A on legal issues that regularly arise in the course of real estate transactions after a “hard Brexit” (a Brexit without an agreement between the UK and the EU)



1 Will a hard Brexit (no-deal Brexit) mean obstacles to acquisition of real estate assets by British investors in Poland?

Acquisition of property by the British will be more difficult, once the UK leaves the EU. It will become necessary to obtain a decision of the Minister of the Interior permitting a British citizen to acquire real estate according to the Act of 24 March 1920 on the acquisition of real estate by foreigners. Since the date of Poland's accession to the EU, this rule does not apply to citizens and entrepreneurs having their place of residence or registered office in the European Economic Area. This exception won't be applicable any more for British citizens and companies after Brexit.

2 Will there be any obstacle for British citizens or companies to acquire shares in a Polish company?

Similarly to the acquisition of real estate by EU citizens, currently UK citizens can acquire shares in companies that own or hold in perpetual usufruct real estate, without any obstacles. In case of a hard Brexit it will become necessary to obtain a permit from the Minister of the Interior. Acquisition of real estate or acquisition of shares or stocks by a foreign national contrary to these requirements – shall be null and void.

3 What taxes will be payable by British investors following Brexit?

In case of acquisition of a real estate, the buyer is in general obliged to pay tax on civil law transactions at the moment of making a civil law transaction. In case of a sale agreement, the tax base is the market value of the property or property right. The rate of tax on the real estate sale agreement is 2%. Taxpayers are obliged, without being summoned so by the tax authority, to pro-actively submit a declaration on the tax on civil law transactions, to calculate and pay the tax within 14 days from the date of arising of the tax obligation. Sale of real estate may be in certain cases subject to VAT instead of tax on civil law transactions. The provisions of the VAT Act are highly complex, so determining whether a given real estate transaction is taxable or exempt should be decided with a tax advisor.

4 Will British investments in the Poland be controlled in any way?

At the moment, Polish law does not provide for controlling British investments in Poland. It is possible that in Poland works on the introduction of such regulations will begin in the future.

5 Will Brexit restrict investment in real estate funds in Poland?

The above restrictions regarding acquisition of real estates will be applicable also to real estate funds from Great Britain as for any other non-EU foreigner.

6 Will Brexit impact the use of documents issued in GB for the purposes of completing or registering a transaction with the Polish authorities?

The increasing international exchange of goods and services is regulated not only by bilateral agreements concluded by individual countries but also by the Hague Convention Abolishing the Requirement of Legislation for Foreign Public Documents. The Convention provides for a specific certificate (apostille) to be issued in the State where the document is issued by the competent authorities of that State. The aim of the Convention is to facilitate the use of official documents in foreign countries under private law by simplifying the procedure for their validity abroad, without abolishing the legalisation procedure. As both Poland and the UK are signatories to the Convention, the Convention will apply to official documents issued in those countries regardless of their EU membership.

7 Will the governing law of real estate investment transactions documents change after Brexit?

In the event of the UK leaving the EU, the Rome I Regulation concerning governing law will still apply for Great Britain in front of Polish Courts, because it is part of Polish national conflict-of-law rules. In case of the UK leaving the EU without an agreement, the Brussel I Regulation concerning acknowledgement of judgements of EU courts will not apply in UK any more. Thus each UK judgement will be subject of proceeding in front of Polish civil courts to be enforced in Poland.

8 What legal regime will apply to posting of UK management/employees to Poland following real estate acquisition?

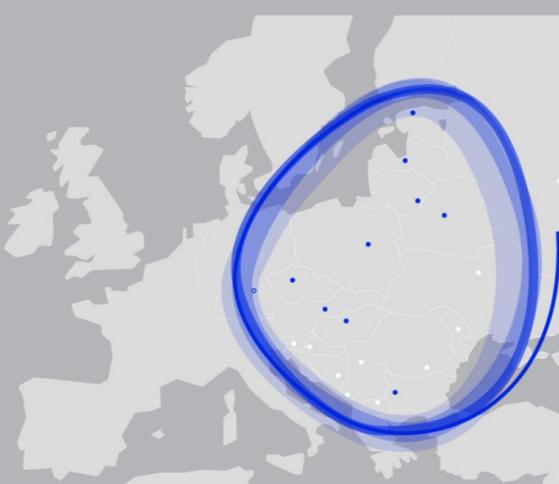
Currently, due to free movement of services the employment of a citizen of another EU country in Poland does not differ in practice from the employment of a Polish citizen. Therefore the posting of managers related to real estate investments is not hindered by administrative obstacles. As a result of leaving of the EU by the United Kingdom, its citizens will be treated in Poland as third-country nationals. It will involve the requirement to obtain additional documents related to the performance of work by an employee in Poland, especially residency and work permits. Employers employing third-country nationals are obliged to require a present and valid document authorizing the foreigner to stay on the territory of the Republic of Poland before commencement of work (e.g. visa or residence card). The employer is obliged to keep a copy of this document. Posted employees from UK will also be obliged to obtain work permits under the terms of Polish law.

9 Will there be any further administrative or other obstacles in relation to completion and settlement of real estate transactions?

AML checks on the parties are in Poland mandatory in the course of real estate transaction (by the notary), also a new online Register of Final Beneficiaries was introduced in Poland in September 2019. However, the banking fees may increase due to the fact, that EU rules limiting bank charges will no longer be applied. It may significantly raise the costs associated with investments in real estate. The EU authorities have agreed to give British citizens visa-free travel to member states for short-term purposes (90 days in any 180 days), even if there is a no-deal Brexit. However, in case of a no-deal scenario British citizens will be entitled as “third-country nationals” and according to the Schengen Border Code they will be obliged to have passport which has been issued within the past ten years, at maximum, from the day of arrival in a particular Schengen country. Also, this passport must be valid for at least 3 months from the day of his departure. A passport should be valid for at least the next six months from the day of British citizen's arrival.

Contact

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bnt Neupert Zamorska & Partnerzy Sp.j.
ul. Chłodna 51 33rd floor
00-867 Warsaw
T: +48 3736550
E: info.pl@bnt.eu

