Doing Business in Poland 2024

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Contents

Law

Tax

Accounting

Corporate Law in Poland

Setting up business

Foreigners can set up business in Poland in many ways. Running a business activity by foreign persons (individuals without Polish citizenship or organizational units based outside Poland) depends mostly on the country of origin of the investor who intends to start doing business in Poland.

Foreign persons from Member States of the European Union, or the European Free Trade Association (EFTA) – party to the Agreement on the European Economic Area (Iceland, Liechtenstein, Norway, Switzerland) may take up and pursue economic activity in the territory of the Republic of Poland on the same principles as Polish citizens.

Foreigners from outside of European Economic Area must comply with a number of additional requirements such as having a permanent or temporary residence permit or a Pole's Card or take part in certain government programs (e.g. Poland Business Harbour);

When starting a business in Poland, the entrepreneurs may choose from a registered individual entrepreneurship, or incorporating partnerships or companies, in particular:

- civil law partnership;
- registered partnership;
- partnership;
- limited partnership;
- limited joint-stock partnership;
- limited liability company;
- joint-stock company;
- simple joint-stock company;
- branch office of foreign entrepreneur.

Moreover, foreign entrepreneurs may wish to open a representative office, which requires an entry in the register of representative offices of foreign entrepreneurs. In doing so, it should be borne in mind that representative offices may only carry out advertising and promotional activities.

In partnerships day to day business is conducted by the partners – owners of the business. On the other hand, in companies the business is conducted by the members of the management board.

Members of the management board are appointed by a resolution of the shareholders unless the company's articles of association provide otherwise. Only individuals may be appointed to the management board regardless of his/her nationality.

The sole appointment the foreigner to be the member of the management board does not entitle to reside on Polish territory. In order to stay legally, the foreigner must have a national visa, a Schengen visa from another country, hold visa-free travel (applies to Ukrainian citizens) or obtain a work permit.

Certain companies have a supervisory board that oversees the activities of the management board. This corporate body provides an additional protection against unlawful actions of the members of the management board.

Shareholder's resolutions can be adopted at a shareholder's meeting, or without holding shareholder's meeting (if all shareholders agrees) or by means of distance communication, such as Skype or MS teams.

Moreover, individuals cannot be appointed to management board if they are convicted for the crimes specified in Article 18 § 2 of the Commercial Companies Code (i.e. crimes against the security of economic transactions or against the activities of state and local government institutions).

Note that, regardless of which of the above forms of business is most suitable for you, the registered seat has to be within territory of Poland.

Depending on the type of business selected, in order to conduct the business activity, the entrepreneurs must:

- draft in a presence of notary or by filling electronic application (only if you have PESEL number) an articles of association or statute;
- register the company in the National Court Register or Central Register and Information on Economic Activity;
- open a bank account for the business;
- register the employees in the Social Security Office (ZUS);
- open books of accounts and commence statutory reporting activities, such as uniform control file (JPK);
- pay up share capital (only in companies) or to make contribution (only in partnerships);
- fill an application to Register of the Ultimate Beneficial Owner;
- establish necessary corporate bodies, e.g. management board in limited liability company or supervisory board in joint stock company.

In practice, the registration of a business takes a few weeks and comes to filing in forms with the competent authorities. Due to the level of complexity of the required forms, entrepreneurs often rely on the advise of the legal advisors, who assist them in selecting the best possible solutions for the newly-established business.

Banking and Finance

Financing of business in Poland in a nutshell

a. Sources of business financing in Poland

The economic potential of Poland, its stable banking system and supportive government policies make it altogether a promising destination for locating businesses and establishing new business relationships. However, it may prove challenging to secure the necessary financing as to allow business growth and stability. It is then beneficial to explore and navigate through different ways of how international entrepreneurs can take advantage of financing opportunities available in Poland in order to facilitate their relocation and new establishments successfully and effortlessly.

