Taxes in Poland

2023

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TAX SYSTEM IN POLAND

Overview

Tax administration in Poland is in the hands of two kinds of authorities:

- governmental ones (corporate income tax, personal income tax, VAT, excise duty)
- local governmental ones (ex.: real estate tax, civil transactions tax, tax on means of transport).

The tax authorities also include: (i) the Head of National Revenue Administration whose competences include matters related to tax avoidance, including advance safeguarding tax rulings, and the conclusion of advance pricing agreements, (ii) the Director of the National Revenue Information System responsible for issuing individual advance tax rulings, and (iii) the Minister of Finance responsible for issuing general advance tax rulings.

Special tax offices for large taxpayers

There are special tax offices in Poland (20 of them) dedicated specifically for large taxpayers, i.e.:

- entities (including foreign enterprises) that have generated an annual income of at least EUR 3 million in the previous year (there is also one tax office for the largest entities that have generated an annual income of at least EUR 50 million in the previous year);
- capital tax groups, banks and insurance entities;
- branches and rep offices of the foreign entities.

Relations with the tax authorities

All the correspondence shall be delivered (both to an entity and to the authorities) either personally, electronically or via the Polish Post. As a rule, correspondence with offices and courts is conducted via an electronic platform. To meet a deadline given for any activity (i.e. submitting an application, lodging an appeal etc.) it is required that the documents are either delivered within this deadline to the given authority personally or sent via the Polish Post Office. The deadline shall also be considered to have been met, if prior to its lapse, the letter is sent to the post office of the operator providing universal postal service in another EU Member State.

Any documents send via courier shall be sent sufficiently early to be delivered to the tax authorities within a deadline.

All correspondence, contacts, applications, appeals, complaints must be prepared in Polish. As a consequence all the documents submitted to the tax authorities in foreign language should be accompanied by their translation.

Tax proceedings in Poland

The tax amount shall be determined either in the tax return submitted by a taxpayer or in a decision issued by the tax authority. The terms of payment are given in the law.

A taxpayer that is dissatisfied with the first instance decision may submit an appeal to the second instance.

As a rule, an appeal shall suspend execution of a decision, but it shall not stop charging penalty interest on tax arrears.

The final decision issued by the second instance authority which is unfavourable for an entity may be subject to a complaint to the District Administrative Court. The proceedings before administrative courts are also governed by a dual instance system.

Advance tax rulings

There are two types of advance tax rulings in the Polish tax system. General advance tax rulings – addressed to all taxpayers – are issued by the Minister of Finance.

Individual advance tax rulings are issued by the Director of National Revenue Information System.

An application to obtain an individual advance tax ruling might be submitted both by any entity that requires information about the tax consequences of its activities (at present and in the future) and shareholders, potential investors or a foreign entity that intend to open a representative office in Poland.

An individual advance tax ruling may relate both to past and future transactions, however, the scope of safeguarding granted by obtaining a ruling differs in each of the above-mentioned situation.

Should the ruling refer to future transaction (i.e. tax implications of the transaction take place after the ruling is delivered), the taxpayer shall benefit from full safeguarding, i.e. it shall not be obliged to pay any tax arrears. Should the ruling relate to a past transaction, tax arrears must be paid.

An unfavourable individual advance tax ruling might be challenged to the District Administrative Court and subsequently to the court of the second instance.

The application for tax binding ruling shall be subject to fee of 40 PLN per question.

GAAR advance tax rulings and investment agreement

The general anti-avoidance clause (GAAR) is effective in Poland. Pursuant to the provisions thereof, any transaction performed primarily in order to achieve a tax advantage, in defiance in given circumstances of the object and purpose of a tax act, shall not result in a tax advantage if the manner of taxpayer's acting was artificial.

An entrepreneur that wants to protect itself against the possibility of general anti-avoidance clause being applied against it may apply for the so-called advance (safeguarding) tax ruling. The refusal to issue it and the safeguarding tax ruling the entrepreneur disagrees with may be appealed against to the administrative court.

From 2022, the taxpayer may sign an investment agreement with the tax authority. The agreement is to ensure tax security for the taxpayer implementing a new investment in the territory of Poland (defines the tax consequences of the investment).

Signing a tax return by a proxy

Tax returns may signed by taxpayers (tax remitters) as well as by theirs proxies. By granting the power of attorney the taxpayer is exempted from signing the tax return.

A power of attorney to sign tax returns must be granted by each individual that would be responsible for signing the given tax return.

The power of attorney should be sent to a relevant tax office and should be granted separately for each kind of a tax return.

On-line tax returns

Most tax returns must be obligatorily filed online.

Electronic filing requires possession of electronic signature (officially acceptable in the EU).

Tax declarations are submitted via a special online system.

It is possible to submit a tax return by a proxy. For this purpose, it is necessary to register in the online system a power of attorney authorizing to represent the taxpayer (UPL-1 form).

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VAT

Overview

Polish regulations on VAT (PL *podatek od towarów i usług*) are based on the EU legislation. It means that principles of VAT taxation in Poland are in general the same as in other EU Member States.

Basic transactions subject to VAT are supplies of goods and supplies of services deemed to be made in Poland. In some situations also free of charge supplies of goods or services can be subject to VAT.

The latest changes in the VAT regulation derive from the new rules for e-commerce, temporary reduction of some VAT rates (e.g. foodstuffs, fuel, fertilizers, natural gas, humanitarian aid for Ukraine) and introducing VAT grouping (in 2023) and an option to tax financial services.

In 2023 another changes in VAT rates on fuels and natural gas and changes on taxable of returnable and non-returnable packaging are expecting due to implementation of DRS (deposit refund system) are expected. While in 2024 mandatory e-invoicing regime by using governmental system (KSeF) in B2B transaction is to be introduced (the derogation from the EU is already obtained).

Who is taxable

Generally, VAT is levied on transactions made by business entities acting as VAT taxpayers – both B2B and B2C. Generally, VAT taxpayers are natural persons, legal persons or other entities carrying out any economic activity independently, whatever the purpose or results of that activity. In this regards, 'economic activity' covers: any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, as well as the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis.

There are some specific cases where not only business entities are considered to be taxpayers, e.g. in case of importation of goods – any person liable to pay custom duties, or any person who, on an occasional basis, supplies a new means of transport to other MS.

Since 2023, VAT Grouping rules were introduced in Poland (more details in point "VAT Grouping").

There are certain transactions that are subject to reverse charge mechanism, which means that the seller invoices a sale without VAT and a purchaser is liable to settle a transaction – i.e. to report both output and input VAT. It covers domestic supplies of goods by the foreign taxpayer not having a business establishment or a fixed establishment in Poland made for Polish taxpayers. Thus, foreign taxpayers do not have to register for VAT in Poland because of such transactions. Also in case of import of services (B2B services acquired from foreign entities, where place of supply is deemed in Poland) reverse charge applies and VAT is settled by a buyer.

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What is taxable

The main transactions subject to VAT in Poland are the following one:

- the local supply of goods for consideration),
- the supply of services for consideration in Poland,
- exportation of goods from Poland,
- importation of goods into Poland,
- the intra-EU acquisition of goods for consideration into Poland,
- the intra-EU supply of goods.

What is more, in case of a dissolution of a partnership or a liquidation of a sole business goods of own production or other goods purchased with VAT deduction and not supplied before the liquidation are to be mentioned in the final inventory and are subject to taxation (specific self-supply).

Free of charge transfers of goods, where the VAT on their purchase was wholly or partly deductible, is deemed as taxable a supply of goods (self-supply). However, samples or as gifts of small value (unit price is below PLN 20 or a total value of gifts handed to one person is below PLN 100 and gift are included in a register) are excluded.

Tax base

As a general rule, a tax base includes everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply. However, in transactions between related parties, tax authorities may assess VAT tax base at a market value of transaction if it turns out that the relationship affected the calculation of the remuneration for the supply of goods or provision of services and one party to the transaction is a taxpayer not eligible to deduct VAT. The right to assess the tax base applies if there are family, capital or financial links between counterparties or persons in managerial or supervisory roles in the counterparties' business. Capital links apply if one counterparty has at least 25% voting rights that represent at least five per cent of all voting rights, or disposes of such rights directly or indirectly. For VAT purposes employees are also deemed to be related parties.

Tax authorities may also consider some transaction as an abuse of law (transaction is formally legal but essentially is aimed at achieving a tax benefit contrary to the VAT Act) and therefore restructure the transaction by omitting abusive actions.

VAT rates

In 2023, the main VAT rates applicable to local supplies in Poland are as follows:

Category	VAT rate
standard VAT rate	23%
reduced VAT rate – supplies of certain foodstuffs, medical products, restaurant and hotel services and supplies covered by the social housing policy	8%
reduced VAT rate – applied to supplies of certain foodstuffs (e.g. bread, dairy products, meats), certain kinds of printed books	5%
zero VAT rate – applied to e.g. supplies of certain vessels and aircrafts, services related to air and sea transport, international transport services, services related to import and export of goods	0%

It is worth noticing that in 2022 there were two extraordinary reductions of VAT rates:

- resulting from measures combating high inflation – 0% VAT on local supplies of some foodstuffs, fertilizers, gardening soil, natural gas; 5% for electricity and heat supplies; 8% for petrol, diesel fuel and LNG for motor vehicles,
- dedicated to help humanitarian aids for Ukraine – local supplies for that purpose to appointed governmental or municipal entities was subject to 0% VAT.

From the above extraordinary reductions of VAT rates in 2023 it is planned to keep 0% VAT for some foodstuffs.

VAT exemptions

There is a list of activities that may be exempt from VAT. As a result of the exemption, input VAT linked with such supplies cannot be wholly or partially deductible. Typical VAT-exempt activities include:

- financial services (granting of credits, providing suretyships for financial transactions, money transfers, keeping money accounts, currency exchange, management of investment funds, trading in shares and securities), other than leasing, factoring and consulting,
- insurance and reinsurance services,
- certain medical services,
- some educational services,
- welfare services,
- social security services,
- some culture and sports-related services.

There are also some supplies related to real property which can be exempted, for instance letting for housing purposes or their sale (at least two years after a first occupation). In case of B2B sale of buildings it is possible to choose an option and charge the sale of real property with VAT.

For financial services (granting of credits, providing suretyships for financial transactions, money transfers, keeping money accounts, currency exchange, management of investment funds, trading in shares and securities) there is an option to tax all B2B transactions of a taxpayer in that regards. A taxpayer should notify tax authority about exercising that option and should apply it for at least 2 years.

Polish VAT Act also stipulates a special exemption for small businesses. Taxpayers starting their business or continuing it but in both cases where their annual turnover is below PL 200k may apply this exemption to all their supplies within the said threshold. This exemption is not applicable for person residing or established abroad.

Intra EU transactions

VAT taxpayers selling goods to buyers in EU member states may apply 0% VAT rate rate (which is equal to an exemption with a right to deduction) and treat transaction as the intra-EU supply of goods. The conditions to apply zero rate are that the supply is made a recipient registered for the intra-EU transactions and that documents confirming that goods were dispatched (by the seller or by the buyer) to the buyer in another EU Member State are collected. Also non-transactional transport of goods to another member state ("transfer to another member state") in some situations is reported as the intra-EU supply of goods. It is also possible to treat movement of goods call-off stock in another Member State as the intra-EU supply of goods which is taxable at the moment when goods are released from the call-off stock, without an obligation to be registered for VAT in the country where the call-off stock is located.

