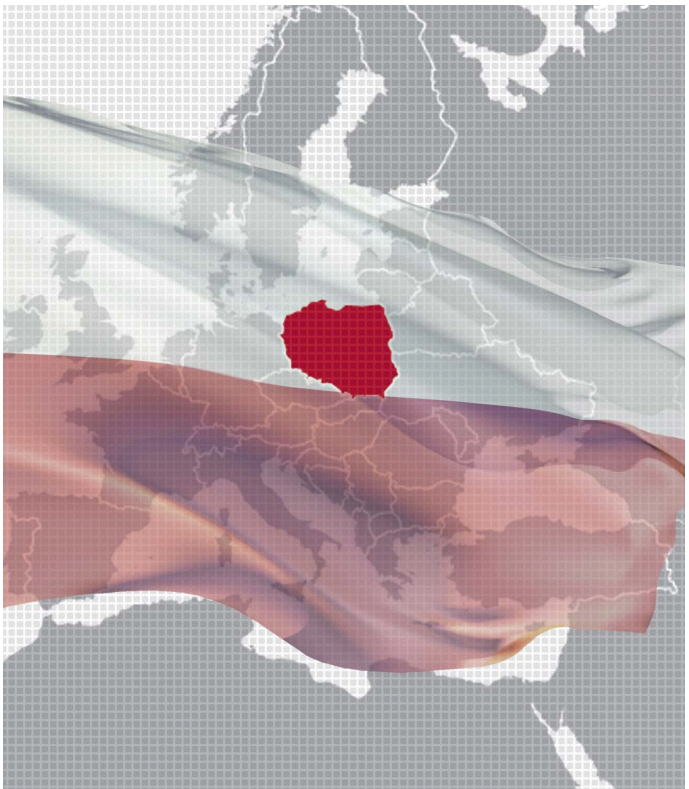


# Tax and Investment Facts

A Glimpse at Taxation and  
Investment in Poland  
**2019**



# WTS&SAJA Sp. z o.o.

## Poland

WTS&SAJA Sp. z o.o. has been in the market since 2004 and is the exclusive representative of WTS Global for Poland. Our mission is to deliver practical end-to-end tax solutions geared towards achieving our clients' business objectives. WTS&SAJA boasts expert tax advisors with a wealth of experience working on and coordinating domestic and international tax projects.

Our service portfolio includes:

- » Personal income tax
- » Corporate income tax
- » Expatriate compliance
- » VAT and excise duty

- » Transfer pricing
- » Standard Audit File for Tax (SAF-T)
- » General tax compliance
- » Tax reviews
- » Audits and litigation

Our team of expert advisors offers professional assistance for day-to-day business and complex business processes, both in Poland and internationally.

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# 1 Ways of Doing Business / Legal Forms of Companies

Business activity in Poland can be conducted in forms similar to those found in other European countries.

Polish law stipulates the principle of freedom of business. This means that anyone has equal rights in undertaking a business activity of their choosing.

**Business in Poland may be conducted in the following forms:**

## **Companies**

- limited liability company
- joint-stock company

## **Partnerships**

- registered partnership
- limited liability partnership
- limited partnership
- limited joint-stock partnership

## **Sole proprietorship**

## **General partnership**

## **Branch office of a foreign company**

## **Limited Liability Company (sp. z o. o.)**

- The most popular form of business activity, preferred for smaller-scale businesses.
- This company type needs to be registered in the National Court Register (KRS) and have "spółka z ograniczoną odpowiedzialnością" or "sp. z o. o." as part of the name.

- Needs up to 1 month to register.
- Has legal personality.
- Can be formed by natural persons, legal persons or organisational units without legal personality to which applicable laws have granted legal capacity.
- The minimum share capital is PLN 5,000 (EUR 1,167) and needs to be fully paid prior to registration.
- Shareholders have the right to participate in distributable profit in proportion to the number of their shares.
- LLCs are liable for corporate income tax (CIT at the rate of 19%) and, where applicable, VAT.

### Joint-stock company (spółka akcyjna)

- A joint-stock company is a popular form for larger-scale businesses.
- Usually joint ventures with many shareholders.
- Supervision over the company's business is carried out only by the supervisory board.
- Needs to be registered in the National Court Register (KRS) and have "spółka akcyjna" as part of the name.
- Needs up to 1 month to register.
- Has legal personality.
- Can be formed by natural persons, legal persons or organisational units without legal personality to which applicable laws have granted legal capacity.
- The minimum share capital is PLN 100,000 (EUR 23,347) and the minimum nominal value of a share is PLN 0.01.
- The company's share capital is divided into shares of equal nominal value, in proportion to the number of shares.
- Joint-stock companies are liable for corporate income tax (CIT at the rate of 19%) and, where applicable, VAT.