There is a number of possible sources for foreign companies operating on the Polish market that may advantage collecting necessary business financing. Examples of such sources include above all:

b. Bank Financing

Bank financing is one of the most common ways of financing businesses locating their activity in Poland. Successfully obtaining bank financing in a form of a loan may require securities and collateral, and usually businesses applying for a loan must have a solid business plan and a good credit score. It is noteworthy that banks in Poland may present different requirements and regulations that those in your country, so it should be important to conduct an appropriate research to understand these differences before applying for financing. The most effective way to ensure a smooth process would be to meet with your local bank representative and get to know and understand all of the options and procedures.

c. Leasing

Leasing is a financing option allowing businesses to acquire equipment or other assets while establishing their activity in Poland. It is a contract in which a party, in this case a business, rents equipment or another asset for a set period of time with an option to purchase the asset at the end of the lease term. Leasing may require a security deposit. This can be a suitable option for those businesses that require certain equipment, but do not have the capital to purchase it outright. As many firm do provide leasing contracts, it is possible to choose the best option for your company.

d. Factoring

Another financing option is factoring, which, in simplest terms, allows businesses to sell their receivables to a third-party, known as a factor. It consist of quick conversion of invoices issued by the company into cash and may be a useful option for those business establishments that may need quick cash flow, as the factor provides the business with immediate cash, while assuming the responsibility of collecting payments from customers who owe the receivables. There are several firms on the Polish market that provide factoring options to choose from.

e. Private Financing

Private financing or financing from private investors is another possible option for obtaining financing by new business establishments. Private investors, such as business angels or venture capitalists, provide funding in exchange for equity in the company and may also offer guidance, experience and expertise that help the business grow in the new location.

f. EU funding

There are also some noteworthy financing resources provided by the European Union to EU-based business. Those resources include loans, grants, equity financing and some more specific programs for foreign-originated business entities planning to open a business in Poland. It is possible to obtain advisory services from one of the many consulting companies operating on the Polish market regarding choosing an appropriate type of funding for your business and also filling and submitting required application in the name of the applicant. Receiving EU funding does however require the business to maintain activity in the selected European country through the so-called durability period, so for 3 years in regards to small and medium enterprises and for 5 years in regards to large enterprises.

Other Financing Options

Besides the financing options listed above, there are some additional ways for new businesses to obtain necessary financing. Those means include **crowdfunding**, so raising money from a large number of people who each contribute a relatively small amount, typically through an online platform, or **invoice financing**, which allows for short term borrowing against outstanding invoices.

2. Collaterals

As mentioned above, obtaining a loan from a bank while applying for bank financing may lead to the need of establishing certain kinds of collateral as a mean to secure the loan. Establishing a form of collateral on company's assets can be beneficial for both the borrower, for whom it allows access to financing that might have been unavailable without a certain security and the lender, for whom it is a mean to reduce the risk of default as well as to recover the loan amount if the borrower fails to repay it.

The required form of collateral is chosen based on the creditworthiness of the borrower and the nature of the loan itself. For those reasons a company with a stronger credit rating can be allowed to provide fewer securities than a company with a weaker position on the market.

The main forms of security under Polish law are:

a. mortgage over real property;
b. civil law pledge over movables or rights;
c. financial pledge over the rights to cash resources, credit receivables and financial instruments;
d. registered pledge over movables, rights or collections of movables or rights;
e. surety;
f. guarantee;
g. bank guarantee;
h. assignment of rights;
i. security transfer of ownership;
j. security deposit;
k. statement on submission to enforcement (in form of notarial deed);
l. promissory note/bill of exchange.

For details about selected most common forms of securities, see the highlights below.

Registered pledge over movables, rights or collections of movables or rights

Registered pledges over movables, rights or collections of movables of rights are created by a written agreement between the borrower (in this case known as the pledgor) and the bank (in this case known as the pledgee) and a subsequent entry into the pledge register maintained by the registry court. Registered pledges may also be established over future assets as these will be encumbered by the registered pledge upon their acquisition by the pledgee.

It is important to note that there are certain drawbacks associated with this type of security, such as a lengthy registration process, court fees and an inconsistent practice of the registry court with respect to non-typical objects of a pledge.