In case of acquisition of goods transported from another EU Member State to Poland, Polish VAT taxpayer is obliged to report such transaction as the intra-EU acquisition of goods which is subject to reverse charge. It means the transaction should be at the same time and in the same amount reported as a taxable sale (output VAT) and as a purchase of goods (input VAT). As a result, such transaction is in most cases financially neutral. Also non-transactional transport of goods from another member state is in some situations reported as the intra-EU acquisition of goods. In the latter case it is possible to apply call-off stock simplification – an then movement of goods is taxable when they are released from the call-off stock, not at the time of their movement (it does not apply to goods for distribution).

0% VAT rate is also applicable to export of goods, which takes place when goods are dispatched from Poland outside the EU territory. A dispatch can be conducted by the seller or by the acquirer. To apply 0% VAT rate it is necessary to obtain customs documents confirming that goods have left the EU territory.

Import and export of goods

importation of goods subject to VAT in Poland are deemed to mean imports of goods from outside the EU into Poland. VAT on import of goods can be settled in a few procedures. Under general rules, output VAT on import is payable together with other customs duties (within 10 days from clearance) and then when customs documents are received it is possible to deduct it as an input VAT in the VAT tax return. It is also possible to settle import of goods in the postponed accounting scheme, i.e. in the VAT tax return (output VAT and input VAT is then subject to reverse charge). When centralized clearance procedure applies (import of goods to all member states is reported only in one of them), import of goods for VAT can be settled in the import return where all transactions from one month are reported.

The VAT exemption applies e.g. to import of goods subject to inward processing, goods subject to temporary clearance with full customs duty exemption, advertising materials, and product samples. It is also possible to exempt from import VAT goods which are to subject to the intra-EU supply of goods.

There are some specific rules regarding chain transactions (where goods are transported directly from the first supplier to the last customer in the chain and deemed to be supplied successively). As a rule, in case of transaction between Member State, the dispatch or transport is ascribed to the supply made to the intermediary operator (supply A-B) which is then the intra-EU supply. However, the supply B-C is the intra-EU supply where the intermediary operator has communicated to his supplier the VAT identification number issued to him by the MS from which the goods are dispatched or transported.

Poland also introduced the simplification in the intra-EU triangulation scheme – where 3 taxpayers, established in 3 different MS, participate in a chain transaction, while 1st or 2nd arranges the transport. The simplification results in a specific settlement of the middle taxpayer (B): it is not obliged to register in the MS of destination, but report the intra-EU acquisition of goods without VAT and a sale outside Poland also without VAT in Poland (if this taxpayer is established in Poland).

Supply of services

Polish regulations on place of supply of services are in line with similar regulations applied in other EU member states. In case of services supplied between taxpayers (B2B basis) with their business established/place of residence/fixed establishment in other countries, the primary place of taxation is the country of where is the business establishment/ place of residence/fixed establishment of the entity purchasing the service. The opposite applies to services provided by a taxpayer to a non-taxpayer entity (B2C basis) – that case the business establishment/place of residence/fixed establishment of the service provider is the key factor.

In the case of cross-border supplies of services, VAT obligation in Poland may arise if the place of supply is deemed to be in Poland. As an effect, according to the general rules, VAT will be payable in Poland on service transactions between taxpayers from different countries only if the service recipient has its business establishment/place of residence/fixed establishment in Poland. However, in case of services provided by a Polish taxpayer to a non-taxpayer entity, VAT will be payable in Poland if the service provider has its business establishment/place of residence/fixed establishment in Poland. There are several exceptions to the above rules – for instance, the place of taxation of services related to an immovable property is always a place where an immovable property is located. The place of taxation of restaurant and catering services is the place (country) of their actual provision.

In case of e-commerce transactions in goods and TBE services – B2C supplies to other MS, generally they are taxable in the country of destination if a taxpayer opts for an OSS procedure. This procedure is obligatory over the annual threshold of EUR 10,000. As a result, all B2C intra EU transactions are reported in one VAT return and there is only one payment to the tax authorities of the country of an identification.

Input VAT deductions

Taxpayers may deduct the input VAT when purchasing goods and services, provided that the purchases are related to taxable supplies. Input VAT may be generally deducted in a tax return for a month in which a purchase invoice is received or in one of the three following months.

In case of input VAT connected with both taxable and exempted sales, the VAT taxpayer is entitled to pro-rata deduction and an amount of such deduction is calculated in proportion to the share of sales taxed in the entire sales of the taxpayer.

There is an unconditional exclusion of VAT deduction on restaurant services. Catering services gives rise to deduction. Accommodation services results in an input VAT deduction only when they purchased are resold.

Limitations of input VAT deduction applies to expenses on:

- purchase (including leasing) and use of passenger cars as well as fuel – it is generally possible to deduct 50% of input VAT, although when a car is deemed to be used only for business purposes, i.e. classified as "a special purpose car" or detailed mileage records are kept, full deduction is possible,
- purchase of goods and services related both to economic activities and other activities (applies mainly to public sector and foundations),
- purchase or update of real property used both for economic activities and for private purposes.

The surplus of input tax over output tax can be carried forward or refund. A refund, as a rule, is made within 60 days from the date of filing an appropriate VAT return.

It is also possible to obtain VAT refund within 25 days on additional conditions, for instance:

- all purchase invoices are fully paid (there are other prerequisites),
- a refund is requested to VAT account (more details in point 'Split payment').

There is also a possibility to obtain VAT refund in 40 days if a taxpayer invoiced all its local B2B transactions by e-invoicing governmental system (KSeF).

The latest amendments introduced a possibility for 'a cashless taxpayer' to obtain input VAT return in 15 days. It applies to taxpayer that have B2C sales, 80% of which are registered by the cash register and 80% of which are paid by a cashless method e.g. a bank transfer, by debit or credit card (there are other prerequisites to obtain this refund).

If no taxable sales or sales outside of Poland are concluded, the taxpayer may apply for a tax refund within 180 days of filing the VAT tax return.

Deadlines for input VAT refunds may be prolonged by the tax authorities for a time necessary to verify the refund. However, if input VAT is finally refunded after a deadline, it is increased by interest. Negative decisions on a prolongation or denying refunds may be appeal to the authority of a higher instance and the to an administrative court.

The tax refund is, as a rule paid into the bank account indicated by the taxpayer. It can, however, be converted into a security of a bank credit.

Input VAT refund for the UE entities is made in the VAT-REF procedure – it files an annual motion for a return in electronic form before the 30th September next year or quarterly to its local tax office.

Refunds for non-EU entities is possible where there is a reciprocity rule in refunds (i.e. country of establishment make refunds to Poland). A motion should be filed before the 30th September next year.

VAT registration

Entities planning to conduct business activities subject to VAT in Poland must file a registration form before the date of the first taxable activity. If they also plan to conduct intra-EU transactions they must be also registered for such purposes.

Taxpayers with the annual sales that do not exceed PLN 200,000 are exempt from VAT (small business exemption). However, the exemption cannot be applied to foreign taxpayers. The taxpayers may choose to opt for taxation of his sales upon prior notification of the tax authorities.

In order to register for VAT purposes in Poland, entities without business establishment/ place of residence/fixed establishment in the EU must appoint a tax representative. Tax representatives are responsible for the tax liabilities of the taxpayers they represent.

Tax authorities are empowered for deregistration of entities which i.a. are deemed non-existence, cannot be contacted, did not submit VAT return for 3 months, issued invoices documenting fictitious activities.

Since 2023, a group of entities established in Poland that are closely bound to one another by financial, economic and organisational links may be register as a VAT grouping (more details in point 'VAT Grouping').

Domestic supplies of goods by the foreign taxpayer not having a business seat or a fixed establishment in Poland made for Polish taxpayers are subject to reverse charge mechanism (some conditions apply). Thus, foreign taxpayers do not have to register for VAT in Poland because of such transactions.

According to the VAT Act, tax point arises e.g.:

- when a supply is made or a prior payment is received,
- at the end of each settlements period or when a prior payment is received,
- when a payment is received – e.g. in case of exempted financial services,
- when an invoice is issued – e.g. construction services (this case also upon payment), supplies of electricity, leasing services, telecommunication services (provided they are invoiced before a deadline for a payment).

Invoicing rules

As a general rule, an invoice documents B2B transactions, both local and international.

Invoices to B2C or exempted transactions are issued upon demand.

Invoice should be drawn up until the 15th day of a month following the supply or a prepayment is obtained. It can be issued up to 60 days before a supply. The latter does not limit services with settlement periods, if a period is mentioned, or invoices for services chargeable when an invoice is issued (e.g. leasing services).

It is possible to use e-invioces, secured by any means of business controls. The purchaser should accept to receive e-invoices. There is also a possibility to invoice transactions by e-invoicing governmental system (KSeF). It will be obligatory in 2024.

As a rule, B2C sale are subject to be recorded by using cash registers. There are many exemptions from this obligation. In case of some supplies (e.g. sales of fuel) only e-cash registers must be used (connected online to the Central Repository held by the Ministry of Finance).

VAT reporting obligations

Taxpayers file monthly VAT returns by the 25th of the following month or quarterly VAT returns by the 25th of the following month in the form of SAF-T (JPK_V7). However, quarterly VAT returns may be filed only by "small taxpayers" (annual sales of less than EUR 1,200,000).

VAT returns and recapitulative statements are filed electronically.

As a rule, VAT liable is paid to the tax office at the time of filing an appropriate VAT return.

Taxpayers making intra-EU supplies of goods and services are required to submit monthly recapitulative statements (EC sales list).

Some taxpayers are also required to file statistical information (INTRASTAT) on intra-Community commodity transactions.

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Split payment

From July 2018, a split payment mechanism was introduced and it allows the buyer of goods or services to pay purchase invoices using a special kind of a bank transfer. As a result of its application, a part of the payment corresponding to the net amount will go to the seller's business account, and the part corresponding to the input VAT to a special account called a VAT account. The use of funds on the VAT account is limited, because they are allowed to be used mainly for payment of purchase invoices under a split payment mechanism, payment of VAT to the tax office, refund of amounts resulting from a correcting invoice (credit notes). In addition, the taxpayer is able to submit an application for the transfer of funds on the VAT account to a settlement account, which will, however, require the prior consent of the tax authorities.

The benefit of using the split payment mechanism for the purchaser is the exclusion of the provisions on VAT sanction (additional amount to pay for the undervaluation of VAT), increased interest on tax arrears, joint and several liability in the sale of sensitive goods – in relation to the amounts paid using it. The use of a split payment mechanism is declared to be a factor proving due diligence of the buyer what means that the right to deduct VAT from transaction should not be challenged.

In 2019 obligatory split payment was introduced for local B2B supplies where a gross amount of an invoice exceeds PLN 15k including for example:

- construction works,
- car parts,
- computers, smartphones, TVs,
- metal products,
- waste,
- emission allowances.

There are strict sanctions for a violation of obligatory split payment regulations. A seller who does not indicate that its invoice is subject to a mandatory split payment (an annotation 'split payment') may be obliged to pay an additional tax of 30% of output VAT from that invoice. Similarly, a buyer may also be imposed with such additional tax liability. What is more, persons responsible for buyer's tax settlements may be charged with a fiscal penalties and a buyer may not be entitles to deduct payments omitting obligatory split payment as tax deductible costs.

VAT Grouping

From the very beginning of 2023, Poland will allow a group of entities bound by financial, economic and organisational links to be registered as a single taxpayer, i.e. a VAT group. The VAT group may include only entities established in Poland and Polish branches of foreign taxpayers.

Once the VAT group is created, transactions between the group members fall outside the scope of VAT, and therefore are not taxable (internal transactions). Output VAT becomes chargeable only on external transactions, i.e. on supplies of goods or services to entities other than members, made in both B2B and B2C. Consequently, only the representative of a VAT group files VAT return (in Poland in the form of SAF-T file called JPK) which serves as a "collective" return.