### Registered partnership (sp. j.)

- A registered partnership is a popular form of small-scale business activity conducted by at least two entities.
- Needs to be registered in the National Court Register (KRS) and the business name should contain the surname or business name of at least one of the partners and the additional designation of the legal form "spółka jawna".
- Needs up to 3 weeks to register.
- Must have at least two founders who are natural persons, legal persons or organisational units without legal personality to which applicable laws have granted legal capacity.
- Has no legal personality but does have legal capacity and capacity to sue and be sued.
- No minimum capital requirement.
- No income tax - income tax applies to individual partners.
- Liable for VAT, where applicable.

### Limited Liability Partnership (sp. p.)

- Reserved for freelance professionals.
- Needs to be registered in the National Court Register (KRS) and the business name should contain the surname of at least one of the partners, the additional designation of "i partner" (and partner) or "i partnerzy" (and partners) and the name of the profession.
- Needs up to 3 weeks to register
- At least two natural persons who have the right to practise specified freelance professions.
- Has no legal personality but does have legal capacity and capacity to sue and be sued.
- No minimum capital requirement.
- A partner's interest in the partnership's capital corresponds to the amount of the actual contributions made.
- No income tax - income tax applies to individual partners.
- Liable for VAT, where applicable.

### Limited Partnership (sp. k.)

- For any scale of business.
- Needs to be registered in the National Court Register (KRS) and the business name should contain the surname of at least one of the general partners and the additional designation of "spółka komandytowa" (limited partnership).
- Needs up to 3 weeks to register
- Must have at least two founders who are natural persons, legal persons or organisational units without legal personality to which applicable laws have granted legal capacity.
- Has no legal personality but does have legal capacity and capacity to sue and be sued.
- No minimum capital requirement.
- There are two kinds of partners:
  - a) at least one general partner with unlimited liability,
  - b) at least one limited partner whose liability is limited by an amount specified in the partnership agreement.
- No income tax - Income tax applies to individual partners.
- Liable for VAT, where applicable.

### Limited Joint-Stock Partnership

- For business partners wishing to protect their partnership against hostile takeovers.
- Needs to be registered in the National Court Register (KRS) and business name should contain the surname or business name of at least one of the general partners and the additional designation of "spółka komandytowo-akcyjna" (limited joint-stock partnership)
- Needs up to 3 weeks to register
- At least one general partner (natural or legal person or organisational unit without legal personality to which applicable laws have granted legal capacity) and at least one shareholder (natural or legal person or organisational unit without legal personality to which applicable laws have granted legal capacity).

- Has no legal personality but does have legal capacity and capacity to sue and be sued.
- Minimum share capital is PLN 50,000 (EUR 11,674).
- Liable for CIT at a rate of 19%.
- Liable for VAT, where applicable.

### **Branch office of a foreign business**

- Includes the original name of the foreign parent, a Polish translation of the parent's legal status and the additional words "oddział w Polsce" (branch in Poland).
- Is not a separate entity and does not have legal personality, legal capacity, or capacity to sue and be sued.
- The foreign parent is represented in the branch by an authorised person and has all of the aforesaid capacities.
- No minimum capital requirement.
- The foreign parent is the founder,
- No need to register in the National Court Register,
- Has the same liability as its parent.



In Poland, the income of the following types of company (and companies in the process of being incorporated) is subject to taxation with Corporate Income Tax (CIT):

- joint-stock company (S.A.);
- limited liability company (Sp. z o.o.);
- limited joint-stock partnership (S.K.A.)

Unincorporated organisational units (except for unincorporated partnerships) are also subject to CIT.

### 2.1 Applicable Taxes / Tax Rates

The basic CIT rate in Poland is 19%. Additionally, starting from 2019 a preferential CIT tax rate of 9% is introduced, which is applicable to:

- small taxpayers – sales revenue including VAT did not exceed EUR 1,200,000 in previous fiscal year (EUR 2,000,000 as of 2019);
- start-ups – in the fiscal year when they started business.

Other rates may be applicable in the case of payments subject to withholding tax (20%; 10%; other tax rate provided by double taxation treaty).

### 2.2 Resident Companies

As a rule, the entire income of resident taxpayers (those with their registered office or place of management in the territory of Poland) is subject to taxation in Poland, irrespective of where the income is earned. There are certain exemptions, provided the requirements set forth in the Polish CIT Act are satisfied.

## 2.2.1 Computation of Taxable Income

Companies must maintain accounting records in such a way as to enable the calculation of income (loss), the taxable amount and the tax due in a given tax year. They must also maintain tangible and intangible asset records containing information required to calculate depreciation.

As of 2019 we have two revenue sources in Poland:

- capital gains – include revenues like revenues from dividends, sale of shares, restructuring, contributions in-kind, resale of receivables, sale or lease of certain intangibles (licences, IP rights, commercial property, know-how); certain exemptions apply,
- other revenues (general business activity).

As a rule, CIT applies to income computed as a sum of the incomes from the two sources. Income in each source is the positive difference between tax revenue and tax-deductible expenses in a tax year. If tax-deductible expenses exceed revenue, the balance is a loss. There are some non-taxable revenue items and non-tax-deductible expenses that are not taken into account when determining taxable income. Tax losses from one source may not be utilised with income from the other source.

