

Brexit vote: time to buy Swiss real estate?

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Introduction

Legal framework

Properties acquired before EU referendum

Properties acquired in future

Comment

Introduction

The outcome of the United Kingdom's EU referendum raises many questions on the consequences of Brexit for UK citizens. The same is true for relations between Switzerland and the United Kingdom, where changes are expected in regard to, for example, the movement of people, work and residence permits, trade, customs and tax matters.

The legal situation of UK citizens, particularly those living in Switzerland, is also likely to change in relation to Swiss real estate.

The forthcoming separation process between the European Union and the United Kingdom has not yet been clearly defined in terms of the required action, the timeframe and the precise outcome – and this uncertainty will last for some time. The premise of this update is that once Brexit has been completed, the United Kingdom will no longer be a formal EU member state and will not have joined the European Free Trade Association (EFTA); nor will Switzerland and the United Kingdom have entered into a specific treaty on the subject matter.

Legal framework

Foreign investments in Swiss real estate are governed by a federal law known as the '*Lex Koller*',⁽¹⁾ a federal ordinance and additional cantonal rules. The law restricts the acquisition of residential real property by non-Swiss citizens, although they are free to invest in any type of business premises.⁽²⁾

Regarding the acquisition of residential real property by non-Swiss citizens, the law distinguishes between Swiss residents and non-Swiss residents. Non-Swiss residents include:

- citizens of EU and EFTA member states without legal and actual Swiss residence; and
- citizens of other states without permanent Swiss residence permits (C permits), with or without legal and actual Swiss residence.

Non-Swiss residents are subject to the *Lex Koller* restrictions. They may acquire Swiss residential properties only in limited cases and on formal approval by the competent authority. In practice, this mainly affects the purchase of holiday homes and, in the case of citizens of a non-EU or EFTA member state without permanent Swiss residence permits, the purchase of a residential property at their main place of residence in Switzerland. Both holiday homes and properties at the main place of residence should not exceed a certain size; otherwise, approval requires additional justification.⁽³⁾ Pure capital investments in Swiss residential properties are not allowed. These restrictions apply to citizens of EU and EFTA member states without legal and actual places of residence in Switzerland and to citizens of other states without permanent Swiss residence permits.

In contrast, Swiss residents are not subject to the *Lex Koller* restrictions, even if they do not have

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Swiss citizenship. They may acquire Swiss residential property for their own use, including main residences and vacation homes, and as pure capital investment without restriction in terms of the number, type and size of properties. This applies also to citizens of EU and EFTA member states, provided that their legal and actual place of residence is in Switzerland, and to citizens of other states with permanent Swiss residence permits.

Properties acquired before EU referendum

In some cases the law requires a property owner to sell the property if certain requirements are no longer met. This applies if a property is no longer used for the purpose declared at the time of its acquisition (eg, if a secondary home is no longer used or a holiday home is rented out all year long). Similarly, a non-Swiss resident must sell his or her Swiss holiday home before acquiring another holiday home in Switzerland.(4)

In contrast, if an EU or EFTA member state citizen permanently leaves the country and thereby becomes a non-Swiss resident, he or she is not obliged to sell legally acquired Swiss residential properties or to obtain subsequent approval. The same applies to citizens of non-EU or EFTA states who move to a new place of residence within Switzerland or abroad. Both scenarios are subject to evasions of the law – in particular if residence is taken only to acquire properties, which may have serious consequences.(5)

Following Brexit, the question arises of whether UK owners must sell their Swiss residential properties once Brexit has been completed as they will then no longer be citizens of an EU or EFTA member state. This question can be answered in the negative. In regard to the constitutional guarantee of ownership, there is no legal basis for such an obligation because:

- the law governs the acquisition of ownership and other rights directly or indirectly relating to real property – no longer being a citizen of an EU or EFTA member state does not result in such an acquisition;
- the law does not explicitly regulate the loss of the citizenship of an EU or EFTA member state; the principle of legality therefore prohibits the imposition of certain obligations in the case of such loss;(6) and
- the law neither requires nor allows a new assessment of a past purchase on the grounds that a property owner is no longer a citizen of an EU or EFTA member state.

Accordingly, Brexit should not affect residential properties that were acquired before the referendum. Rather, the same rules shall apply as if a property owner permanently leaves the country – that is, there should be no obligation to sell legally acquired Swiss residential properties or to obtain subsequent approval.

Properties acquired in future

Before completion of Brexit

Until Brexit takes legal effect, UK citizens are citizens of an EU member state. Accordingly, if they have legal and actual Swiss residence, they are considered to be Swiss residents for the purpose of acquiring Swiss residential properties. As such, until Brexit takes legal effect, they may acquire Swiss residential properties without restriction, including main residences, holiday homes and pure capital investments in residential properties.

Swiss law does not allow Brexit to be given early effect by prohibiting acquisitions before it takes legal effect. As a result, land registrars should enter such purchasers in the Land Register without further clarification and without invoking the competent *Lex Koller* authority.

This principle must apply until Brexit takes legal effect – that is, even once the schedule for the separation process becomes clearer. The prohibition of acquisitions in view of forthcoming legal changes would result in an unlawful pre-effect. Further, acquisitions made before Brexit takes legal effect are in line with the applicable law and should not be considered to circumvent the law.

After completion of Brexit

Once Brexit takes legal effect, UK citizens will no longer be citizens of an EU or EFTA member state.

With regard to the acquisition of Swiss residential property, they should be considered non-Swiss residents and subject to the restrictions outlined above.

This should apply to UK citizens who, only after completion of Brexit, take new legal and actual residence in Switzerland, but without permanent Swiss residence permits.

UK citizens who, before completion of Brexit already have legal and actual residence in Switzerland and who will continue to do so, may possibly benefit from a grandfathering under the agreement on the free movement of persons between Switzerland and the European Union and its member states. Such grandfathering would exempt these UK citizens from the restrictions outlined above.

Comment

Until Brexit takes legal effect, UK citizens with legal and actual Swiss residence may be treated as Swiss residents and thus may acquire Swiss residential properties without restriction.

Once Brexit takes legal effect, UK citizens taking new legal and actual Swiss residence but not holding C permits should be considered non-Swiss residents. If they wish to acquire Swiss residential properties, they should be subject to a number of restrictions.

In contrast, UK citizens continuing to have legal and actual Swiss residence after Brexit takes legal effect, but not holding C permits, may possibly benefit from a grandfathering of their current rights. Accordingly, these UK citizens would be exempted from the *Lex Koller* restrictions following the completion of Brexit.

Finally, Brexit should not result in an obligation on UK owners to sell Swiss residential property acquired legally before the referendum, or to obtain subsequent approval.

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Endnotes

(1) The Federal Act on the Acquisition of Real Property by Non-Swiss Residents, SR 211.412.41.

(2) For further details please see "[Latest developments in foreign real property investments](#)" and "[Non-Swiss residents can own several holiday homes in exceptional cases](#)".

(3) In contrast, if certain conditions are met, no formal approval is required for the purchase of a property at the main place of residence (citizens of a state other than EU and EFTA member states without permanent Swiss residence permit).

(4) For an exception please see "[Non-Swiss residents can own several holiday homes in exceptional cases](#)".

(5) Including, without limitation, the obligation to sell property, fines, imprisonment and the confiscation of profits.

(6) In contrast, the law explicitly regulates the cross-border relocation of a company, which requires approval from the competent *Lex Koller* authority. However, this is a different case and the relevant provision may not be applied with regard to the consequences of the loss of an EU or EFTA member state citizenship.