The VAT Act sets forth a complex set of rules regarding input VAT deduction applicable for VAT groups. As a general rule, purchases should at first be allocated to taxable or exempted activities of the whole group or a specific member. Then an individual pro-rata of a specific member is applicable, but if it is not possible to allocate activities to VAT group members, group pro-rata should be applied. The same rules apply to non-taxable activities interfering with the right to deduct input VAT (e.g. acting as public bodies).

Creating a VAT group also entails an obligation to keep a special register of internal transactions, which from July 2023 should be sent each month to tax authorities in the form of SAF-T. What is also worth mentioning, during the period when a VAT group is a taxable person, as well as after losing this status, members of the VAT group are jointly and severally liable for its VAT obligations.

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CORPORATE INCOME TAX (CIT)

Overview

The provisions of EU directives have been implemented into the Polish taxation system.

CIT rate	**19%**
CIT rate for small taxpayers and taxpayers starting their activity does not apply to capital gain – in the tax year of starting their activity	**9%**
CIT rate on shifted income	**19%**
Flat rate CIT regime's tax rate	**20%**
CIT on commercial real estate	**0.035%**
Withholding tax:	
dividends	19%
interest	20%
licence fees	20%
intangible services	20%

A small taxpayer is a taxpayer in whose case the value of revenue from sales (including the amount of output VAT) did not exceed in the preceding tax year an amount being the equivalent of EUR 2 million.

CIT payers include:

- limited liability companies, joint-stock companies and other legal entities;
- corporations in formation;
- limited partnerships (in Polish: *spółki komandytowe*), limited joint-stock partnerships;
- general partnerships (in Polish: *spółki jawne*), – where the partners are exclusively individuals and the partnerships fails to inform the tax authority about the partners entitled to profit;
- limited joint-stock partnerships having its registered office or management board in territory of the Republic of Poland;
- companies without legal personality having its registered office or management board in another state, if pursuant to the tax laws of another country are treated as legal entities and are subject to taxation in that state on their total income regardless of where it is earned;
- organisational units without legal personality except for civil partnerships and professional partnerships;
- tax capital groups.

Taxpayers with offices or management boards in Poland are subject to CIT in Poland on their worldwide income. Non-resident companies are subject to CIT only on income from Polish sources (i.e. earned in Poland), unless a double tax treaty (DTT) provides otherwise.

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Comparison of taxation on different types of activity (branch/company):

	Branch 9%/19% (lower rate is applicable up to EUR 2 mln of taxable revenues. The threshold is calculated as the sum of branch's and parent company's revenues)	**Company** 9%/19% (lower rate is applicable up to EUR 2 mln of taxable revenues)
Tax	19%	19%
Profit distribution	No tax on branch profit distribution.	19% WHT, with the option of an exemption or lower rate.
Rules of taxation	It is important to accurately allocate revenues and costs to the branch's activity, which in practice may cause problems due to the absence of detailed provisions.	The company is a separate taxpayer subject to CIT in accordance with general principles.
Introducing separate accounting	Yes	Yes
Other comments	Possibility of deducting the CIT paid in Poland in the home country of the holding company. Some treaties provide for an exemption on income taxed in Poland.	Possibility of deducting WHT paid in Poland. In the case of a parent company with its registered office in the European Union, it is typically possible for dividends to be exempt.

The CIT Taxable base is the sum of income from capital gains and income from other sources of revenues (e.g. operational income). The taxable income is calculated as a the difference between revenues and the costs incurred in earning it; if the difference is negative, the taxpayer declares a tax loss. In certain cases, revenue may be the taxable base.

CIT taxpayers have to calculate income from capital gains separately from operational income. Therefore, if the taxpayer earns income from only one of these sources, and in the second source incurs a tax loss – income from one source is taxed without deducting the loss incurred on the second source of revenue.

Sources of revenues under CIT Act:

- **capital gains** – dividends, other revenues actually derived from participation in profits of legal persons and a limited joint stock person, the value of property received as a result of the liquidation of a legal entity or a limited joint stock person, revenues from the sale of shares of companies, revenues from the sale of receivables previously acquired by the taxpayer, revenues from property rights such as copyrights or related property rights, licenses, trademarks and know-how, revenue from securities, derivative financial instruments,
- **other revenues, including revenues derived from operating activities** – other revenues, including revenues derived from the sales of goods and services, etc.

Tax Loss

- may be deducted from profit earned from particular source of revenue during five subsequent tax years ("loss carry-forward system"); the deduction in a single year cannot exceed 50 per cent of the value of the loss; alternatively the tax losses of up to PLN 5 million can be set off against profits of one year, however, not deducted amount may be carried forward to the remaining five years, but it may not exceed 50% of the loss per year.
- the losses of business subject to transformation, merger, acquisition or division – in the event of a transformation of the legal form, a business merger or a division, with the exception of a transformation of a company which is a taxpayer of CIT into another company which will be a taxpayer of CIT are not taken into account for tax loss carry forward.

Profit distribution

Dividends disbursed by corporations with offices in Poland are subject to withholding tax at the 19-per cent rate, (the tax is collected by the company making the disbursement).

Tax treaties stipulate a lower withholding rate for dividends (5%, 10% and 15%) if certain conditions are met.

There is possibility of exempting dividends from WHT, when entity receiving income (revenue) from dividends, as well as other revenues qualified as dividends, is a company which is subject to taxation on the entire of its income in the Republic of Poland or in a European Union

member state other than the Republic of Poland, or the Swiss Confederation or in another state of the European Economic Area, regardless of where it is earned.

The condition of the exemption is a continuous, two-year holding period by the company receiving the dividends required 10% (in the case of Swiss – 25%) of shares in the capital of the company paying the dividend. The prerequisite is also met, if this period has elapsed after the date of receiving the dividend.

Any exemptions and deductions shall apply on condition that legal grounds exist, whether resulting from an agreement for the avoidance of double taxation or a different ratified international treaty to which the Republic of Poland is party, for the tax authority to receive tax information from a tax authority in the state where the registered office of the taxpayer is located or where the income was earned.

An entity interested to make use of this exemption should possess:

- a current certificate of tax residence or a document of the existence of a foreign permanent establishment, the obligation to submit a current certificate of residence does not apply to companies resident in Polish territory;
- written statement confirming the lack of exemption from income tax on the entire income, regardless of where it is earned.

The definition of dividend also applies to income earned, among other cases, on a mandatory or automatic redemption of shares or a company liquidation.

For payments above PLN 2 million see "Payments above PLN 2 million to a related entity" in Withholding tax section.

EU SAAR

Poland has introduced regulations implementing PSD SAAR. Under the anti-abuse rule, the tax exemption for inbound dividends and the exemption from withholding tax on outbound dividends would not apply if dividends were connected with an agreement, a transaction, or a legal action or series of related legal actions, where the main or one of the main purposes was benefiting from these tax exemptions and such transactions or legal actions do not reflect the economic reality and are used with the sole intention of obtaining a tax benefit detrimental to the substance and main purpose of the PSD.

For the purpose of the above rule, it is considered that a transaction or a legal action does not reflect the economic reality if it is not performed for justified economic reasons. In particular, this concerns transferring the ownership of shares of a dividend-paying entity or in earning revenue by that entity which is then paid as a dividend.

PSD applies also to the interest and royalties outbound payments.

The introduction of PSD SAAR may significantly increase the interest of the Polish tax authorities in the examination of applicability of the PSD tax exemption to outbound dividends and interest / royalties payments. Given the vague wording of the Polish provisions implementing PSD GAAR, it is expected that they may raise controversies and the specific prerequisites of applying the PSD SAAR will be shaped mainly by jurisprudence of Polish administrative courts.

Tax on foreign earnings

Income earned by a Polish taxpayer from sources located abroad is subject to CIT and should be cumulated with income earned in Poland, unless the tax treaty states otherwise. The tax paid abroad may be deducted from Polish CIT, but the deduction cannot exceed the amount of CIT due under Polish legislation (for the part classified as foreign income).

Dividends obtained from foreign sources may be exempt from CIT in Poland:

- if they are disbursed by companies with offices in an EU or EEA state or in Switzerland
- and the Polish company has held at least 10 per cent (or 25 per cent for companies with their registered office in Switzerland) of the shares in the company disbursing the dividends for at least two years.

The 2 year period may also elapse after the dividend disbursement date.

The company disbursing and the company collecting the dividend must be subject to CIT on their total income in Poland and in the EU/EEA state or in Switzerland. Income on the liquidation of foreign legal entities is not eligible for exemption.

Dividends obtained from companies with offices in a state with which Poland has concluded a tax treaty (other than EU/EEA states or Switzerland) are subject to 19-per cent CIT. However, withholding tax paid abroad and, if other specific conditions are met, foreign CIT paid by a foreign subsidiary, can be deducted from Polish CIT (underlying tax credit). The deduction cannot exceed the CIT amount due under Polish law.

MDDP

Withholding tax on interest, royalties and services

Interest and license fees are subject to 20-per cent withholding tax in Poland, but tax treaties may stipulate a lower rate (5, 10 or 15 per cent). Some tax treaties also stipulate a 0-per cent rate on interest (e.g. those with Sweden, the United States or France).

In order to obtain a reduction of the withholding rate, a certificate of tax residence is required.

Poland implemented the Interest and Royalties Directive. Therefore, interest payments between parent and subsidiary, subsidiary and parent and between direct sister companies (in all cases a minimum 25% interest and two-year holding period is required) are free from withholding tax, assuming that the receiving company is beneficial owner of the interest. If the interest rate on a loan is not at arm's length, the excess payment may potentially be challenged as not deductible under general rules.

The application of exemption depends also on whether the Polish company has the recipient's tax residency certificate and a statement that the recipient is subject to CIT on its total income in its country of residence, regardless of where the income is earned, and is not taking advantage of an exemption from CIT on its total income regardless of source.

In order to benefit from withholding tax exemption, recipient of interest shall be beneficial owner of received interest. The above applies also to the royalties.

According to the definition, beneficial owner is an entity that meets jointly all of the following conditions:

- it receives a payment for its own benefit, takes individual decisions on its use and bears economic risk associated with the loss of this amount or its part;
- it is not an intermediary, representative, trustee or other entity legally or factually obliged to transfer all or part of the receivables to another entity;
- it conducts an actual economic activity in the country of its register office, if the
- receivables are obtained in connection with economic activity.

Although it does not directly result from the CIT Act, Polish tax authorities claim, that the beneficial ownership condition should be also met in the case of WHT exemption (or reduced WHT rate) on the dividend payments (i.e. not only in the case of interest and royalties payments).

For tax exemption EU SAAR applies accordingly (see "Profit distribution").

Payments for intangible services, such as advisory services, advertising, data processing, etc. are subject to 20-per cent withholding tax unless otherwise stated by tax treaties (treaties concluded between Poland as a rule do not provide for withholding tax on payments for such services).

The 20 per cent withholding tax exemption in Poland is conditional upon the disbursing entity holding the recipient's tax residency certificate.

To apply a reduced WHT rate or not collect the tax at all, if allowed by a tax treaty or by specific regulations the remitter is required to exercise due diligence in verification of requirements provided by these regulations including in particular to determine the beneficial owner of receivables.

For payments above PLN 2 million see "Payments above PLN 2 million to a related entity" in Withholding tax section.

Payments above PLN 2 million to a related entity

A tax remitter which makes interest, royalties or dividend payments to a related entity is required to calculate, collect and pay WHT applying standard rates specified in the CIT Act. If the total amount of receivables paid on the foregoing basis exceeds PLN 2 million in the tax year for the same taxpayer, the remitter is obliged to collect WHT according to the tax rate resulting from the CIT Act on the surplus over PLN 2 million and next apply for the refund i.e. „pay-and-refund mechanism".