There are some items that may be deducted from taxable income like donations (strict conditions have to be met) and R&D expenses.

## 2.2.2 Taxation of Dividends

Dividend repatriation is subject to withholding tax in Poland. As a rule, this dividend tax amounts to 19% of the revenue. In the case of a dividend payment for a foreign company, a lower rate may be provided by the applicable double tax treaty (some formal conditions have to be satisfied).

There is also an exemption from taxation if the following conditions are met:

- dividend is paid by a company that is a CIT-payer and a tax resident of Poland;
- the dividend income is earned by a company whose entire income, irrespective of where it is earned, is subject to income tax in Poland or in a Member State of the EU or of the EEA, other than Poland;
- the company which earns the dividend has directly held no less than 10% of the payer's share capital for an uninterrupted period of 2 years;
- the company which earns the dividend is not exempt from tax on its world-wide income.

The tax exemption does not apply if:

- the dividend income is obtained due to the conclusion of a contract or the making of any other legal act, or several related legal acts, whose main or one of the main objectives was to obtain exemption from income tax in this respect and the only result of getting this exemption is the elimination of the double taxation of income (revenue); and
- the activities referred to above have no real character.

A contract or other legal act has no real character if it is not carried out for legitimate economic reasons.

### 2.2.3 Capital Gains and Losses (including Capital Gains and Losses from Sales of Shares)

Revenues and costs related to capital transactions are separated from other business incomes and costs (capital gains). Capital gains realised by a Polish company are subject to CIT at the standard rate of 19%. This includes capital gains on the sale of shares. When a taxpayer suffers a loss in a tax year due to revenues and costs of capital transactions, the loss may be carried forward, but may only be utilised with incomes realised in the same source (capital gains). The carry forward is granted for a maximum period of 5 years. The annual amount deductible cannot exceed 50% of the total loss. Additionally, starting from 2019 the tax loss for a given year may be deducted in the first year in which it is deducted, up to a maximum amount of PLN 5 million (EUR 1,167,460). The remaining part may be deducted in the following years according to the general rules.

### 2.2.4 Depreciation / Capital Allowances

Assets that are subject to depreciation are property or shared property of a taxpayer. Assets are depreciable provided that their expected service life is longer than one year and they are used by the taxpayer for the purposes of its business activities, or handed over to a third party under a hire, rental or lease agreement.

Depreciable assets include tangibles such as buildings, structures, machines, vehicles, investments in foreign fixed assets, and buildings and structures built on another's land, as well as intangibles, including proprietary rights such as licenses, copyrights, industrial property rights, know-how, goodwill, and R&D. Only acquired intangible assets are depreciable.

Some tangibles and intangibles are not depreciable. These are, among others, land and perpetual usufruct of land.

There are various methods of depreciation that taxpayers may choose from:

- the straight-line method according to the depreciation schedule of rates, which, however, may be increased or reduced,
- in accordance with dedicated rates for used or improved fixed assets,
- the reducing-balance method providing a variable base for depreciation.

Example rates from the depreciation schedule:

- buildings: 1.5% - 10%;
- structures: 2.5% - 20%;
- plant and machinery: 7% - 30%.

In the case of intangibles, the period of amortization cannot be shorter than the legally specified number of months, e.g. 24 months for computer software licenses (sub-licenses) and for copyrights.

## 2.2.5 Loss Carry Over (including Potential Loss of Tax Loss Carry Forward in case of Restructuring)

A loss carry forward is granted for a maximum period of five years. The annual amount deductible cannot exceed 50% of the total loss. Starting from 2019 the tax loss for a given year may be deducted in the first year in which it is deducted, up to a maximum

amount of PLN 5 million (EUR 1,167,460). The remaining part of the loss may be deducted in the following years according to the general rules. A loss incurred by a business which is transformed into (except for transformation of a company into another type of company), merged with or taken over by another entity, or is dissolved, is not taken into account when determining taxable income.

## 2.2.6 Group Taxation

In Poland, tax groups may be formed only for CIT purposes. For purposes of other taxes (e.g. VAT) the companies are treated as separate entities (not as a group). In order to form a tax group, certain quite restrictive requirements have to be satisfied:

- Only public companies and limited liability companies which are tax residents of Poland are allowed to form a group.
- The average share capital must not be lower than PLN 500,000 (EUR 116,748).
- Minimum holding requirement of 75% owned by the parent company.
- Subsidiaries do not hold any shares in the share capital of other companies in the group.
- The companies do not have outstanding tax liabilities qualifying as government revenue.
- The group agreement must be notarised.
- The minimum period for joint tax compliance is 3 years.
- The group's profitability ratio is not lower than 2% for each tax year.

Taxable income for the group is calculated by combining the incomes and losses of all group members. No transfer pricing regulations apply to a tax group.

## 2.2.7 Relief from Double Taxation (Tax Credit / Tax Exemption)

Where no double tax treaty applies, income earned by Polish resident taxpayers outside Poland is combined in their tax return for the same tax year with the income earned in Poland. The amount equivalent to the foreign tax paid is deducted from the Polish tax due on the aggregate income. However, the deducted amount must not exceed the part of the tax calculated before deduction that is commensurate with the income earned in the other country.