A pledge established over assets allows the bank a priority claim over the company's assets in case of default, meaning that the bank can liquidate the pledged assets to recover the loan amount. When registering a pledge over a varying set of assets, the pledgee may and usually will require the pledgor to update the list of assets from time to time and file such an updated list with the registry court. Establishing a pledge over shares does require a notification of the company in which the shares are being held.

Ensuring a successful enforcement of a registered pledge usually requires some extra steps besides fulfilling the standard requirements outlined in the paragraph above. The main one would be to ensure that the articles of association of a limited liability company are reviewed and amended in accordance with the established security. It is especially important, as the articles of association may impose certain limitations on creating a registered pledge over the company's assets, for example by introducing requirement of obtaining consent from the shareholders.

Assignment of rights from existing agreements

An assignment of rights is established in a form of a written agreement between the borrower, or an assignor, and the bank, which in this case acts as an assignee. Under the agreement, the assignee is entitled to demand the payment of assigned receivables upon fulfilment of the conditions set forth in the assignment agreement, known as the occurrence of event of default. It should also be noted that the agreement will be effective in case of insolvency of the assignor only if it has a certified date.

The negatives associated with this type of collateral are that, as all the debtors under the assigned receivables need to be notified of the assignment, such notifications may prove time-consuming in the event of many assigned contracts. On the other hand, if the debtor has not been appropriately notified of such assignment, any payment made to the assignor will cause discharge of debt.

It is possible also to assign future contracts to the bank (for example receivables under a future lease agreements in a real estate finance transaction). In such case it is recommended that the assignor be contractually obliged to confirm the assignment of those claims as they arise.

Mortgage over real property

Mortgage is the only security established over a real property that is seen as valuable by the bank. It is created by a written agreement between the bank, acting and the mortgagee and the mortgagor, which in this case is the borrower and a subsequent entry into the land and mortgage register. Mortgages may also secure existing, conditional and future receivables or more than one receivable. The main benefits of the mortgage is that it provides the bank with the right to satisfy its cash receivables from sale of the real property in priority to other creditors of the debtor, while the negative include a time-consuming registration proceedings and the cost of establishment.

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Note that the process of creating a security in favor of the lender requires careful planning, legal expertise and consideration of the pros and cons of providing a specific collateral. Following the necessary steps, with a special focus on compliance with Polish law and regulations and standard market practice, can help to ensure that the security is properly established and enforceable in the event of default. Establishing a required security is however always related to certain drawbacks. Mostly it can limit the company's ability to use the secured assets for other purposes, such as selling or leasing them, and reduce the company's flexibility in obtaining additional financing in the future.

3. Tips on how to start the process of financing your business in Poland

A smooth and successful establishment of your business in Poland can be ensured by following a set of carefully recommended tips:

a. Opening a Bank Account

The most important step to be undertaken in order to obtain business financing in Poland is to open a Polish bank account in accordance with applicable requirements. As there are many possible offers suitable to different types of companies, it is important to conduct a through research and choose the best fit offer for your business.

When choosing such an offer you should consider factors such as fees, interest rates and the customer service. After selecting the best offer it will be necessary to provide a set of documents, such as corporate document like the Articles of Association, business registration documents and tax identification numbers. In many cases banks offer some specific solutions for international businesses, including abolition of certain fees, commission or simplifications in the process of opening an account.

Other documents may be require to ensure the compliance with applicable, standard regulations such as KYC and AML. KYC regulations require banks to verify the identity of their customers and collect certain information about them. For your business it may mean the need to provide documents relating to the company's name, registration number, address, and tax identification number, information about the company's owners (ultimate beneficial owner), such as their names, addresses, and identification documents.. AML regulations on the other hand ensure that banks monitor the transactions of the customers', and report any transactions deemed as suspicious to the relevant authorities. To comply with those regulations you may need to provide information about the nature of the company's business structure, the source of funding and capital, and the purpose of the conducted transaction. The bank may further on request a periodic update in terms of information or documentation relating to the requirements stemming from the AML and KYC regulations.

The typically required documentation includes company's registration documents, such as the aforementioned Articles of Association or the registration certificate, identification documents for the company's owners and authorized signatories, and other addition information, including a financial statement or a business plan. In Poland, it is usually the representatives of the company that are authorized to sign the bank documents and manage the accounts.