The pay-and-refund mechanism would not apply if:

1) opinion on the application of preferences is received,

2) declaration of a management board of a Polish payer is executed, whereby:

- tax remitter obtained required documents, including certificate of residence obtained from taxpayer and written statement from taxpayer on meeting the certain conditions;
- after the verification, tax remitter has no knowledge justifying the assumption that there are circumstances excluding the possibility of applying the preferable tax conditions (tax exemption, reduced tax rate etc.).

At the request of the tax remitter or the taxpayer, the tax authorities will issue an opinion confirming WHT exemption or application of reduced tax rate under the DDT. Obtaining an opinion allows application of preferential rules for payment during its term of validity.

The tax authority have 6 months to examine the matter and issue an appropriate opinion. The fee for issuing such opinion amounts to PLN 2,000.

In the application, it is necessary to indicate that the conditions for using the abovementioned exemption or reduced tax rate (among others those referring to beneficial ownership and actual business activity) are met.

The opinion will be valid for 36 months from its issue, unless the circumstances on the basis of which it was issued change.

If the taxpayer / tax remitter fails to meet the conditions for application of the reduced WHT rate or WHT exemption, the WHT will be collected at the statutory WHT rates.

Real estate clause

Income from the sale of shares, all rights and obligations in partnerships, shares in investment funds as well as receivables being a consequence of holding shares in these entities if at least 50% of the value of assets of these entities comes from real properties located in Poland is taxable in Poland at 19%, unless a relevant tax treaty provides otherwise.

Restructuring efforts

Poland has implemented the directive on a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States. Mergers, divisions and exchanges of shares concerning companies with seats in the EU may be CIT-neutral, provided that certain requirements are met with SAARs application.

Tax-deductible costs and depreciation

Tax-deductible costs are costs incurred to earn or maintain or secure a source of revenue that are not excluded by law from the tax-deductible cost category. Taxpayers must document the costs incurred. Tax costs also include expenditures for discontinued investments. The legislation contains a list of more than 60 items that are not regarded as costs for tax purposes. These include, *inter alia,* accrued but unpaid interest, business entertainment costs (i.e. essentially costs of meeting contractors), administrative penalties and interest on overdue statutory payments, as a rule provisions established in accordance with accounting principles, car wear and tear allowances or car insurance premiums in the portion of the car value that exceeds the equivalent of EUR 20,000. Expenditures for the purchase of fixed assets and intangible assets do not constitute costs either, but depreciation write-downs made in accordance with applicable laws.

Interest

As a rule, the tax cost related to interest can be deductible at the time of its payment (cash method) – other than for accounting purposes where the rule is to allocate interest to costs at the time of accrual (accrual method). Exceptions include interest accrued until the date of handover of an asset for use.

Foreign exchange rate differences

Foreign exchange differences may be accounted for at the time they are incurred (tax method) or at the time of their accrual (accounting method). If the accounting method is selected, it applies for at least three tax years. Exceptions include exchange rate differences accrued until the date of handover of an asset for use.

Depreciation

As a rule, depreciation write-downs are based on the cost of acquisition or manufacturing of the depreciated asset. The following depreciation methods are available:

- linear method (as a rule);
- Reducing balance depreciation method – means higher costs in the initial depreciation period (applicable to some components: boilers and power generation machinery, basic and specialised machinery, devices and equipment, technical devices, movables and equipment and vehicles other than cars);
- one-off depreciation (for assets under PLN 3,500);
- custom rates (applicable to used or improved fixed assets, for example a non-residential building in use for more than five years may be depreciated over forty years minus the full number of years elapsed from the date of its initial handover for use until the date of entering it in the fixed asset and intangible asset register kept by the taxpayer, but the depreciation period cannot be shorter than ten years).

Entrepreneurs who in a given tax year launched economic activity and small taxpayers, can make use of the privilege, which is a one-time depreciation. As part of the relief entrepreneurs can make write-offs up to EUR 50,000 in a given tax year.

For assets depreciated using the linear method, the rate may be decreased in a given tax year by no more than the rate prescribed by tax legislation.

In the case of a transformation, division, merger, in-kind contribution including a business or its organised part, buyers of fixed assets and intangible assets must carry on using the depreciation methods applied by the seller.

Depreciation does not apply to:

- the land and right of perpetual usufruct of land;
- expenditure incurred on their acquisition constitute tax deductible cost at the time of non-free of charge disposal (sale).

Depreciation rates and periods for tax purposes may differ from depreciation for accounting purposes.

Examples of depreciation rates and methods for selected assets

Type of fixed asset	Linear method		Reducing balance method	
	Depreciation period	Annual depreciation rate (%)	Depreciation period	Annual depreciation rate (%)
Car – PLN 50,000	60 months	20% (PLN 10,000)	n/a	
Truck – PLN 100,000	60 months	20% (PLN 20,000)	30 months	40% (PLN 40,000 in the first year)
Computer – PLN 5,000	3 years	30% (PLN 1,500)	18 months	60% (PLN 3,000 in the first year)
Construction equipment – PLN 1,000,000	60 months	20% (PLN 200,000)	30 months	40% (PLN 400,000 in the first year)
Office building – PLN 10,000,000	40 years	2.5% (PLN 250,000)	n/a	

Leasing

Income from leases is subject to CIT in accordance with general principles. Tax laws set out in detail two types of leases: operating leases and financial leases. Leased objects may include fixed assets, intangible assets and land (or the right of perpetual usufruct of land). Lease settlement for tax purposes may be different than for accounting purposes.

For both types of leases, upon contract termination, ownership may be transferred to the beneficiary. Since it is possible to enter the entire lease payment under tax costs, operating leases may be more favourable in terms of tax. It is also worth noting that contracts recognized as "operating lease" for tax purposes often fall within the definition of "financial lease" under IFRS regime.

Major differences between operating leases and financial leases:

	Operating leases	Financial leases
Lease payments	Lease payments, in their entirety, are a cost for the beneficiary and revenue for the financing party.	Lease payments are a cost for the beneficiary and revenue for the financing party only in the interest portion.
Depreciation	The financing party effects depreciation.	The beneficiary effects depreciation.
Term	At least 40 per cent of the statutory depreciation period (or at least 5 years for real properties).	Fixed term – no minimum or maximum.

MDDP

The costs of debt financing – thin capitalization restrictions

Costs of debt financing (both resulting from intra-group and external financing) is excluded from tax-deductible costs in part in which the surplus of costs of debt financing over interest- type revenues [the Surplus] exceeds PLN 3 million or 30% of the tax EBITDA in the tax year.

The limit does not apply to the surplus of debt financing costs where it does not exceed the higher of the above thresholds.

Tax EBITDA = (tax revenues – interest revenues) – (tax deductible costs – costs of debt financing not included in the initial value of the Fixed Asset or Intangible Assets – depreciation write-offs)

The costs of debt financing are all kinds of costs related to obtaining from other entities, including non-related parties, any funds and the use of these funds, in particular interest, including capitalized or included in the initial value of fixed assets or intangible assets, fees, commissions, bonuses, interest part of the lease instalments, penalties and fees for delay in payment of liabilities and costs of securing liabilities, including costs of derivatives.

The costs which are not deducted in a given year due to this limitation may be fully deducted in five subsequent tax years – within limits binding in these years. Some exceptions apply, including lack of possibility to carry forward interest in the case of merger, demerger or transformation.

Financial entities (banks, credit institutions, insurance companies) are not subject to thin capitalisation limitations.

Tax exemptions and credits

Legislation provides for a number of CIT exemptions, both subjective and objective. For instance, investment funds, pension funds, public service organisations, church organisations and special economic zone companies are exempt from tax upon meeting appropriate requirements. Furthermore, CIT does not apply to agricultural business, with the exception of income from special departments of agricultural production.

Polish Investment Zone/Special Economic Zone

The Polish Investment Zone allows for exemption from taxation of income generated by a new investment, understood, i.e., as the establishment of a new plant or an increase in the capacity of an existing one. The exemption is based on a Decision on Support that can be obtained by operating in any part of the country.

The amount of tax exemption depends on the location of the investment and size of enterprise. The relief can be 10-50% for large companies, 20-60% for medium companies and 30-70% for micro and small enterprises.

The decision will not be given to an entrepreneur operating, among others wholesale and retail trade, facilities and works and the operation of gaming centers.

R&D CIT Relief

The R&D tax relief entitles to deduct up to 200% of costs incurred on research and development activities from the tax base (not withstanding their prior deduction as an ordinary cost under the general rules), if the taxpayer earned income other than income classified to capital gains source.

R&D activity includes any systematic scientific research or development work undertaken with the aim of increasing knowledge or creating new solutions.

The provisions contain a closed list of such expenditures, which should also qualify as tax – deductible costs under the general tax rules.

Qualified expenditures ought to be deducted in the year in which they were incurred, and if the taxpayer does not generate sufficient income or incurs a loss in this particular year, in the period of six consecutive fiscal years directly following the aforesaid year.

Any business can take advantage of the R&D tax relief, regardless of the industry or the organization size. It does not require any special applications or requests. Companies apply in Polish Investment Zone or Special Economic Zones are exclude.

Restrictions on the application of the relief may only result from the use of other forms of tax support, e.g. application of exemption on the basis of a Decision on Support.

IP BOX

The IP BOX relief is a mechanism to support research and development activities. It allows preferential taxation at the rate of 5% of the part of income from intellectual property rights that are subject to protection.

The relief is accounted for in the annual return, in which the amount of income covered by the preferential tax rate is indicated, but it can be used only in the calendar year following the one in which the activity was commenced.

To claim IP Box relief, a taxpayer must:

- carry out research and development activities;
- produce qualifying IP.

IP rights covered by the relief are:

- patent;
- a utility model;
- the right of registration of an industrial design;
- supplementary protection right for a patent for a medicinal or plant protection product;
- a right to register a topography of an integrated circuit;
- right of registration of a medicinal product and a veterinary medicinal product authorised for marketing;
- the exclusive right referred to in the Act on Legal Protection of Plant Varieties;
- a copyright in a computer program.

Robotization CIT relief

The tax relief is primarily addressed to manufacturing companies, automating their manufacturing process, regardless of the size of the company and the type of industry.

The robotisation tax relief allows for the deduction from the tax base of expenses incurred on:

- the purchase or lease of new robots and collaborative robots,
- the purchase of software,
- the purchase of accessories (e.g. tracks, turntables, controllers, motion sensors, end-effectors),
- training for employees to operate the new equipment,
- the purchase of occupational health and safety (OHS) equipment.

Prototype relief

The relief provides taxpayers with the ability to deduct 30% of the amount of trial production of a new product from their tax base. At the same time, the maximum deduction cannot exceed 10% of the income earned from sources of income other than capital gains in a tax year.

As costs can be considered expenses for production (e.g., acquisition of equipment, expenditures on improvements or materials) and costs for marketing the product (e.g., research, expertise or obtaining the necessary permits).

It can be used by any company that develops a new product not previously present on the market, distinguished by its technical performance, usability and functionality. The product will have to be innovative on the scale of the company, not previously present on the market, which will develop its offer and allow it to reach new markets in the future.

Expanse relief

A taxpayer earning income other than income from capital gains may deduct from the tax base deductible costs incurred to increase income from the sale of products up to the amount of income earned in the tax year from income other than income from capital gains, but not more than PLN 1,000,000 in a tax year.

This relief applies only to products manufactured by the taxpayer.