Where a double tax treaty concluded by Poland applies, the treaty method shall be used.

## 2.2.8 Incentives

### Special Enterprise Zones

A Special Enterprise Zone (SEZ) is a specific uninhabited area in Poland where business may be conducted on preferential terms. To obtain state aid in a SEZ, the investor needs a business franchise issued by a SEZ Manager on behalf of the minister competent for matters of the economy. There are currently 14 Special Enterprise Zones in Poland.

Investors doing business in SEZs may obtain state aid:

- by way of support for new projects,
- by way of support for creating new jobs.

The maximum state aid for supporting new projects is a specified percentage of eligible project expenditures, depending on the region in which the project is located.

Eligible project expenditures are the following expenses, less VAT and excise if deductible under other laws:

- purchase of land or the right to its perpetual use,
- purchase or manufacture of fixed assets, provided that they are the taxpayer's property in accordance with other laws,
- development or modernisation of existing fixed assets,
- purchase of intangible assets by transferring technology through the acquisition of patent rights, licenses, know-how or unpatented technical knowledge,
- acquisition of assets that are hired or leased (land, building, structure) for at least 5 years (3 years for small and medium-sized enterprises),

provided that the expenses have been incurred during the term of the franchise on a project within the SEZ.

The maximum job creation relief is a specified percentage of bi-annual labour costs for the new hires, such labour costs including:

- gross pay, and
- obligatory charges related to employment,

as incurred by the undertaking from the hiring date.

The actual mechanism for the reimbursement is that the investor enjoys income tax relief until the total tax savings equal the amount of the aid (as long as the SEZ exists).



## Research and Development Expenses

Expenses for R&D activities are tax-deductible costs according to standard rules of recognising tax-deductible costs. This incentive also allows taxpayers to deduct a specified percentage of R&D expenses (eligible costs) from their taxable income.

The following expenses related to R&D activities are considered eligible costs:

- salaries and employee contributions relating to employees involved in R&D activities,
- purchase of materials directly related to R&D activities,
- expert advice, opinions, consultancy and the like, as well as the acquisition of specific research results,
- use of research equipment exclusively in R&D activities,
- depreciation of tangible and intangible assets used in R&D activities with the exception of passenger cars and buildings, structures and premises which are separately owned,
- costs incurred by micro, small or medium-sized enterprises for obtaining and maintaining a patent, utility model or industrial design.

The amount of eligible costs that may be deducted from taxable income shall not exceed:

- 50% of the total amount of eligible costs in the case of micro, small or medium-sized enterprises,
- in the case of other taxpayers:
  - a) 50% of labour costs,
  - b) 30% of other eligible costs excluding costs of registering a patent, utility model, or industrial design.

## Research and Development Expenses

IP Box regulations have been implemented in Poland from 2019. IP Box is a preferential form of taxation for businesses that generate income from commercialising intellectual property (IP) rights they have developed. The preferential CIT rate is 5%.

The list of IP rights subject to the IP Box is closed-ended and generally includes industrial property rights of a technical character (excluding trademarks) and software copyrights (but not other copyrights). The IP rights are patents, supplementary protection certificates for inventions, utility models, industrial designs, integrated circuit topographies, supplementary protection certificates for patents involving medicinal products or plant protection products, registered medicinal rights, software rights. These rights must be legally protectable.

The new law provides for a list of profits from IP rights which are subject to the IP Box. These profits must be generated by IP royalties (license fees), sale of IP, IP included in the sale price of products or services; damages for infringement of IP, if awarded in litigious proceedings, including arbitration.

The value of income subject to the preferential 5% CIT rate is calculated according to the specific formula.

Businesses that apply the preferential 5% CIT rate on income from qualifying IP rights are obliged to record each IP right separately for accounting purposes and ensure that their accounting records enable them to determine profit/loss on each IP right. If a taxpayer's accounting records are not sufficient to enable them to determine profit/loss on IP rights, they have to pay the tax at the standard rate of 19%.

## 2.3 Non-Resident Companies

In the case of taxpayers who do not have their registered office or place of management in Poland, only the income earned by them in the territory of Poland is subject to taxation in Poland. This also includes income (profits) from their Polish-based permanent establishments (PE). In order to establish the appropriate tax treatment of the particular case, the provisions of a relevant double tax treaty should be applied.

### 2.3.1 Concept of Permanent Establishment / Doing Business

According to Polish CIT regulations, taxpayers who do not have their registered office or place of management in Poland are taxed only on income generated on Polish territory. This also includes income (profits) from their Polish-based permanent establishments (PE).

According to the Polish CIT Act, a PE means:

- a permanent agency used by an entity whose registered office or place of management is located in the territory of one state to perform all or part of its activities in the territory of another state, in particular a branch, a representative office, a factory, a workshop or a natural resource extraction site,
- a construction site, construction, assembly or system operated in the territory of one state by an entity that has its registered office or place of management in the territory of another state,
- a person who acts in the territory of one state for and on behalf of an entity that has its place of management in the territory of another state, if he is authorised to conclude agreements on behalf of that entity and actually exercises that authority, unless otherwise provided for in a double tax treaty to which Poland is a party.