Please note that sometimes the information on the company in the commercial register may not be up-to-date, and it is possible for individuals who are no longer authorized to represent the company to still be listed as such in the register, so it is especially important to ensure that the authorized representatives are accurately reflected in the company's documentation that is being provided to the lending bank.

b. Building Creditworthiness and Credibility

Before approving any means of funding, lenders and investors operating in Poland review the company's credit score, financial history and reputation. The most crucial step to building creditworthiness is to establish a positive payment history, which can be managed by making on-time payments on loans, credit cards, and other financial obligations, keeping debt levels low, paying existing debts and maintaining a low credit utilization ratio. Late payments and making credit enquiries to multiple banks can negatively impact one's credit score and make it harder to access a loan in the future.

Remember to always conduct a proper paperwork. Keeping accurate financial records by tracking the expenses, incomes and profits on an up-to-date basis can help establish credibility and act as a demonstration of financial responsibility.

The preferred standard for Polish banking institutions is for the seniority of the company to be a minimum of 6 to 12 months with regular income, but it can vary depending on the particular bank.

The last important factor to building credibility is to establish and maintain a positive reputation in the business community by networking with other businesses and building a strong online presence. Such a positive reputation is a key to building trust with lenders and investors, making it easier to secure funding.

c. Submitting a Credit Application

After making all the necessary inquires, the first step in applying for an investment loan for a company would be to contact a customer adviser from the preferred bank, who can highlight the main terms of the loan and even help to negotiate some of them.

Prior to submitting a loan application, as mentioned previously, it will be needed to gather all the required documentation, including usually the financial statements, tax returns, business plans and financial projections. After the application is submitted, it may take several weeks to obtain a decision. The specific waiting period will depend on the complexity of the loan and the lender's internal processes.

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Polish market is filled with a wide range of offers pertaining to financing possibilities for international businesses. Above, we highlight the variety of funding options available to ease and smooth out the transition. You should still always remember to conduct a throughout research, carefully assess your funding needs, ensure your financial credibility and understand the collateral requirements. The most important tips for establishing a successful position on the Polish market would be to keep accounting and corporate records up-to-date, maintain low debt ratio and establish a solid security in favor of lenders. Following the presented tips may allow your company to position itself as trustworthy from Polish lenders' perspective and will navigate the challenges and opportunities of relocating or starting a new establishment in Poland.

Labour Law

1. Employer's duties before hiring an employee

Duties related to employing foreigners from outside the EU

Before commencing work by a foreigner, the employer is obligated to request from them a valid document entitling them to stay in Poland (e.g., a national visa).

If required by regulations, before allowing the foreigner to work, the employer should obtain a document legalizing the work of the foreigner (e.g., a work permit, a statement on entrusting work).

Employment Contracts

An employment contract should specify: (i) the parties to the contract; (ii) employer's address; (iii) the type of contract; (iv) the date of its conclusion; (v) the terms of work and remuneration (in particular: type of work, place(s) of work, remuneration for work with an indication of its components, working hours and commencement date).

Additionally, an employment contract for a probationary period should indicate the duration of the probationary period or the day of its termination.

Referral for Preliminary Medical Examinations

Before allowing an employee to commence work, the employee should undergo preliminary medical examinations to determine their fitness for the specific position.

The employer is obligated to issue a referral for medical examinations and indicate the healthcare facility where these examinations will be conducted.

The employer cannot permit an employee to work without a current medical certificate confirming the absence of contraindications to work in the specified position.

Training in Occupational Health and Safety

Before allowing an employee to commence work, the employee is required to undergo initial occupational health and safety (OHS) training. Initial OHS training consists of two parts: (i) general introductory training (known as "general instruction"); (ii) job-specific introductory training (known as "job instruction").

2. Employer's Responsibilities During the Employment Relationship

Reporting an Employee to Mandatory Social Insurance

The employer is obliged to report each new employee to the Social Insurance Institution (Zakład Ubezpieczeń Społecznych) within 7 days from the commencement of the employment relationship.