The condition of increasing sales can be fulfilled in three ways; over a period of 2 consecutive fiscal years:

- the taxpayer has increased revenue from the sale of products in relation to revenue from such sales as determined on the last day of the tax year preceding the year in which these costs were incurred, or
- achieved revenues from the sale of products not previously offered, or
- achieved revenues from the sale of products not previously offered in the country.

Costs incurred to increase revenue from the sale of products are considered to be:

- costs of participation in the fair;
- costs of promotional and informational activities;
- costs of adapting product packaging to the requirements of contractors;
- costs of preparing documentation to enable the sale of products or entering into tenders.

Consolidation relief

A taxpayer who is an entrepreneur, earning income other than income from capital gains, may deduct from the tax base in companies engaged in activities identical to those of the purchaser. The maximum amount of the deduction may be PLN 250 000.

The expenditures that are covered by the relief are:

- legal services for the acquisition of shares and stocks and their valuation;
- notary, court and stamp fees;
- taxes and other public and legal dues paid in Poland and abroad.

Specific requirements need to be met for the relief to apply. It should be noted that expenditures for the mere acquisition of shares (stocks) are not covered by the relief.

Bad debts relief

The mechanism allows the creditor to reduce – subject to fulfilment some detailed conditions – the tax base by the amount of receivables included in revenues which have not been repaid or sold within 90 days from the payment date set by the parties in the agreement, on the invoice or receipt.

If the amount of the reduction exceeds the tax base, the deduction may be made in subsequent tax years (up to next three tax years) provided that the amount due was not settled or disposed of during that period.

In a case of tax loss in the source of income to which the transaction is related, the taxpayer is entitled to increase the value of the loss by the amount of the outstanding debt.

For debtors the provisions introduce an obligation to increase the tax base / reduce the tax loss by the outstanding amount.

Tax capital groups (PGK)

A 'tax capital group' (tax consolidated group) may be formed for CIT purposes in Poland. Taxable income for the group is calculated by combining the income and losses of all the companies. A tax consolidated group formed and registered with the relevant tax authorities is treated as a separate taxpayer for CIT purposes.

Some of the requirements for establishing a capital group are as follows:

- a tax capital group may be formed only by limited liability or joint-stock companies based in Poland, provided that average share capital is not lower than PLN 250,000 (approximately EUR 62,500; assuming that 1 EUR = 4 PLN);
- the holding company should hold at least 75% of the shares in the other group companies;
- none of the members of the group can have tax liabilities towards the State Treasury (e.g. VAT, CIT);
- the holding company and the subsidiaries have agreed in writing to establish the capital group for at least three tax years. The tax agreement must be filed with the tax office;
- group companies do not take advantage of income tax exemptions under other acts (the use of an exemption due to activity conducted within a SEZ – does not preclude from establishing a PGK);

If all the above-mentioned restrictions are met the tax capital group may take advantage of the benefit i.e. the losses of some of the members of the tax capital group can be set off against the taxable income of its other members.

Tax capital group can lose the status of taxpayer retroactively (from the date of registration as a tax group) in case of breach of certain conditions. In such a case, companies forming tax capital group are obliged to reconcile CIT as independent taxpayers retroactively for past years. Tax capital group members will be obliged to set intra-group transaction terms at arm's length.

So called "Estonian CIT" regime/Lump sum CIT

Lump-sum tax on corporate income, or the so-called Estonian CIT regime, is a form of taxation in force as of 2021. It allows CIT taxpayers to defer payment of income tax (CIT) for 4 or more years, until the distribution of profits (dividends).

"Estonian" CIT is available to limited liability companies, joint-stock companies, simple joint-stock companies, limited partnerships or limited joint-stock partnerships in which the shareholders, stockholders or partners are exclusively natural persons.

Companies can benefit from lump sum CIT if certain conditions are met (e.g., the company's shareholders, stockholders or co-partners should be natural persons only,

the company should not hold shares in other entities, the company's passive income should not exceed its operating income).

The method of taxation is chosen for a period of 4 years (after the end of this period, provided that the conditions are met, the taxation with lump sum CIT can be continued).

CFC (Controlled Foreign Corporation)

Polish entities are liable to 19% income tax on the profits earned by their controlled foreign companies (CFC).

A CFC is defined as:

- foreign corporations having their registered office or management board or which are registered or headquartered in a territory or country listed in the current notice of the minister responsible for public finance
- foreign corporations having their registered office or place of management board, or which are registered or headquartered on the territory of a country other than that specified in item 1, with which:
  a. The Republic of Poland has not ratified an international agreement, in particular a double taxation treaty, or
  b. the European Union has not ratified an international agreement
  – which constitutes the basis for obtaining tax information from the tax authorities of that country, or
- foreign corporations that meet detailed conditions set forth in the Act regarding:
  a. the level of shareholding and the level of control exercised over the foreign corporation by Polish taxpayers and their related entities or other entities having their place of residence or office or management board in Poland (more than 50%);
  b. the level of income of these corporations from specific sources or the share of this income in the value of their assets;
  c. the amount of income tax actually paid by the corporations in relation to the amount of tax due if they were taxpayers having their registered office or management board in Poland (lower by at least 25%);
  d. requirements relating to the specification of assets of these corporations.

A Polish resident is obligated to:

- maintain a register of controlled foreign corporations;
- keep records of economic events in CFC;
- submit CFC tax return and pay a tax on CFC income.

The CFC taxation regime does not apply to entities if they are subject to taxation on the entire of the income in a European Union member state or in another state of the European Economic Area, regardless of where it is earned and they carry out their actual economic activity in that state.

CIT on commercial real estate

This tax covers commercial real estate classified according to the Classification of Fixed Assets as office facilities, shopping centres, department stores, independent stores and boutiques, and other commercial and service facilities with the initial value exceeding PLN 10 million.

Taxation with this tax does not apply to fixed assets where the depreciation write-offs with regard there have ceased as a result of the suspension / cessation of business operations, nor does it apply to office buildings used solely or mainly for taxpayer's own needs..

The taxable base is the revenues corresponding to the initial value of the fixed asset determined on the first day of each month resulting from the records maintained less the amount of PLN 10 million.

The tax amounts to 0.035% of the taxable base for each month. It is calculated and paid for each month by the 20th day of the following month. It is deducted from CIT advance payments and annual CIT.

CIT on shifted income

This tax was introduced to eliminate the possibility of obtaining tax benefits through tax schemes aimed at transferring income to tax jurisdictions with effective low tax rate, but in practise affect also payments to the USA, Switzerland or the UK or Canada.

The provisions on taxation of shifted income do not apply to the extent that the taxable costs were incurred for the benefit of an entity tax resident in a country in the EU or the EEA that carries on actual economic activity in such country.

The tax rate on shifted income is set at the same level as the basic corporate tax rate, 19%.

The shifted income is defined as costs incurred directly or indirectly for the benefit of an entity related to a Polish taxpayer, which is subject to tax according to the rate lower than 14,25%, provided that such a foreign taxpayer receives its revenues mainly from passive income/intangible services paid by related parties. Further detailed rules apply here.

The costs that can fall within the range of the shifted income consist of intangible services, royalties, costs of transfer of risk of insolvency, debt financing costs (including interest paid and capitalized), remuneration for transfer of functions, assets or risks if the sum of these costs incurred in the tax year for the benefit of entities, including unrelated entities, constitutes least 3% of the sum of the tax deductible costs incurred in that year in any form, whereby to determine the sum of these costs thin capitalization limitation (i.e. limitation of including in tax deductible costs the debt financing costs' surplus above PLN 3 million or 30% tax EBITDA in the tax year) does not apply.

Shifted income tax is settled and paid annually by the end of the third month after the end of the tax year and is not added to other income (revenues) of the taxpayer.

Taxation of real estate company

A real estate company means the company in which as at the last day of the previous fiscal year at least 50% of carrying amount of the assets constituted, directly or indirectly, the value of real estate located in Poland, and the value exceeded PLN 10 million. If the company is not a taxpayer of income tax – at least 60% of the company's revenues are revenues from rental, sublease, lease or similar agreements relating to real estate or rights to the real estate or shares in other real estate companies.

A real estate company is a tax remitter with respect to a CIT advance payment resulting from the sale of shares in this company. This mechanism transfers the tax settlement obligation arising from the sale of shares in the real estate companies from a foreign (i.e. non-Polish tax resident) seller to a real estate company which shares are subject to sale.

Real estate company whose shares are being sold is obliged to pay 19% CIT advance payment to a relevant tax office within 20 days from the beginning of a month starting after a month in which the income from the sale arose, if in particular:

- selling company is an entity not having its registered office or management board in Poland and
- shares being sold grant at least 5% of the voting rights in the company.

Seller as the taxpayer is obliged to provide the tax remitter with the amount of the advance CIT to be paid before the date referred to above. On the date of payment, the real estate company is obliged to send to the taxpayer the information about the advance payment (prepared in accordance with the specific form determined by the Ministry of Finance).

Direct and indirect shareholders of real estate companies (however only if they are taxpayers in Poland) holding directly or indirectly at least 5% of shares, stocks etc. are obliged to report real estate companies in which they hold shares, stocks etc.

The information should be submitted electronically within 3 months from the end of the tax year of the real estate company.

For the real estate companies without a registered seat or corporate management in Poland, located outside the EU or EEA (e.g. Switzerland, UK after Brexit) there is an obligation to appoint a tax representative in Poland.

Polish Holding Company (PHC)

The benefit of the PHC model is tax exemption on dividends received from subsidiaries (100% exemption), and tax exemption on the sale of shares (stocks) of a subsidiary to an unrelated party (100% exemption).

A holding company is an entity that fulfils all of the following conditions cumulatively for a continuous period of two years:

- is a limited liability company, a joint stock company, or a simple joint stock company not belonging to a tax capital group,
- holds continuously at least 10% of the shares (stocks) in the capital of the subsidiary,
- does not benefit from an exemption in a special economic zone or on the basis of a Decision on Support,
- conducts genuine economic activity,
- whose shareholder is not a tax haven entity.

A subsidiary is a company, that:

- does not belong to a tax capital group,
- Polish subsidiary: is a Polish limited liability company or joint-stock company;
- foreign subsidiary:
  - is a legal person and is subject to income tax in a state other than Poland on all its income (and does not benefit from tax exemption on this income); and
  - does not have a seat/registered office in a state or territory which is applying harmful tax competition (the so-called tax heaven).

Family Foundation

Family foundation is a new concept in Polish law. It is introduced in Poland to minimise the risk of unsuccessful succession and to ensure the continuation of business operations of an enterprise.

The family foundation is a separate legal entity that was established to accumulate property, manage it in the interest of the beneficiaries and to provide benefits to the beneficiaries.

A family foundation will generally be exempt from CIT. 15% CIT is due only on amounts distributed to beneficiaries. There is no personal taxation for close family members. For other beneficiaries there is 15% PIT.

Reporting on the tax strategy

There is an annual obligation to draw up and publish a report on the implementation of the tax policy by taxpayers whose revenue for the previous year exceeds EUR 50 million.

The report on the tax strategy executed in a given year should be presented by a taxpayer on the website in Polish, within 12 months from the end of each tax year. The website address should be also provided to the head of the tax office.

The scope of provided information is very wide and covers, i.a. information on:

- procedures used by the taxpayer to manage the performance of obligations that arise from the provisions of tax law;
- voluntary forms of cooperation with tax authorities;
- the taxpayer's performance of tax obligations in the territory of Poland, together with the number of submitted information on tax schemes;
- transactions with related entities which value exceeds 5% of balance sum of assets;
- planned or undertaken restructuring activities;
- applications for tax rulings submitted by a taxpayer;
- binding rates and excise tax;
- tax settlements in countries applying abusive tax practices.