## 2.3.2 Withholding Taxes

Some kinds of revenue earned in Poland by non-resident taxpayers are subject to withholding tax. These are, for example:

- interest, copyrights and related rights, trademarks, know-how, use or right to use an industrial device, including means of transport, a commercial device or a scientific device – 20%;
- advisory services, accounting services, market research services, legal services, advertising services, management and control, data processing, personnel recruitment services, guarantees and sureties and similar services – 20%;
- fees due for transport of cargo or passengers from Polish ports by foreign commercial sea transport companies and income earned in Poland by foreign air transport companies – 10%.

A lower rate or exemption may be provided for in the applicable double tax treaty. In the case of payments related to items mentioned in the first bullet point, an exemption is possible under conditions specified in the CIT Act (Poland implemented the EU Interest and Royalty Directive).

Also, dividend repatriation (both for residents and non-residents) is subject to withholding tax in Poland. The taxation of dividends is described in point 2.2.2.

As of 2019 there are new and very strict regulations on WHT collection in Poland. The general rule is that the preferential rules of WHT collection (according to DTT or EU Directives) on payments made by Polish entities to foreign taxpayers may be applied, provided the Polish remitter has diligently verified that all conditions specified in the relevant provisions have been met (and a valid certificate of residence is available). For payments

subject to WHT under the Polish CIT Law which exceed PLN 2 million (EUR 467,098) in relation to one foreign entity during one fiscal year, the Polish entity must collect WHT at the standard rate specified in the Polish CIT law (20%). Then the foreign entity may apply to the Polish tax authorities for a refund of this WHT. If the WHT was effectively financed by the Polish entity, the Polish entity may apply for the refund under certain conditions (there must be a special clause in the agreement confirming that the WHT will be financed by the Polish entity).

In the above cases the WHT may not be collected by the Polish entity under the following conditions:

- the Polish entity or foreign taxpayer hold an official individual opinion issued by the Polish tax authorities which confirms the possibility of exemption from WHT (the opinion is valid for 3 years) – this option only applies to exemptions based on EU Directives related to dividends, interest, royalties, or
- all members of the management board of the Polish entity file confirmation with the Polish tax authorities that all the conditions to apply preferential rules on WHT under the relevant provisions (DTT, EU Directives, Polish CIT Law) are fulfilled – this option may be applied for all types of payment subject to WHT, and:
  - a) the confirmation must be filed before the payment is made by the Polish entity to the foreign taxpayer,
  - b) the confirmation is valid for 2-3 months and after it expires it must be renewed,
  - c) if the confirmation does not reflect the actual situation, high penalties may be applied for management board members (financial penalty up to PLN 20 million, EUR 4,671,081).

### 2.3.3 Capital Gains

Revenues and costs related to capital transactions are separated from other business incomes and costs (capital gains). Capital gains realised by a Polish company are subject to regular CIT at the standard rate of 19%. When a taxpayer suffers a loss in a tax year (including revenues and costs of capital transactions) the loss may be carried forward, but may only be utilised with incomes realised in the same source (capital gains).

## 2.4 Tax Compliance

As a rule, for CIT taxpayers are obliged to pay monthly tax advances. Monthly tax advances shall be paid by the 20<sup>th</sup> day of each month with reference to the previous month. Taxpayers in the first tax year of their business and small taxpayers may pay quarterly tax advances. Taxpayers shall pay quarterly tax by the 20<sup>th</sup> day of the month following each quarter for which the advance is paid. Subject to certain conditions set forth in the CIT Act, taxpayers may also choose to pay monthly tax advances in a given tax year in a simplified form, amounting to 1/12 of the tax due as reported in the tax return.

By the end of the third month of each tax year, taxpayers shall submit tax returns to tax offices reporting the amount of income (loss) for the previous tax year. By the same date, they shall also pay the tax due or the difference between the tax due on the income reported in the tax return and the aggregate tax advances paid on a YTD basis.

## 3 Double Taxation Agreements

According to Polish law, double tax treaties concluded by Poland take precedence over domestic tax laws. Most double tax treaties to which Poland is a party are based on the OECD Model Convention for taxes on income and on capital. At the moment, Poland is party to 93 double taxation treaties, including ones with all the EU Member States.

## 4 Transfer Pricing

Transactions between related parties must follow the arm's length principle. Transfer pricing regulations are applied both to international and domestic transactions.

Polish regulations generally follow the OECD's Transfer Pricing Guidelines with respect to transfer pricing assessment methods. The following methods are applied: comparable uncontrolled price method, resale price method, reasonable margin (cost plus) method, profit split or transactional net margin method. Taxpayers are also allowed to apply other (undefined) methods (for example valuations). The tax authorities are obliged to follow the method applied by the taxpayer unless they are in a position to prove that applying another method is more appropriate in a specific case.