Obligation to Contribute to the Employee Capital Plans (PPK), When Applicable

Employee Capital Plans (PPK) are a universal and voluntary savings program generally organized by every employer. The employer is required to enter into: (i) a management agreement for PPK, and (ii) an agreement to administer PPK on behalf of the employee (unless the employee submits a declaration of opting out of PPK). The employer is obligated to calculate and transfer monthly contributions to PPK.

Information Related to Employment

No later than 7 days from the day the employee is allowed to start working, the employer informs the employee, in paper or electronic form, about the basic terms of employment (the scope of information depends on whether the company has introduced work regulations).

Within 30 days from allowing the employee to start working, the employer is obligated to inform the employee about the name of the social security institution to which contributions for social insurance related to the employment relationship are paid.

Obligation of Monthly Social Insurance Contributions

The employer is obligated to pay contributions for social insurance, health insurance, and the labor fund for each employee on a monthly basis. Alongside the payment of contributions, the employer is required to submit the relevant settlement documents to the Social Insurance Institution each month.

Obligations Related to Income Tax Withholding

As the payer of personal income tax, the employer is obligated to calculate a monthly advance payment for the employee's income tax and remit that amount to the tax office. This amount is deducted from the employee's gross salary.

The employer is required to designate an individual whose responsibilities include calculating and withholding taxes, as well as timely remitting the withheld amounts to the tax office.

Maintaining Personnel Records

The employer is obligated to maintain personnel records for each employee. These records can be kept in either paper or electronic form, utilizing a qualified electronic signature.

Personnel records consist of 5 parts: (i) documents related to applying for employment; (ii) documents detailing the course of employment; (iii) documents related to the termination of the employment relationship; (iv) documents related to the employee's disciplinary responsibility (reprimands, warnings); (v) documents related to monitoring the employee's sobriety and checking for the presence of substances in their body that act similarly to alcohol.

Documentation Management in Employment Matters, Including Timekeeping Records

The employer is obligated to maintain documentation related to the employment relationship, including the timekeeping records of each employee. This enables the accurate determination of the employee's remuneration.

Announcements Regarding Work Schedules and Time Distribution

Work systems, schedules, and established periods for timekeeping are determined through announcements if the employer is not obligated to implement work regulations (i.e. employing fewer than 50 employees).

Responsibilities in the Field of Health and Safety at Work

Occupational Health and Safety Training:

Employers are required to organize occupational health and safety (OHS) training for employees. The initial periodic training should generally take place within 12 months from the start of work at a specific position.

Medical Examinations:

Employers have an obligation to issue referrals for periodic medical examinations (as specified by labor law) and for control medical examinations (in case of incapacity for work exceeding 30 days due to illness).

Remote Work

Introduction of Appropriate Regulations: The implementation of remote work in an organization necessitates the creation of the following documents:

a. Remote work principles should be outlined in the Remote Work Policy, either after consultation with employee representatives or in agreement with the respective employee.
b. Development of Information on Safe and Hygienic Conditions for Remote Work.
c. Preparation of a Risk Assessment for the Remote Work Position.
d. Development of Procedures for the Protection of Personal Data in connection with remote work.

Occasional Remote Work: Remote work may be performed occasionally, at the request of the employee submitted in paper or electronic form, for a duration not exceeding 24 days in a calendar year. Regulations regarding remote work are limited in their application to occasional remote work.

Monitoring

An employer intending to implement visual surveillance, email monitoring, monitoring of company equipment, or monitoring of employee activities on company equipment is obligated to establish appropriate in-house regulations.

Protection of Intellectual Property

Intellectual Property Law in Poland is determined by EU legislation and international agreements. For businesses, there are various instruments to extend the protection of their IP rights to the territory of Poland.

Under the Polish laws intangible assets enjoy protection of copyrights (and related rights), as well as industrial property rights (including the provisions against unfair competition). They can also be protected on contractual basis.

Depending on the company's business profile, any type of protection can be beneficial.