Failure to send the head of the tax office information on the address of the website on which the strategy has been published may result in a fine of up to PLN 250 thousand.

Monthly CIT advances, annual returns/ CIT withholdings

As a rule, the tax year covers twelve consecutive months, but in the course of business, taxpayers may modify the tax year pattern adopted.

CIT monthly advance payments must be paid by the 20th of every month. There is no requirement to file monthly tax returns.

Annual tax return CIT-8 is filed by the end of the third month after the end of each fiscal year (a taxpayer may opt for a tax year different from calendar year). Electronic filing is mandatory. The tax resulting from this return must also be paid by the above deadline. WHT reporting is are at the same time.

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PERSONAL INCOME TAX (PIT)

Overview

The income taxable in Poland depends on your tax residence status.

Individuals, with their place of residence in Poland, are taxed on their total worldwide income, regardless of where the income is earned (unlimited tax obligation in Poland).

Individuals, who do not have a place of residence in Poland, are taxed solely on income earned in Poland (limited tax obligation in Poland).

An individual with a place of residence in the Republic of Poland is a person who:

- is physically present in the Republic of Poland for more than 183 days during a tax year, or
- has a centre of personal or economic interests in the Republic of Poland (centre of vital interests).

The above rules are applied taking into account the provisions of relevant tax treaties. Therefore, even if, in the light of Poland's national legislation, a person passes the residence test for Poland, the appropriate criteria contained in an international treaty must be applied to determine what country is that person's actual place of residence for tax purposes.

Tax number

PESEL is a primary tax identification number in Poland. An individual needs a PESEL number in contacts with tax authorities. PESEL is used, for example, by employees.

NIP is an alternative tax identification number to PESEL. NIP is required in certain other circumstances e.g. self-employed individuals, VAT payers.

Sources of revenue subject to PIT

The Polish PIT Act provides the following sources of income:

- a labour-based relationship and an employment relationship, including a cooperative employment relationship, retirement or disability pension;
- personal services;
- non-agricultural business activity;
- special departments of agricultural production;
- lease, sublease, tenancy, subtenancy and other similar agreements;
- monetary capital and property rights;
- paid disposal of, among other things, real property or parts thereof and real property interests, movables;
- activity conducted through controlled foreign company (CFC);
- unrealized gains (exit tax);
- other sources.

The Personal Income Tax Act does not apply i.a. to revenue subject to the provisions on tax on inheritance and donations, revenues from actions that cannot be the subject of a legally binding agreement, or revenue subject to tonnage tax.

Taxation of employment income

Natural persons in Poland are subject to personal income tax calculated, as a rule, according to a progressive tax scale.

Income from the employment relationship includes, i.a.:

- Base remuneration
- Cash payments

- Benefits in kind or their equivalents
- Additional payments and benefits: overtime pay, allowances, awards
- Value of other free benefits (e.g. company's car, apartment rented by the employer, fees for medical insurance, any other services/fees financed/borne by employer for the employees and their family members)

PIT tax advances are calculated on a monthly basis by the employer. The income is taxed according to the tax scale:

Tax Scale from 1 st July 2022		
Tax thresholsd (PLN)		Tax due
from	to	
	120.000	12% minus tax reducing amount PLN 3.600
120.000		10.800 PLN + 32% surplus over PLN 120.000

*Monthly tax reducing amonut – PLN 300 PLN – is available regardless of the amount of income

For months in which the taxpayer's accumulated annual income does not exceed PLN 120,000 – the tax advance equals to 12% of the monthly income.

For the month in which the taxpayer's accumulated annual income exceeds PLN 120,000 – the tax advance equals to 12% on the part of income below the limit, and 32% on the surplus above the limit.

For the following moths – the tax advance equals to 32% of the monthly income.

The income is understood as taxpayer's gross salary lowered by the amount of statutory costs and employee's part of social contributions.

The taxable costs are stipulated in the Polish PIT act:

	Monthly	Annual
One employment contract	PLN 250,00	PLN 3.000,00
Several employment contracts	PLN 250,00	PLN 4.500,00
One emplyment contract – place of work different than place of living	PLN 300,00	PLN 3.600,00
Several employment contracts – place of work different than place of living	PLN 300,00	PLN 5.400,00

Incentive schemes – preferential tax regime

In the case of gratuitous or partial paid acquisition (taking up) of shares, the Polish PIT Act allows, upon fulfillment of certain conditions, to postpone the moment of income taxation until the time of realization of profit from the disposal of shares.

In such a case income (i) will arise only at the moment of paid disposal of the shares, (ii) will be qualified as income from capital gains, taxed at 19%, (iii) a Polish employer is not burdened by the obligation of a payer of advances for Polish PIT/Polish social security contributions.

Conditions to be fulfilled in order to postpone the moment of income taxation until the time of realization of profit from the disposal of shares:

- a person acquires or takes up shares in the company from which he or she receives income from an employment relationship or activities performed personally, or in the company which is the parent company (under Polish Accounting Act) of the company from which he or she receives said income,
- the registered office of the joint-stock company is located in the territory of Poland, the EU, the EEA, or in a country with which Poland has concluded a double taxation agreement,
- the acquisition (taking up) of shares is factual in nature – it may take place directly or as a result of exercise of rights arising from derivative financial instruments, or exercise of rights arising from securities referred to in Art. 3 item 1 letter b) of the Polish Trading in Financial Instruments Act, or exercise of other property rights,
- the acquisition (taking up) of shares happens within the framework of a remuneration system established on the basis of a resolution of the general meeting of the joint-stock company from which the person obtains income from an employment relationship or activities performed personally, or of the joint-stock company that is the parent in relation to such a company.

Business activity

Each entrepreneur is obliged to calculate his/her tax and contributions due.

Entrepreneurs in Poland may be taxed according to the following taxation methods:

- Tax scale (12%/32%)
- Flat tax (19%)
- Lump sum tax imposed on revenue (rates vary in terms of field of economic activity).

MDDP

Tax rates – special types of revenue

Certain income (revenue) categories are taxed in accordance with separate rules. The special tax regimes are applicable to inter alia:

- private lease (at the taxpayer's request – 8.5 per cent tax on registered income up to PLN 100,000; for the excess over that amount, the lump sum tax rate amounts to 12.5 per cent of revenues);
- dividends (19 per cent flat tax),
- interest on savings (19 per cent flat tax),
- gains from capital funds (19 per cent income tax);
- gains from the sale of securities (19 per cent income tax);
- selling private properties (as a rule, 19 per cent income tax);
- awards in competitions, gambling, premium sale (10 per cent flat tax);
- income of CFC (19 per cent income tax).

Some revenue categories disbursed by Polish withholding agents to non-residents are subject to a flat-rate tax of 20 per cent of the revenue.

These include i.a. proceeds from:

- serving on management or supervisory boards;
- civil law agreements;
- entertainment or sports activity;
- accounting services;
- legal and advisory services;
- advertising services;
- licence fees, know-how or copyrights.

In the case of non-residents, tax rates resulting from a tax treaty may be applied and withholding tax may be exempted if the non-resident furnishes a certificate confirming its place of residence for tax purposes.

In the case of taxpayers who do not disclose their sources of revenue, income determined by the tax authorities is taxed at the penalty rate of 75 per cent.

Tax credits

In the annual return, under certain conditions, you may deduct from your taxation basis (income):

- social security contributions,
- internet expenses. This would be possible only in two consecutive tax years. The annual limit of deduction is PLN 760.
- expenses for rehabilitation purposes of the taxpayer or a disabled dependent,
- return of unduly received benefits that previously increased the tax base,
- donations for public benefit purposes, religious worship, blood donation. As a rule, the amount of deduction may not exceed 6% of the income. The limit does not apply to donations for church's charity and care activities
- payments to an individual retirement account, up to the statutory limit updated every year. In 2022, the limit amounts to PLN 8 322.

Moreover, the Polish PIT Act provides for several additional tax reliefs, which aim to exempt the amount of PLN 85 528 per annum from taxation:

- relief for young workers (up to 26 yo.),
- relief for return (relief for taxpayers transferring their tax residence to Poland after December 31, 2021 – additional conditions apply),
- relief for families at least with four children (relief for parents / legal guardians bringing up at least 4 children),
- relief for working pensioners (relief for taxpayers over 60 (woman) / 65 (man) who have the right to pension, but continue working).

If one or more reliefs is applicable to a taxpayer, the income of PLN 85 528 is not subject to tax. All reliefs apply to the same limit at the same time, but the exemption limit cannot be multiplied.

The above four reliefs are applicable to:

- employment income,
- income from contracts of mandate,
- income from business activity (in various forms of taxation),
- maternity benefits.

If a taxpayer determine that the relief may be applied, he/she should inform and submit a statement to the employer.

Tax returns

Each taxpayer is obliged to submit their annual PIT return, until 30th April of the following tax year.

Different sources of income are reported on different tax forms. In case of employees, the mostly used forms are:

- PIT-37 (for taxpayers obtaining income via remitters, e.g. for employees),
- PIT-36 (for taxpayers who obtained incomes without remitters, e.g. for entrepreneurs taxed according to the scale),
- PIT-38 (for taxpayers gaining capital income).

As a rule, taxpayers file separately. Spouses who are tax residents in Poland may, upon meeting certain requirements, file a joint tax return on taxable income according to the tax scale.

The following individuals are also permitted to file jointly:

- spouses with a place of residence in an EU Member State or European Economic Area Member State or Switzerland,
- spouses of whom one is subject to an unlimited tax obligation in Poland and the other has a place of residence outside Poland, but in another EU or EEA Member State or in Switzerland,

  – if (in both cases) they have reached the revenue threshold taxable in Poland in a total amount of at least 75 per cent of the total revenue earned by both spouses in a given taxable year and have documented, with a certificate of residence, their place of residence for tax purposes.

Special rules of taxation apply also to individuals filing as single parents and non-Polish tax residents who intend to leave Poland before the deadline for submitting annual tax return.

Social security contributions

Poland's social security system comprises retirement and disability insurance, accident insurance and illness insurance. Insurance covers, among others, employees, the self-employed and contractors. These individuals are also subject to mandatory health insurance. From 2022 health insurance contributions are due from director's fee even if paid under a resolution.

Mandatory contributions on the employer and employee's side, in force in 2022, are set forth below:

Contribution % of total monthly salary	Total	Employee	Employer
Retirement insurance	19.52%*	9.76%	9.76%
Disability pension insurance	8.00%*	1.50%	6.50%
Health insurance	9%	9%	-
Illness insurance	2.45%	2.45%	-
Accident insurance	0.67-3.33%**	-	0.67-3.33%
Bridging Pension Fund***	1.5%	-	1.5%
Labour Fund	2.45%	-	2.45%
Employee Benefit Fund	0.10%	-	0.10%

* The annual basis for calculating contributions for retirement and disability pension insurance for employees, in a given calendar year may not be higher than the amount corresponding to thirty times the projected average monthly remuneration in the national economy for a given calendar year (in 2023 it is PLN 208 050).
** Accident fund contributions are calculated based on the number of individuals registered for accident insurance and the activity of the payer specified under the employer's statistical Polish National Business Registry Number (REGON) according to the Polish Classification of Business Activities. The level of accident fund is determined through the decision of social security authorities.
*** The premium payable for employees born after 31 December 1948 and performing work in harmful conditions.

Social security contributions should be paid (in most cases) by the 15th day of each month.

Healthcare contribution is collected on a monthly basis by the employer, however it is fully financed by the employee. Since 2022, it is not allowed to deduct the amount of health insurance contribution from the tax.