Poland has also implemented regulations concerning business restructurings, which strictly follow the OECD's approach in this respect.

APAs are available in Poland. They are entered into for a maximum period of 5 years and can be extended. APAs may apply to: planned transactions which will be concluded after the application for the APA has been filed or transactions that have already been concluded and are currently in progress. APA proceedings are payable. Investors planning business in Poland can apply for an APA that would be binding for the future Polish entity. The administration fee generally amounts to 1% of the transaction value and is subject to a cap of EUR 50,000 depending on the type of APA.



### Related parties – definition

Transfer pricing regulations in Poland apply to entities (companies, partnerships or joint venture agreements) where one of the entities exerts influence on the other entity. In particular, this relates to conducting transactions / business dealings with:

- related entities: direct/indirect shareholding  $\geq 25\%$ , management / personal ties resulting, among others, from employment or family connections (applies to domestic related parties),
- the taxpayer's permanent establishments,
- entities located in tax havens.

### Transfer pricing documentation

Transfer pricing documentation is fully in line with OECD BEPS Action 13 and follows the three-tiered approach, i.e. local documentation ("Local File"), documentation for groups of companies ("Master File") and report on global allocation of income and tax within the group ("CbC-R").

The Local File should contain relevant information for all transactions or business events with the related parties that exceed a materiality level (annually):

- PLN 10 million (EUR 2,335,540) – for transactions related to goods or financial transactions (amount of capital),
- PLN 2 million (EUR 467,098) – for supplies of services or other transactions

Exemption from the Local File obligation applies if the transaction is between Polish taxpayers which:

- report taxable income (do not have taxable losses) and
- do not benefit from CIT exemptions.

The Local File should be prepared by the end of the ninth month from the end of the tax year. Taxpayers are required to make a formal statement to the tax authorities that the Local File for a particular year has been completed and prices are at arm's length. Such statements should be signed by the management board members.

The Master File:

- should be maintained by taxpayers that are members of capital groups (domestic or multinational) which
  - » prepare consolidated financial statements and
  - » recorded consolidated revenues in the prior financial year of more than PLN 200 million (EUR 46,704,138).
- should be prepared by the end of the 12 months after the end of the financial year.
- If the master file is prepared by the foreign entity, the English version is acceptable. However, the tax authorities can demand a Polish version, in which case the deadline is 30 days.

The CbC-R:

- should be provided to the tax authorities by an ultimate Polish parent company with consolidated revenues of more than EUR 750 million,

- in certain cases the obligation to prepare CbC-R can be shifted onto entities that are not ultimate parent companies, for example where the ultimate parent is not required to file CbC-R in its home country,
- is to be provided to the tax authorities within 12 months of the fiscal year-end.

In addition to the above documentation obligations, taxpayers are obliged to submit the additional report on transfer pricing (TPR) electronically by the end of the ninth month from the end of the tax year. The Local File and Master File should be provided to tax authorities upon their formal request within the statutory deadline of 7 days. The transfer pricing documentation should be prepared in Polish (excluding the Master File).

If pricing between related parties is not in line with the arm's length principle, the tax authorities could assess and adjust the taxpayer's profit. In such cases the profit will be taxed at rates from 19% to 49% depending on the amount of the tax assessment and the availability of transfer pricing documentation.

## 5 Anti-avoidance Measures

### 5.1 General Anti-avoidance Rule

The general anti-avoidance rule in Poland was introduced in July 2016 as a new part of the Tax Ordinance Act called: "The clause against tax evasion". The clause is applicable in respect of acts performed primarily to achieve a tax benefit contrary to the provisions of tax law. This applies to activities carried out artificially, in particular, unjustified division of operations or involvement of intermediaries where there is no economic justification.

If circumstances of operation indicate that the achievement of a tax benefit was the only goal of the completed transaction, the result will be as if the transaction was not made.

The anti-avoidance rule established the Council for Combating Tax Evasion, which gives opinions on justified use of the clause.

Additionally, apart from the general anti-avoidance rule, Polish tax regulations provide for certain anti-avoidance rules which are dedicated to particular types of transaction like WHT collection or mergers.

### 5.2 Thin Capitalisation Rules

As of 2018 we have completely new regulations on thin capitalisation in Poland. These regulations relate to financial costs incurred towards any taxpayers (some exemptions apply e.g. for financial institutions), they are not dedicated strictly to transactions between related entities. Under Polish tax regulations, the financial costs are limited from a tax deductibility perspective. As a rule, the financial costs which exceed both of the thresholds

below, during one financial year may not constitute a tax-deductible cost in this financial year. The thresholds are:

- PLN 3 million (EUR 700,594) and
- 30% of the taxpayer's EBITDA – calculated according to the special formula indicated in Polish CIT regulations.

The financial costs subject to this limitation are defined as all expenses incurred for gaining financing or for using financing, in particular interest (also interest including the initial value of fixed assets or intangibles), commissions, premiums, the financial part of leasing instalments, penalties for delays in payments, the cost of security of financial obligations. The value of financial costs is decreased by financial revenues received by the taxpayer.

