



TELEPHONE

# BREXIT IMPLICATIONS IN SPAIN

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# IF YOU ARE A BRITISH COMPANY

The withdrawal of the United Kingdom from the European Union has important consequences for both Spanish companies with interests in the United Kingdom and British companies with subsidiaries or interests in Spain.

It is noteworthy that the European directives will no longer apply and, therefore, it will be necessary to resort to the double taxation agreement less favorable to the interests of companies. In this section, we will focus on analyzing how Brexit affects to the field of taxation, with special attention to VAT, and in trade and customs regime between both countries.



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# 1. IF YOU ARE A BRITISH COMPANY

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## 1.1 TAXATION

On December 31, 2020, the transition period ended and Brexit became a reality. Consequently, the European directives below no longer apply to the United Kingdom.

### 1.1.1 DIVIDENDS

According to Council Directive 2011/96/EU, **dividends distribution between a Spanish subsidiary and a British parent company** were exempt from withholding tax in Spain, provided that the latter owned over 5% of the former's outstanding shares throughout more than one year.

As of 2021, taxation of such transaction shall depend on the content of the **Double Taxation Treaty signed by Spain and the United Kingdom**. Generally, the Spanish subsidiary must withhold at a rate of 10% on dividends, unless the British parent company holds at least a 10% ownership. In this case, income is not to be withheld in the Spanish jurisdiction.



### 1.1.2 INTERESTS AND ROYALTIES

The Council Directive 2003/49/CE stated that interests and royalties paid to a British company by a Spanish associated company were not subject to taxes in Spain. The association feature was given when either of the two companies had a minimum holding of 25% in the capital of the other company.

Just like dividends, now taxation on interests and royalties relies on the mentioned Double Taxation Treaty. Nevertheless, their taxation does not change because interests and royalties are still tax exempt in Spain, levying taxes in the United Kingdom exclusively.

### 1.1.3 VALUE ADDED TAX (VAT)

VAT is an EU tax on consumption that arises from the Sixth Directive. If we consider the United Kingdom to be a third country, whenever Spanish companies purchase goods in the United Kingdom, they will be performing imports instead of intra-community acquisitions of goods.

Import VAT is charged when dispatching goods at customs. Afterwards, the tax can be deducted through the coming self-assessment tax return. The tacit financial cost derived from the transpired time between the payment and VAT deduction moment may be significant, especially for those companies which carry out no domestic operations and have to wait for the completion of the fiscal year to claim the VAT refund.

# 1. IF YOU ARE A BRITISH COMPANY

As for the **services provided by Spanish companies**, we should take a closer look at professional services. If the recipient is a British final consumer, the service is to be located in the United Kingdom and the invoice shall not include VAT. However, if the recipient is a British company, the service might be located in the territory of application of Spanish VAT (Peninsula and the Balearic Islands) as long as the effective use and enjoyment take place therein.

(\*) For the purpose of avoiding the situation described above, we recommend opting for the registration in the REDEME (Monthly Refund Registry) along with the special import VAT deferral regime aimed to put off the payment until the submission of the self-assessment tax return.

## 1.1.4 CORPORATE TAX

Contributions to UK occupational **pension funds** will not be considered deductible expenses.

The expenses assumed by Spanish entities related to **R&D&I activities** in the United Kingdom, will not be included in the calculation of the deduction base.

ElIGs made up of Spanish and British entities could no longer be considered an European Economic Interest Grouping and the planned special tax regime will no longer apply to them.

Regarding **Collective Investment Institutions (CII)** incorporated in the United Kingdom and registered in the National Securities Market Commission (CNMV), a case-by-case analysis must be conducted in order to determine the taxation of income from the mentioned CIIs.

The **international tax transparency regime** may apply to companies based in the United Kingdom, so that, if the requirements for this are met, income that an entity domiciled in British territory obtains may be subject to the allocation and taxation regime at the headquarters of the Spanish partner.

In order to ease **business restructuring**, the Council Directive 2009/133/CE established a tax neutral/deferral regime when Spanish and British companies performed some of the following cross-border corporate operations: mergers, divisions, transfer of assets, exchanges of shares and transfer of the registered office between Member States. The loss of the said regime jeopardizes the feasibility of this kind of operations with the United Kingdom.

## 1.2 CUSTOMS AND TRADE



### UNITED KINGDOM

In relation to tariffs, the United Kingdom has already published which tariffs it will apply from January 1, 2021 to its imports from third countries, which are also applicable to the European Union in case of exit without an agreement.



### COMMERCIAL EXCHANGES

In **commercial exchanges**, leaving the United Kingdom with or without an agreement will mean that they are subject to customs and non-customs procedures or formalities to verify compliance with community legislation, including the possible obligation to have an authorization or certificate from competent authorities, which implies an additional procedure prior to import / export.

(\*) However, companies providing services rather than goods are largely unaffected on the trade front, but they are concerned about the “corporate administration” implications.



## 2. IF YOU ARE A BRITISH EMPLOYEE

Specifically, we will be focusing on how to manage immigration options post-Brexit to Spain for British nationals, health assistance in the post-Brexit era, and international social security aspects.

### 2.1 WORK AND RESIDENCE PERMIT

On January 31, 2020 the United Kingdom ceased to belong to the European Union. Said departure is regulated by the Withdrawal Agreement that entered into force on February 1, 2020.

This Agreement established a transitional period that finalized on December 31, 2020. During this period, citizens of the United Kingdom and their family members will keep their rights as if the United Kingdom were still a member of the EU.

This means that UK nationals enjoyed their free movement rights in Spain until the end of the year, permitting them to move to Spain as well as work and reside without a specific work and residence permit. Those who arrive after January 1, 2021 (after the end of the transitional period) are considered nationals of a non-EU country and therefore are subject to the general immigration regime.

