

# Tax and Investment Facts

A Glimpse at Taxation and  
Investment in Poland  
**2017**



# Doradztwo Podatkowe WTS&SAJA Sp. z o.o.

## Poland

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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 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 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.
- 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 2017 a preferential CIT tax rate of 15% is introduced, which is applicable to:

- small taxpayers – sales revenue including VAT did not exceed EUR 1,200,000 in previous fiscal year;
- 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 a rule, CIT applies to income irrespective of the type of revenue source from which the income was earned. Income 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.

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 combined with other business incomes and costs. Capital gains realised by a Polish company are subject to regular CIT at the standard rate of 19%, or 15% for certain taxpayers (see point 2.1). This includes capital gains on the sale of shares. When a taxpayer suffers a loss in a tax year (including revenues and costs of capital transactions) the loss may be carried forward. The carry forward is granted for a maximum period of five years. The annual amount deductible cannot exceed 50% of the total loss.

### 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 depreciation 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. 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 1 million.
- Minimum holding requirement of 95% 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 three years.
- The group's profitability ratio is not lower than 3% 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.

## 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.

## 2.3.3 Capital Gains

Revenues and costs related to capital transactions are combined with other business incomes and costs. Capital gains realised by a Polish company are subject to regular CIT at the standard rate of 19%, or 15% for certain taxpayers (see point 2.1).

## 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 or transactional profit methods.

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. 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 taxpayers (including partnership or joint venture agreements) conducting transactions / business dealings with:

- related entities: direct/indirect shareholding  $\geq 25\%$  (5% until 31 December 2016), 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

Starting from 1 January 2017, 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 be developed by taxpayers with overall revenue or costs of over EUR 2 million in the preceding year,
- should contain relevant information for all transactions or business events with the related parties that exceed a specific materiality level (the lowest materiality threshold has been set at EUR 50,000 and increases pro rata depending on the taxpayer's revenue or costs),
- where the taxpayer's revenue/cost for the previous tax year exceeded EUR 10 million the taxpayer should additionally provide comparables / benchmarking studies to prove the pricing is at arm's length,
- should be prepared by the date for the taxpayer to submit the annual tax return.

### The Master File:

- should be maintained by taxpayers that are members of capital groups (domestic or multinational) with overall revenue or costs exceeding the threshold of EUR 20 million in the preceding financial year,
- should be prepared / available by the statutory deadline for filing the annual CIT return of the entity responsible for developing the Master File (the holding company).

## The CbC-R:

- should be provided to the tax authorities by a Polish ultimate parent company with consolidated revenues of over EUR 750 million,
- according to the planned amendments to the regulations, in certain cases the obligation to prepare CbC-R could 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 (according to projected amendments to the regulations, this deadline may be extended for the first reporting period).

In addition to the above documentation obligations, taxpayers whose revenues or costs exceeded EUR 10 million in a fiscal year are obliged to submit an additional tax form CIT-TP/ PIT-TP by the date for submitting an annual tax return. It discloses certain information on related-party transactions such as the taxpayer's industry and functional profile (e.g. whether it is an agent or commissionaire, a limited-risk distributor or a toll manufacturer), restructuring, basic information on related party transactions, etc.

The Local File and the 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.

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:

- the standard 19% rate if the taxpayer provides transfer pricing documentation by the statutory deadline,
- a penal rate of 50% if the taxpayer fails to provide transfer pricing documentation by the statutory deadline or if such documentation does not meet statutory requirements.

## 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 clause against tax evasion does not apply where the total tax benefit does not exceed PLN 100,000 in the accounting period or where the entity is protected by a tax ruling. The new rule established the Council for Combating Tax Evasion which gives opinions on justified use of the clause.

### 5.2 Thin Capitalisation Rules

Under Polish tax regulations, a taxpayer may choose one of two available methods for thin cap calculations:

#### Traditional Method

The traditional method is applicable when jointly:

- the loan (credit) is granted by:
  - a) a shareholder holding (directly or indirectly) no less than 25% of the company's shares or
  - b) shareholders holding jointly (directly or indirectly) no less than 25% of the company's shares or
  - c) in the case of a loan by a sister company – a shareholder holding (directly or indirectly) no less than 25% of shares in each of the lender and borrower, and

- the debt to equity ratio exceeds 1:1.

The interest on loans (credits) that exceeds the value of equity is non-tax deductible.

### Alternative Method

The alternative method is applicable to interest on loans (credits) received both from affiliates and from unrelated entities after 31 December 2014.

In this method, interest may not exceed the reference rate of the National Bank of Poland plus 1.25% of the tax base of the company's assets. The total annual interest charge to be deducted for tax purposes may not exceed 50% of the operating profit for the year. The interest that was not deducted in the first year (due to limitations) may be deducted in any of the five consecutive tax years (provided that the alternative method is applied in the year the cost was incurred).

## 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.

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 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,
- "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 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 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 2017 ranges from PLN 6,600 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 127,890 in 2017),
- 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 127,890 in 2017),
- accident insurance (ranges from 0.40% to 3.60%, 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 three 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 five 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

In 2017, 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 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.

## 7.3 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.

Inheritance and gift tax applies to acquisitions by an individual of property or property rights by way of succession, legacy/sublegacy, 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.

### 8.1 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.

### 8.2 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.

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 four 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.

## Disclaimer

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