Copyright and related rights

Polish copyright laws apply to **works**, i.e. any expression of creative activity of an individual character, fixed in any form, irrespective of value, purpose and manner of expression. Protections exists from the moment the work takes a fixed form. No registration or publication is required. Works produced or obtained while conducting business abroad enjoy national protection based on international agreements.

As in other countries, in Poland even a small amount of creative input is needed to obtain protection, which involves both opportunities and risks on the part of companies. In particular, using slogans or quotes may give rise to infringement claims from third parties.

Only the **mode of expression** is subject to protection. For example, technical documentation containing know-how (e.g. formulas used for production) can be copyrighted, but the protection covers only the wording or drawings and not the content itself.

Assignment of copyrights is subject to country-specific requirements, which must be taken into consideration when they are to be transferred to the already set up local company. *First*, the assignment must be based on a contractual relationship. Assigning the copyrights without any clear cause may be invalid. *Second*, the copyright transfer agreement must be executed in writing under pain of nullity. *Third*, the agreement must specify the **fields of exploitation** of the copyrighted work. The concept of fields of exploitation is rather unknown under the law of other countries (French, German, English, American) or in the EU law. This concept has also never been defined in Polish law. Generally, it relates to the forms of use of the work (fixation and reproduction of a work, distribution of copies, other ways of dissemination, *etc.*). The copyright transfer agreement covers only the fields of exploitation that were expressly mentioned therein. There is a risk that the agreements will be considered null and void if the fields of exploitation are not mentioned in it.

Works made for hire are not subject to uniform rules. Generally, the work is owned by the creator, unless there is a binding agreement. For employment contracts, the work is assigned to the employer if its prepared by an employee within the scope of his or her employment (i.e. the contract covers creative work) and it is accepted by the employer. Computer programmes are an exception – in their case, the employer immediately acquires the copyright to the computer programme created by the employee, without the need for separate approval. Independent contractors need to regulate the assignment of the copyrights in the agreements governing the cooperation (e.g. commissions). Effective copyright assignment clauses are particularly important for multi-person projects in industries such as entertainment or IT.

Copyright **licensing agreements** generally do not require to be made in writing – only exclusive licenses do, under

pain of nullity. Fields of exploitation, as well as the scope, place and time of use of the work must be indicated. **Sub-licensing** is allowed only if authorized explicitly in the agreement.

Under Polish law, copyright is a bundle of two kinds of rights – **economic** and **moral**. As a rule, transfer or licensing relates only to **economic rights**. However, when entering an agreement as a business, it is also necessary to **settle the moral rights matters**, to avoid potential claims pursued on that basis. Moral rights cannot be transferred; in practice, when a party wishes to dispose of a copyrighted work completely, it undertakes not to execute the moral rights and authorizes the assignee to execute them on its behalf.

There are specific provisions for audiovisual works and computer programs.

Database protection

Poland implemented EU rules on **database protection**. Database is a set of data or any other material and elements brought together according to a particular system or method, individually accessible by any means, including by electronic means, and requiring a substantial investment in terms of quality or quantity to establish, verify or present its contents. **The maker of a database** has the exclusive right to extract or re-utilize the whole or a substantial part of the database. This form of protection is without prejudice to copyright or trade secret protection.

Rules on **copyright licensing** and **transfer** apply by analogy.

However, the protection is reserved for database makers who are individuals from the EU/EEA. No international agreements has been executed to extend the protection to third states. This means that, for example, records included in a database created in the US and then transferred to a company set up in Poland does not enjoy this specific type protection.

Intellectual Property Office

As a rule, industrial property rights need to be registered to obtain legal protection. The exceptions are the well-known trademarks and unregistered community designs, which are protected because of their use. Registration is recommended in any case.

For rights effective in the territory of Poland, there are three competent IP offices: (i) Polish Patent Office (Pol. Urząd Patentowy Rzeczypospolitej Polskiej, the UPRP), which is competent for patents, but also utility models, industrial designs and trademarks; (ii) European Union Intellectual Property Office (EUIPO), competent for community designs and EU trademarks (EUTMs); (iii) European Patent Office (EPO), responsible for the operation of the unitary procedure under which national patents (also the unitary European patent, not effective in the territory of Poland – see below) are obtained in the European Patent Convention (EPC) contracting states.