Exit tax

The base for taxation is unrealized capital gains received by:

- individuals within their business activity, (assets moved out of Poland)
- individuals who are not entrepreneurs. (result of losing Polish tax residency).

Exit tax regulations may apply both to employees leaving Poland to work abroad and to foreigners assigned to

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work in Poland, who decide to leave Poland after the end of their assignment. The regulation shall be applied only if the taxpayer has been a Polish tax resident for at least five years within 10 years period before the change of the tax residence.

The exit tax basis shall be calculated as the surplus of the market value of the transferred asset, determined at the date of transfer, over its tax value. The basic exit tax rate is 19% for CIT and PIT taxpayers. If the tax value of an asset is determined. However the lower tax rate of 3% may be applied for taxation of personal income. The lower rate applies when the tax value of an asset cannot be determined.

The transfer of assets with a market value exceeding PLN 4 000 000 is taxable in Poland. The taxpayer is obligated to pay the exit tax by the 7th day of the month following the month in which the income arose. Within the same period, the taxpayer is obligated to file a tax return and report the amount of income subject to exit tax.

Solidarity levy

The solidarity levy applies to the taxpayers whose annual income from the sources of income determined in the Polish tax act (i.e. employment income, business activity, capital gains) exceeds PLN 1 000 000. The solidarity levy is payable at a rate of 4 % on the surplus of total income above PLN 1 000 000 obtained in the tax year. When determining the basis for calculating the solidarity levy, social security contributions may be deducted. Income to which the solidarity levy applies does not include income subject to a flat rate tax (e.g. interest and dividend income).

The taxpayer is obliged to pay the solidarity levy by 30th April of the following tax year. Within the same period, the taxpayer is obliged to file a declaration on the amount of the solidarity levy – DSF – 1.

Compensation for the duration of inability to work

The employer and the Social Security Office must pay compensation for the duration of an employee's inability to work on the terms set out below:

	Duration of inability to work Paid by the employer	Paid by the Social Security Office (ZUS)
1-14 days of illness for employees over 50 years of age	80 % of average remuneration *	
1-33 days of illness for other employees	80 % of average remuneration *	
more than 14 or more than 33 days of illness		80 % of average remuneration

* Average remuneration for the previous twelve months

In the event of inability to work as a result of a work-related accident, illness during pregnancy or maternity leave or in connection with donating tissue or organs, employees are entitled to receive 100 per cent of their remuneration.

Tax on inheritance and charitable donations

Scope of taxation

Tax on inheritance and charitable donations applies to the acquisition of ownership of assets located in the Republic of Poland or property rights exercised in the Republic of Poland by way of inheritance, bequest, further bequest, specific bequest, testamentary instruction, charitable donation, donor's instruction, usucaption or unpaid removal of shared ownership.

Tax is also applied to acquisitions of ownership of items located abroad or property rights exercised abroad if at the time of opening the inheritance or concluding a donation agreement, the acquiring party was a Polish citizen or had a permanent place of residence in the Republic of Poland.

Taxpayer categories

Payers of tax on inheritance and charitable donations are grouped into three categories depending on the relationship with the donor/testator:

- Tax group 1 includes: spouse, descendants, ascendants, stepchild, son-in-law, daughter-in-law, siblings, stepfather, stepmother, parents in-law,
- Tax group 2 includes: descendants of siblings, siblings of parents, descendants and spouses of stepchildren, spouses of siblings and siblings of spouses, spouses of siblings of spouses, spouses of other descendants,
- Tax group 3: other acquiring parties.

Special rules apply to acquisition of assets or property rights through close relatives of the donor/testator, who include the spouse, descendants, ascendants, stepchild, siblings, step-parents. In such cases, the acquisition of assets or property rights will be exempt from tax if:

- the acquisition of assets or property rights is reported to the relevant tax office within six months from the establishment of the tax obligation (with the exception of agreements concluded in the form of a notarial deed)
- in the case of cash donations – the taxpayer documents the receipt with a proof of transfer to a bank account or their account maintained by a credit union or postal order.

Tax rates

Currently, tax-exempt amounts are as follows:

- for acquirers from tax group 1 – PLN 10,434.
- for tax group 2 – PLN 7,878.
- for tax group 3 – PLN 5,308.

The tax scale is set out as follows:

Taxable base in PLN		**Tax scale**
more than	**up to**	
3) from acquirers from tax group 3		
-	11,128	3%
11,128	22,256	PLN 333.90 + 5 per cent of the surplus over PLN 11,128
22,256		PLN 890.30 + 7 per cent of the surplus over PLN 22,256
from acquirers from tax group 2		
-	11,128	7%
11,128	22,256	PLN 779 + 9 per cent of the surplus over PLN 11,128
22,256		PLN 1,780.60 + 12 per cent of the surplus over PLN 22,256
3) from acquirers from tax group 3		
-	11,128	12%
11,128	22,256	PLN 1,335.40 + 16 per cent of the surplus over PLN 11,128
22,256		PLN 3,115.90 + 20 per cent of the surplus over PLN 22,256

Tax returns

Taxpayers must file tax returns, save for instances where tax is withheld by a withholding agent (for agreements concluded in the form of a notarial deed). The deadline for filing tax returns is one month from the date of establishment of the tax obligation. Documents affecting the determination of the tax base to be attached to the tax returns.

TRANSFER PRICING

Overview

Transactions carried out by taxpayers with related parties should be concluded on the market level, according to the arm's length principle.

Polish TP regulations distinguish several kinds of relations between parties: capital (indirect or direct share of at least 25% of the capital in the controlled entity), managerial, supervisory or control (including the effective ability to influence key business decisions of the entity), family-related or resulting from an employment or property relationship.

IC transactions, which should be covered by TP documentation

The transfer pricing documentation should be prepared for transactions of one kind concluded with related entities, whose value, less the value added tax, exceeds these documentation thresholds in FY 2022:

PLN **10 million**	– for a **commodity transaction**
PLN **10 million**	– for a **financial transaction**
PLN **2 million**	– for a **service transaction**
PLN **2 million**	– for **other transactions** than specified in the above points
PLN **2.5 million**	– for **financial transaction** other than the controlled ones (other than transactions with related parties) performed **with an entity with its place of residence, registered office or management board in the territory or in a country applying harmful tax competition**
PLN **500 thousand**	– for **non-financial transaction** other than the controlled ones (other than transactions with related parties) performed **with an entity with its place of residence, registered office or management board in the territory or in a country applying harmful tax competition**

Documentation thresholds are set separately for:

- each controlled transaction of one kind, independently of the allocation of the controlled transaction to commodity, financial, service or other transactions,
- the cost and revenue side.

Master File documentation is mandatory only for entities covered by the consolidated financial statements within the capital group and the amount of consolidated revenues exceeded PLN 200 million (for previous tax year).

CBC notification submitted by entities from the capital group obliged to submit Country-by-Country reporting.

Country-by-country reporting – is mandatory for group that consolidates financial statements and the amount of consolidated revenues exceeded PLN 750 million (for previous tax year).

TP statutory obligations

TP obligations for particular year cover:

1. **Local file documentation –** includes description of taxpayer and IC-transactions above TP thresholds.
2. **Benchmarking analysis for IC-transactions covered in Local file documentation.**

3. **Statement that TP documentation** is prepared for particular year – includes confirmation that the transfer prices have been set at the arm's length level filled to tax office. Since FY 2022 constitutes one document with TP-R form.
4. **TP-R form filled to tax office –** declaration about information with IC-transactions concluded for FY 2022 and the level of ranges from benchmarking analysis.
5. **Master File documentation –** which includes description of taxpayer's group, significant intangible assets and financial transactions of the group.
6. **Country-by-country reporting –** which includes information on the group of entities.
7. **CBC notification –** which includes an indication of the reporting unit and the state or territory in which information about the capital group of entities will be provided.

Statutory deadlines

The statutory deadline for TP obligations:

- **preparation of Local File documentation and benchmarking analyses** – 10 months after the year-end,
- **filling of information about transfer pricing (TP-R form) together with statement of preparation of the complete local file documentation** – 11 months after the year-end,
- **preparation of Master file documentation** – 12 months after the year-end,
- **submitting Country-by-country reporting** – 12 months after the year-end,
- **submitting CBC notification** – 3 months fter the year-end.

Transfer Pricing adjustments

The taxpayer is allowed to perform a transfer pricing adjustment if certain conditions are cumulatively met. Not every adjustment between related entities is the transfer pricing adjustment.

Safe harbour rules

Polish transfer pricing rules recognise safe harbour regulations for financial transactions (loans) and low value-adding services. To qualify for the safe harbour, the particular transaction must meet certain conditions.

Transactions meeting safe harbour rules are not required to be covered by Local file documentation and benchmarking analysis. However, taxpayers are not exempt from reporting these transactions in the TP-R form.

Advance Pricing Agreements

The best way to manage the transfer pricing risks, including reassessment of additional taxable income, is to conclude an Advance Pricing Agreement, so-called APA, with the Polish Head of the National Revenue Administration.

APAs are possible for transactions that have not yet been executed or transactions that are in progress at the time the taxpayer submits an application for an APA. The APA may apply at the earliest from the date of filling the APA request.

The Advance Pricing Agreements can be in force for up to five years and at the end of this period the agreement can be renewed (through a simplified procedure) if the key elements have not changed substantially.

In Poland, unilateral, bilateral and multilateral Advance Pricing Agreements can be concluded.

MAP disputes

A MAP request may be submitted in case of taxation that is inconsistent with the relevant international treaty (Double Tax Agreement (DTA), EU Arbitration Convention (AC). The MAP request should be made to the Ministry of Finance in Poland.

Penalties

Financial **sanctions up to 720 daily rates** for:

- non-preparation of Local File and/or Master File documentation,
- preparation of Local File and/or Master File documentation inconsistent with the actual terms,
- non-submission or submission of false TP-R form.

Financial **sanctions up to 240 daily rates** for:

- late preparation of Local File documentation,
- late preparation of Master File documentation,
- late submission of TP-R form.

Additional tax liability:

- **10%** of the additionally assessed taxable income resulting from decision regarding additional tax liability
- **Doubled (20%)** when certain conditions are met,
- **Tripled (30%)** when certain conditions are met.

MDDP

REAL ESTATE TAX

Overview

Real estate tax [**RET**] is levied on a mere possession of particular assets, here: real estate and building structures. RET is a local tax that means that executive bodies of municipalities are tax authorities.

Subject of RET taxation

Subject of taxation of RET are:

- lands,
- buildings or their parts,
- structures or their parts associated with business activity.

The basic types of structures subject to taxation are: paved areas (including car parks), external connections (e.g. power lines), fences, industrial facilities, tanks.

Taxpayers

The RET taxpayers are: individuals, legal persons, and organisational units including partnerships, which are:

- owners,
- freeholders,
- perpetual usufructuaries or
- dependent holders of real estate being an ownership of the State Treasury or municipalities (e.g. tenants).

Tax base

Depending on a subject of taxation, the tax base of RET is:

- area (lands),
- usable area (buildings),
- initial value or market value (structures).

Rates

The rates of RET are determined by the council of each municipality and are applied only within their jurisdiction. The maximum allowable rates are specified in the RET Act. Resolutions regarding RET rates in each municipality and related tax-forms should be available on a web page of each municipality.

Subject of taxation	Maximum tax rate for 2023
Lands associated with business activity	1.16 PLN/m^2
Other lands, including those occupied by public benefit organizations conducting benefit activity	0.61 PLN/m^2
Residential buildings	1.00 PLN/m^2
Buildings designated for business activity	28.78 PLN/m^2
Other buildings, including those occupied by public benefit organizations conducting benefit activity	9.71 PLN/m^2
Structures	2% of initial value (shown in the books of accounts as the basis for depreciation) or market value

In view of objective criterion (for example the type of business activity), the council can diversify the tax rates, but on the other hand the council cannot diversify rates of RET basing on the subjective criterion.