If some financial costs are not tax deductible in a given year due to thin capitalisation rules, they may be deducted in the following 5 years provided that these costs along with current financial costs are under the mentioned thresholds during such years.

### 5.3 Controlled Foreign Company Provisions

The obligation to tax income earned through foreign CFCs applies both to PIT and CIT payers. If a Polish tax resident has shares in a foreign entity and this foreign entity meets the conditions specified in Polish tax law to recognise it as a CFC, the income of the CFC is subject to taxation in Poland. The income earned through a CFC is taxable at 19%. There are also other compliance obligations related to CFC regulations: separate records and registers for CFC purposes kept according to Polish regulations, separate tax returns presenting CFC's income.

## 6 Taxation of Individuals / Social Security Contributions

Individuals are subject to personal income tax and social security contributions. Obligations depend on the income source and/or the individual's residency status.

### 6.1 Residency Rules

An individual will be treated as a resident of Poland if:

- the centre of their personal or business interests is in Poland ("centre of vital interests"), or
- they are present in Poland for more than 183 days in a tax year.

### 6.2 Income Liable for Tax

The Personal Income Tax Act defines 9 income sources:

- employment relationship and related legal relationships, retirement or disability pension,
- personal services,
- business activity,
- special sectors of agricultural production,
- rent, lease and related sources,
- capital gains,
- activities conducted by controlled foreign companies (CFC),
- sale of real property, personal property, right of perpetual usufruct of land and related sources,
- tax on unrealised capital gains ("exit tax"),
- "other sources".

Polish tax residents are subject to full tax liability (unlimited taxation) in Poland, i.e. they must declare and tax in Poland all of their world-wide income (revenue).

Foreign tax residents are subject to partial tax liability (limited taxation) in Poland, i.e. they must declare and tax in Poland only their Polish-sourced income (revenue).

### 6.3 Allowable Deductions

Allowable deductions may decrease income or tax.

Deductions from income include, without limitation:

- the employee's part of social security contributions paid in Poland, in an EU/EEA country or in Switzerland,
- donations for public benefit organisations, religious cult purposes or blood donations – up to 6% of annual income,
- payments made by the taxpayer to his/her Individual Pension Account, up to limits specified in in other legal acts,
- rehabilitation expenses – up to the limits specified in the Personal Income Tax Act,
- internet expenses – up to PLN 760 (EUR 177) per year.

Deductions from tax include, without limitation:

- health insurance contributions paid in Poland, in an EU/EEA country or in Switzerland, up to 7.75% of the tax base,
- child-raising allowance, the amount of which depends on the taxpayer's income, marital status (single/married) and the number of children.

## 6.4 Tax Rates

In general, the tax rates are progressive: annual taxable income up to PLN 85,528 (EUR 19,973) is taxed at the rate of 18% and anything above that is taxed at the rate of 32%.

Special rules of taxation apply in particular to:

- capital gains - taxable at the rate of 19%,
- specific income of non-residents - taxable at the flat rate of 10% or 20%,
- income from the sale of real property, right of perpetual usufruct of land and the like – taxable at the rate of 19%,
- activities conducted by controlled foreign companies (CFC) – taxable at the rate of 19%,
- business income - taxable progressively or, if statutory conditions are met, at the rate of 19%.

The tax-free amount in 2019 ranges from PLN 8,000 (EUR 1,869) to PLN 0, depending on annual taxable income. The tax-free amount is applicable only when income is taxed at progressive tax rates (18%, 32%).

## 6.5 Tax Compliance

The tax year is the calendar year.

Tax is payable on a monthly, quarterly or annual basis, depending on the income source.

The deadline for annual tax payments and filing annual income tax returns is 30 April of the year following the tax year, except for non-residents leaving Poland before that date, in which case the deadline is the day of departure.



## 6.6 Social Security Contributions

The types of obligatory social security contributions and their tax bases depend on the income source.

For employment, contributions are based on monthly incomes, except for health insurance contributions based on monthly incomes less pensions, as well as disability insurance contributions payable by the employee and sickness insurance contributions. The employee is required to pay contributions towards:

- pension (9.76%) and disability insurance (1.50%) – up to an annual income ceiling (gross income of PLN 142,950 – EUR 33,400 – in 2019),
- sickness (2.45%) and health (9%) insurance – irrespective of employee's income level.

The employer is required to pay contributions towards:

- pension (9.76%) and disability insurance (6.50%) – up to an annual income ceiling (gross income of PLN 142,950 – EUR 33,400 – in 2019),
- accident insurance (ranges from 0.40% to 3.33%, depending on sector of employer's activity and number of employees), Labour Fund (2.45%) and Employee Benefits Fund (0.1%) – irrespective of employee's income level.

People not covered by social security on a mandatory basis may access the pension, disability and health insurance system on a voluntary basis.

## 7 Indirect Taxes

Poland levies the following 3 indirect taxes: Value Added Tax (Goods and Services Tax), excise duty and gambling tax.