As a rule, applications for registration is also open for natural or legal persons who have their residence or place of business outside the territory, for which registration is sought. However, as a rule, such persons need to be represented by a professional representative, e.g. (European) patent attorney.

UPRP, EUIPO and EPO accept online filings (i.e. as opposed to paper filings), which are usually faster and involve lower fees.

EUIPO administers the SME Fund, which enables entrepreneurs to obtain partial reimbursement for intellectual property fees (paid before the EUIPO, as well as the EPO and the UPRP).

All three offices publish extensive guidelines for registration proceedings carried out before them, which are intended to serve as reference points for examiners.

Patents

Patents are directed at protection of technological solutions, irrespectively of the sector or industry. Businesses may obtain 20-year patent protection of their inventions against disclosure. The 20-year patent protection in the territory of Poland cannot be renewed.

Protection of foreign inventions is possible in Poland according to the national laws and the rules of the EPC or other international procedural rules (in particular the Patent Cooperation Treaty, PCT). The inventions applied for patenting before the UPRP can enjoy the priority date assigned in any of the PCT states. Obtaining patents in third states is also possible through the UPRP.

Poland is not a party of the Unified Patent Court (UPC) system. Unitary protection acquired before the EPO for unitary European patents does not extend to the territory of Poland. However, businesses operating in Poland can still obtain unitary patents and can be sued for infringements in UPC system states.

Poland can be designated as a state of protection in the proceedings before the EPO. The EPO-granted patent is effective in the territory of Poland after UPRP validation.

Generally, patent applications should be filed prospectively, i.e. taking into account that the business is to enter the Polish market. Once the invention is disclosed, there is a limited possibility to extend the patent protection to the territory of Poland. If the earlier application was filed in a member state of the Paris Convention, application in Poland can be made within 12 months.

Protection of inventions is not harmonized on the EU level, apart from the (piecemeal) biotechnological patents directive. Nevertheless, Polish patent laws are generally in line with the international and regional standards of protection, in particular the EPC. Patents are granted regardless of the field of technology for inventions that are **new**, have an **inventive step** and are capable of **industrial application**.

Identically as in many other countries, only **undisclosed inventions** can be patented. There is no possibility to patent inventions already introduced into the market. Since patent applications are made public and the protection is time-limited, if a company wishes to use know-how without time restrictions or revealing it, the plans to file the patent applications should be reconsidered. Such undisclosed information can be protected as a trade secret, pursuant to tort provisions.

There are some country-specific differences in Polish patent law.

The scope of a patent is determined according to the **patent claims**. Generally, their literal wording is taken into consideration. However, the European patents (obtained in accordance with the EPC rules) enjoy protection extended to the equivalents (i.e. technical features equivalent to the elements of the protected invention). However, the application of the so-called doctrine of equivalents to national patents is subject to controversy. In a milestone judgment of 2015, the Supreme Court hinted at such possibility in relation to a national patent obtained before Poland was a party to the EPC, but the question is open.

Inter-jurisdictional patent litigation requires efficient coordination. Polish patent system rests on the **bifurcation principle** – the issue of infringement and invalidity of a patent is considered in separate proceedings, before the Patent Court and the UPRP respectively.

Under the Polish law, the right to obtain a patent is transferable. Before submitting the patent application, apart from protecting the invention from disclosure, the business decision must be made with regard to who will be the patentee. Inventors may enter into a joint invention management agreement.

If the invention is made by people from two different countries (international invention), the applicable law must be identified. Generally, due to the territoriality principle in intellectual property law, Polish law will be applicable. It applies to the right to obtain a patent and co-inventors of an international invention should be determined on the basis of this law.

However, if the invention is made by an employee, the right to obtain a patent is governed by the law governing the employment relationship. Similarly, the right to obtain a European patent is governed by the law of the country in which the employee has his or her principal employment. If such country cannot be determined, the law of the country in which the employer carries on the business with which the employee is connected is applicable.

Joint invention management agreement can be governed by the law chosen by the parties. If such choice has not been done, Polish law is applicable. Polish law is also applicable for delicts relating to infringements relating to international inventions.