Tax obligation

As a rule, tax obligation arises on the beginning of a first day of the month following the month in which circumstances justifying the creation of this obligation occurred. If that circumstance is formation of a new building or a new building structure, the tax obligation arises on 1st January of the year following the year in which construction was completed or in which the use of the building or structure or parts thereof was commenced before the final completion of the construction works.

Exemptions and exclusions

Tax exemptions and exclusions from RET applies, among others, to:

- farmlands and forests not occupied for business activity (which are, however subject to agricultural tax or forest tax),
- fallow land, ecological sites, woodland and shrubland, except for those used to business activity,
- land occupied for lanes on public roads,
- real estates occupied to conduct unpaid statutory public benefit activity by public benefit organizations,
- other exemptions introduced by resolutions of municipalities,
- historical monuments,
- railway and port infrastructure and real estate located in airports.

Assessment

Taxpayers who are **natural person** are obliged to:

1. submit an information, within a specified period, on real estates and building structures,
2. pay instalments proportionate to the duration of the tax obligation within following deadlines: 15th March, 15th May, 15th September and 15th November of the tax year under administrative decision issued by local tax authority every year.

Taxpayers being a **legal entity or organisational unit,** including partnership are obligated to:

1. submit a declarations on RET for each the tax year,
2. correct tax declaration in case of changes in the tax obligation (if circumstances justifying obligation to perform adjustment occur),
3. pay amount of RET, in instalments proportionate to the duration of the tax obligation within the 15th day of each month (and for January – before 31st January).

If the object of taxation is co-owned by natural and legal persons, those natural persons are obliged to submit a tax return and pay RET on the terms applicable to legal persons.

MDDP

CUSTOMS

Overview

Within the EU, incl. Poland customs regulations are unified. The basics European customs regulations include: Union Customs Code (UCC), with its Delegated Regulation and Implementing Regulation.

The EU customs provisions include in particular trade agreements (bilateral and multilateral) concluded between the European Union and non-EU countries.

Additional to the EU provisions, national regulations should be also taken into account, i.e. the Act of 19 March 2004 – Customs Law.

Customs procedures

Customs procedures are:

- release for free circulation (import of goods),
- special procedures,
- export of goods.

Special customs procedures cover:

- **Transit** including internal transit and external transit,
- **Storage** including customs warehousing and free zones,
- **Processing** including inward processing and outward processing,
- **Specific use** including temporary admission and end-use.

Tariff classification

Before the submission of the customs declaration, it is necessary to carry out a detailed analysis and determine the relevant customs tariff code. The correct classification of goods is important to determine the amount of customs duties (according to the chosen duty rate). For goods which classification is complicated or unclear, UCC provides the possibility to apply for the Binding Tariff Information (BTI).

The Binding Tariff Information (BTI) is an administrative decision issued at request. The BTI confirm the tariff classification of goods determined by the entrepreneurs. Having a BTI decision secures the regularity of the tariff classification of goods and the duty rate applied during the import or export of the goods.

Origin of goods

Customs origin of goods means the country or region/jurisdiction, where products are made within the meaning of rules of origin. The origin of goods is divided into two categories:

- non-preferential origin of goods – mostly to identify whether the origin country is under customs restrictions,
- preferential origin of goods – mostly to determine the duties or charges to be levied on the products.

Customs value

Customs value means the value of goods for the purposes of levying ad valorem duties (duties that are calculated based on the value) of customs.

The transaction value method is the first method that should be used for the determination of the customs value. According to this method, the customs value is determined regarding the price actually paid or payable for the goods (adjusted if necessary), which includes all payments made or to be made in the future as a condition of sale of the imported goods.

Where the transaction value method cannot be applied, the customs value shall be determined, as appropriate, according to:

- the transaction value method of identical goods,
- the transaction value method of similar goods
- the computed method,
- the deductive method,
- the fall-back method.

AEO

The entrepreneur who has been granted AEO status is treated by the customs authorities as a reliable economic operator. To apply for this status, the entrepreneur must meet several conditions:

- compliance with customs and tax legislation, including no conviction for a serious criminal offense related to the applicant's business activities,
- the applicant demonstrates that he has a high level of control over his operations and the movement of goods, ensured by a system for managing commercial and, where applicable, transport records, which allows appropriate customs controls to be carried out,
- proven solvency,
- and – depending on the type of AEO status:
  - meeting practical standards in terms of customs competence or professional qualifications directly related to the conducted activity (AEOC),
  - appropriate safety and security standards (AEOS) including not committing serious breaches or repeated breaches of customs and tax legislation, being solvent and having an adequate records management system.

The entrepreneur who obtains the status of authorized economic operator (AEO) may be granted authorization to use certain simplifications in accordance with customs legislation (authorized economic operator for customs simplifications – AEOC) or security and safety (authorized economic operator for security and safety – AEOS).

Among many advantages of having AEO authorization, the few should be point out:

- easier admittance to customs simplifications,
- fewer physical and document-based controls,
- prior notification in case of selection for physical control (related to safety and security),
- prior notification in case of selection for customs control (related to other customs legislation),
- priority treatment if selected for control,
- recognition as a secure and safe business partner,
- improved relations with customs and other government authorities.

EXCISE

Overview

Excise duties are indirect taxes that are levied on certain products at one stage of their lifecycle in Poland, in particular during its production, importation from a third territory or introduction into Poland from another Member State of the European Union (EU).

Excise duty law is harmonised at the EU level by Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty called as "Horizontal Directive" and other directives covering excises on specific products. These directives have been transposed into the Polish legislation by the Polish Excise Duty Act of 6 December 2008 (consolidated text OJ 2022, item 143, as amended) and Polish Excise Duty Executive Acts.

In Poland the excise duty covers energy products, electricity, alcoholic beverages, tobacco products, dried tobacco, liquid for electronic cigarettes and novel tobacco products, as well as passenger vehicles.

What is taxable

The Polish Excise Duty Act provides different rules to particular types of goods, i.e. there are special regulations which are applied i.e. to alcoholic beverages, electricity, energy products, coal products, tobacco, gas products, passenger cars.

Generally the taxable events for excise duties are the manufacture, the importation and the intra-Community transaction of the products.

In case of importation excise duty is payable upon introduction of the products into the EU, unless imported under a duty-suspension arrangement.

As refers to the intra-Community transactions excise duty is payable in the Member State to which the products are delivered in order to be used or consumed.

Excise duty rates

The Polish Excise Duty Act specified excise duty rates to particular types of goods, i.e. to alcoholic beverages, electricity, energy products, coal products, tobacco, gas products, passenger cars.

Poland, as one of the countries which have not adopted common currency (EUR), is obliged to annual review of the level of taxation of excise goods, depending on the euro exchange rate in relation to the national currency for a given year, and to possible correction of excise duty rates.

Excise duty rates in Poland are expressed in particular in:

- PLN per unit of the product, i.e. for petrol (unleaded), gas oil (heating fuel), gas fuel (propellant) – liquified (e.g. LPG), natural gas – liquified and gaseous (propellant) (e.g. CNG), biocomponents constituting fuel in their own right, electricity, ethyl alcohol, beer, wine.
- The percentage of the tax base i.e. for cars for the transport of persons with motor capacity >2000 cm^3, other cars for the transport of persons.
- The percentage of the maximum retail price or PLN per unit of the product and the percentage of the maximum retail selling price, i.e. cigarettes.

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Excise duty exemptions

The Excise Duty Act provides a wide system of excise duty exemptions which may apply in specified cases. Excise duty exemptions cover in particular:

- Energy products, i.e. consumed to produce electricity, consumed for navigation purposes (including fishing trips) if they are properly marked and coloured,
- Electricity or in agricultural, in mineralogical process and electricity, i.e. generated from renewable energy sources, consumed to produce electricity, consumed to produce combined electricity and heat, used for chemical reduction purposes and in electrolytic, metallurgical and mineralogical processes, used by an energy-intensive business,
- Selected types of ethyl alcohol and alcoholic beverages, i.e. used in the manufacture of medicines, alcohol added to a product not intended for human consumption or for the maintenance and cleaning of production equipment used in the production process,
- Motor fuels acquired within the European Union or imported, intended to be used during transport and imported in standard tanks of commercial motor vehicles and gas tanks, tanks mounted in special containers, and tanks on aircraft or vessels (in specific quantities),
- Excise goods moved for own use for non-commercial purposes, i.e. for tobacco products, liquid for electronic cigarettes, novel tobacco products and alcoholic beverages in quantities specified in the Excise Duty Act, appropriate for intra-EU acquisition and import;
- Selected coal and gas products (used for heating purposes);
- Passenger cars, i.e. an electric vehicle and a hydrogen-driven vehicle.

Obligations regarding excise duty

In order to carry out business activities relating to excise goods, an entities conducting such an activity needs to comply with a number of obligations regarding an excise duty.

The excise obligations depends on particular goods, i.e. there will be different obligations in related for example to energy products, tobacco, electricity, gas or coal products, etc. The excise obligations might be as follows:

- registration in the Central Register of Excise Operators (CRPA) on PUESC before the date of the first excisable transaction,
- submission of an excise declaration,
- payment of excise duty,
- keeping the excise records.

New rules on movement of excise goods

As of 13 February 2023 entered into force the changes regarding the intra-Community movements of excise goods outside duty suspension procedure.

The changes refer to trading excise goods listed in the Annex 2 of Commission Delegated Regulation (EU) 2022/1636 (OJ EU. L. 2022 No. 247, p. 2). According to the Polish provisions the list of such excise goods is specified in the Annex 2 to the Polish Excise Act and include such excise products as beer, wine, vodkas, liqueurs and other spirituous beverages, lubricants, natural (liquid) gas, selected cyclic, selected anti-knock preparations, anti-corrosive preparations, cigarettes, smoking tobacco, cigars and cigarillos.

According to the changes, entities trading excisable goods are required to apply for these new authorisations (called also as an excise number). For the sender is required the Certified Consignor authorisation, while for the receiver the Certified Consignee authorisation is needed.

As of 13 February 2023 the Certified Consignor and the Certified Consignee are required to use the Excise Movement and Control System (EMCS) to move excise duty-paid goods. The move of such goods within EMCS is documented by the electronic Simplified Administrative Document (e-SAD) instead of Simplified Administrative Document (SAD).

The planned introduction of Central Register of Excise Goods (CEWA)

As of 1 February 2024 the introduction of the Central Register of Excise Goods (CEWA) is planned.

The Central Register of Excise Goods (CEWA) will be a system for keeping records provided free of charge by the tax authorities in Poland to all entities obliged to keep excise records in Poland.

In the case of entities which keep excise records directly in their financial and accounting software (ERP), the CEWA will allow data to be transferred for the preparation of records via API.

However the taxpayers will be able also to keep records directly in the CEWA (online).

About MDDP

MDDP Michalik Dłuska Dziedzic and Partners is the most successful independent Polish tax advisory firm operating on the market since 2004. Our team consists of nearly 200 experts in the fields of VAT, income taxes, transfer pricing, international taxes, local taxes, tax and tax controversy, and customs and excise duties. MDDP conduct pioneering tax cases and innovative projects.

MDDP Group is a leading Polish firm providing comprehensive advisory services in the field of tax, law, business consulting, accounting and payroll outsourcing, and access to professional knowledge through training workshops and seminars. The MDDP Group team draws on the insights and experience of over 450 experts.

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