### 7.1 Value Added Tax / Goods and Services Tax

Polish value added tax is regulated by the Act of 11 March 2004 (the VAT Act) based on EU legislation, and in particular, on Directive 2006/112/EC on the common system of value added tax (the VAT Directive).

The VAT Act mentions 5 types of transaction:

- supplies of goods and services
- exports of goods
- imports of goods
- Intra-Community acquisitions of goods from EU Member States to Poland for a consideration
- Intra-Community supplies of goods

The standard VAT rate in Poland is 23% and is applicable to domestic supplies of goods and services. A reduced rate of 8% applies to suppliers of certain food items, medical products, hospitality services or community housing. The other reduced VAT rate of 5% applies to suppliers of certain food items, e.g. bread, dairy products, meat, and certain publications.

The VAT Act has a special regulation for supplies of goods in international trade. Taxable persons selling goods to buyers in EU countries may zero-rate their supplies if they qualify as intra-Community supplies of goods. The zero rate also applies to exports of goods from Poland outside of the European Union (if part of taxable activities).

If purchasing goods transferred from an EU Member State to Poland, Polish taxable persons must self-assess their VAT (reverse charge mechanism). Intra-Community acquisitions of goods are generally VAT-neutral for Polish taxable persons (the amount of output VAT equals the amount of input VAT).

In the case of imports of goods from outside the European Union into Poland, output VAT is typically paid to the customs office that clears the imported goods. In select cases it is possible to avoid paying VAT to the customs office and account for the import in a VAT return (postponed accounting system, similar to reverse charging).

In the case of cross-border services, a VAT charge may arise in Poland if Poland is the place of taxation in accordance with the VAT Act. In this respect, for services provided between taxpayers (on a B2B basis) with their registered offices/places of residence/permanent places of business in different countries, the primary place of taxation is the country of the registered office/place of residence/permanent place of business of the entity purchasing the service. The opposite applies to services provided by taxable persons to non-taxable persons (B2C).

There are several exceptions to the above rules; for instance, the place of taxation for services related to immovable property is always the place (country) in which the property is situated.

### **VAT exemptions**

The VAT Act contains a list of activities (mainly services) that may be exempt from VAT, e.g. financial, insurance, medical, some educational, social security or culture-related services. Furthermore, there is VAT exemption for suppliers of certain real properties.

## 7.2 Others

### Excise duty

Excise duty is levied in Poland on the consumption of the following goods: energy products, electricity, alcoholic beverages, tobacco products and raw tobacco. These goods are called excise goods.

### Gambling tax

The Polish Gambling Law regulates the terms and conditions of conducting the activity within the field of games of chance, betting and slot machines.

Polish law provides for a Tax on Civil Law Transactions (Transfer Tax). This tax is generally imposed on non-commercial activities. The general rule is that this tax is not applied to transactions which are subject to VAT. From a business perspective it should be noted that the following transactions are subject to Transfer Tax:

- sale of immovable property which is VAT-exempt (2% of value of the property),
- sale of shares or stocks (1% of the share value),
- increase in share capital (0.5% of the share increase).

## 9 Inheritance and Gift Tax

Inheritance and gift tax applies to acquisitions by an individual of property or property rights by way of succession, legacy/sub-legacy, gift, severance of joint title for no consideration, usucaption, legitime, etc.

Such acquisition is subject to taxation if:

- the property is located in Poland / property rights are exercised in Poland, or
- the property is located abroad / property rights are exercised abroad, but the beneficiary was a Polish citizen or had a place of permanent residence in Poland upon the succession or executing the gift instrument.

### 9.1 Taxable Base

The taxable base is the value of acquired property or property rights, after deducting debts and burdens, determined in compliance with the status of the property or property rights at the date of acquisition and the market prices as at the date when the inheritance and gift tax arose.

## 9.2 Valuation

Tax rates depend on:

- the "tax bracket", which reflects the kinship between the benefactor and the beneficiary,
- the taxable base.

In general, the tax rates vary from 3% to 20%.

For each tax bracket, the Inheritance and Gift Tax Act provides for a tax-free amount. For closest relatives (spouse, ascendants, descendants, siblings, stepchildren, stepparents), the total value of the inheritance or gift may be exempt from taxation, if statutory conditions are met.

## 10 Wealth Tax

In Poland, real estate tax is payable by the owner, possessor or perpetual usufruct-holder of the land/building/structure used for business activities. The real estate tax rates are set by local authorities. However, there are maximum tax rates which are governed by national tax regulations. The local authorities may grant exemptions for certain types of real estate.

As a rule, the tax base is:

- for land – area;
- for buildings or parts thereof – usable area;
- for structures or parts thereof related to business activities – the value referred to in the regulations on income taxes.

In the case of natural persons, real estate tax for a fiscal year is determined by the local tax authorities by way of a decision. The real estate tax is payable in 4 instalments.

Legal entities are required to submit real estate tax returns to local tax authorities by 31 January of each fiscal year. The real estate tax instalments are payable each month no later than on the 15<sup>th</sup> day of the month, except January, when they are payable by 31 January.



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