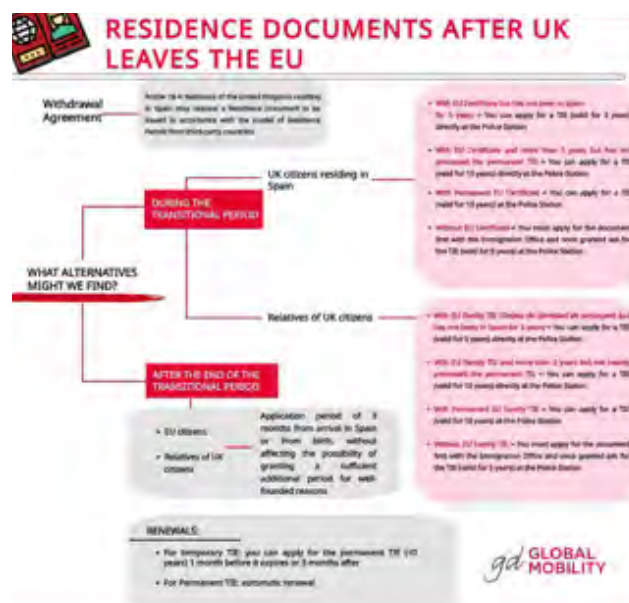




### Residence documents after UK leaves the EU

However, the Agreement determined the conditions of residence of UK nationals and their family members in the Host State, as well as the documentation that will be required in each case. A different procedure has been established for those who were residing in Spain before December 31, 2020 with an EU Registry Certificate (in which case, the modification is optional) and those who arrive before the end of the transitional period, but do not hold an EU Registry Certificate.

On June 29, the General Directorate of Migrations (DGM) together with the General Directorate of the Police (DGP) issued an Instruction establishing the anticipated Procedure for UK citizens according to the conditions of the Agreement. The diagram summarizes the process established in each case, both for residence applications during the transitional period and for applications for residence afterwards, that is, from January 1, 2021, when the applicant benefits from the Withdrawal agreement.



(\*) If you benefit from the Withdrawal agreement and have not processed residency, be sure to initiate the application as soon as possible to ensure a favorable response.

All British citizens and their family members arriving after December 31, 2020 will require a work and residence permit in order to reside and work in Spain as they cannot benefit from the Withdrawal agreement.

## 2. IF YOU ARE A BRITISH EMPLOYEE

### 2.2 SOCIAL SECURITY

The Brexit Agreement continues social security coordination between the the UK and the EU, so that **posted workers** will be able to maintain Social Security links with their country of origin. Specifically, with the Protocol on Social Security Coordination between the EU and the UK, the UK and the EU confirm that this coordination will continue.

Let's look at an **example**: What happens if a British employer posts a worker to Spain?

In this case, the posted worker will maintain their link with British labor law (and, therefore, contributions in the United Kingdom) as long as the posting is temporary and does not exceed a maximum period of 24 months.

We can therefore understand that Social Security relations between the United Kingdom and Spain will continue to be based on the rules established by Regulation 883/2004 on the coordination of Social Security systems in the European Union.

This is the determination of the applicable legislation in matters of Social Security established by the Royal Decree-Law of December 29.

All this does not mean that there is an exemption, for immigration purposes, from the obligation to obtain a mandatory work permit. At the end of the initial secondment period, a British national seconded to Spain will require processing a work and residence permit based on this transfer in order to continue the assignment longer.

(\*)If you are a posted worker and moved to Spain before the end of the transition period with the A1 form, you can continue your assignment through the end of the initial secondment period.

## 2.3 HEALTH CARE

UK citizens who reside and work in Spain with a local work contract and their family members, as long as the minimum waiting period of contributions has been met, will continue to have the right to the public health care system as long as residency in Spain continues.

For Post-Brexit arrivals, the waiting period must still be met, but will be covered as long as there are Social Security contributions.

Pensioners and posted workers residing in Spain before December 31, 2020 who have a valid S1 form from the UK will be recognized, always depending on reciprocity from the UK.

For those moving to Spain post-Brexit, the Protocol between the UK and the EU continues to recognize the coverage offered by the S1 form.

For traveling as a tourist or to conduct business, the European Health Insurance Card will still be accepted during its validity. Additionally, you will require travel insurance. If you apply for a card now, you will be issued a new UK Global Health Insurance Card (GHIC).

(\*) If eligible for public health care, complete the application procedures at your Social Security office and public medical center. However, please remember that your S1 forms and Spanish public health cards will only be valid through June 30, 2021 at the latest unless a new agreement is made between Spain and the UK, so please look out for updates.

## 2. IF YOU ARE A BRITISH EMPLOYEE



### 2.4 PROFESSIONAL QUALIFICATIONS

Some professions require official recognition in order to work under that capacity. These regulated professions include: doctors, lawyers, actuaries and architects. EU citizens can pursue employment in their area, even if their qualification is not from the new state.

Employment which does not require official recognition just requires the apostille of your foreign degree.

In Spain, registration is initiated by contacting the specific professional association. This facilitated regime is only available to EU citizens.

During the **transition period and for the following 5 years (as long as the acceptance to the studies were started before January 1, 2021)**, if you are covered under the Withdrawal Agreement, it will be completed under the current EU rules.

**Post-Brexit** it will be necessary to complete the homologation procedure to register at the professional association.

(\*) Consider applying for homologation, especially if you have not initiated the professional qualifications recognition prior to the end of the transition period or you are not a beneficiary of the Withdrawal agreement.

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