If an invention is made as a **work for hire**, the employer/ordering party is entitled to obtain a patent. If an invention is made outside the scope of employment or specific order/commission, but with substantial help from an entrepreneur, the latter is entitled to use the invention for his own purposes (type of a so-called **shop right**).

Patent can be **transferred** or **licensed** on the basis of an agreement executed in writing, in both cases under pain of nullity. This must be taken into consideration if a patent is already owned by a parent company in a third state. For the transfer or license to have effect *vis-à-vis* third parties it has to be entered into the patent register, which is essential for pursuing infringement claims, among other things. However, only exclusive licensees have standing in infringement litigation. **Sublicensing** is also possible, upon approval of the patent holder; further sublicenses is not eligible. Similarly to other industrial property rights (i.e. utility models, industrial designs and trademarks), it is possible to **pledge a patent** or use them as in-kind contributions to companies.

Pharmaceutical or biotechnological inventions can enjoy extended protection on the basis of supplementary protection certificates (SPC), on condition that they relate to a medicinal product subject to marketing authorization. Substantive rules on SPCs are set out in the regulation 469/2009. The validity of the SPC in Poland may be extended on the basis of Regulation 1901/2006. The extension is possible if paediatric clinical trials have been conducted in relation to the medicinal product.

Utility models

A right to a utility model is not recognised in the EU law, but can be obtained in some countries, including Poland.

Due to their characteristics they are often called "minor inventions" – they need to be new and industrially applicable, but no inventive step is required.

The protection is limited to products of an established form, precisely their shape, construction or functionally related parts (unlike patents, which can cover substances or biological material). The technical features of a utility model can only be structural features; they cannot be defined by functional features.

This type of protection appears to be the most attractive for entrepreneurs involved in the manufacture of various **devices, tools or machinery**.

Protective right for utility models is granted by the UPRP for 10 years and cannot be renewed. The right holder is entitled to exclusive use of the utility model for profit or professional purposes throughout the territory of Poland. The protective right can be licensed pursuant to patent licensing rules applied by analogy (see patents).

Similarly to the right to obtain a patent, the right to obtain a utility model protective right is transferrable.

If an invention does not fulfil the requirements to obtain a patent, it can be transformed into a utility model application, which makes it possible to protect an intangible asset even though it does not present an inventive step.

Industrial designs

Industrial designs are harmonized on the EU level and are aimed at protecting new and individual characteristics of a product. In practice the protection of industrial designs may include furniture, clothing (designs, fabric texture), footwear, packaging, bottles, product labels or ornamentation of any kind, sanitary fittings, domestic appliances, etc.

Similarly to trademarks, the design may be protected by separate rights in various states or by EU-effective unitary right. The latter right, i.e. the community design right can be obtained at the EUIPO, providing protection for the entire EU territory, including Poland. The national registration limited to the territory of Poland is done by the UPRP.

Registered industrial design allows the right holder to exclusive use of the industrial design in a commercial or professional manner. The scope of the protection includes any design which does not produce on the informed user a different overall impression.

Contrarily to trademarks (see below) the protection is not limited to goods and services designated in the application. This means that any reproduction of the design may give rise to infringement claims.

Both on the EU and the national level industrial design registration right is granted for up to 25 years.

The registration right can be licensed pursuant to patent licensing rules applied by analogy (see patents). The community design licenses need to be entered into the EUIPO register to have effect *vis-à-vis* third parties.

Trademarks

Businesses can obtain trademark protective rights for Poland in at least three ways: (i) by obtaining a unitary EU trademark right (EUTM) in the EUIPO; (ii) by filing a national application to the UPRP; (iii) by designating Poland in international application proceedings (see below).

The application must in particular indicate the mark and the goods or services to which the mark relates. There is no possibility of registering the mark in isolation from goods or services the applicant intends to provide. The decision to register should be linked to the business decision to offer the marked goods or services, as the trade mark expires (entirely or partially) if it is not actually used.

There are absolute and relative grounds for refusing trademark applications. The absolute grounds are, in particular, the characteristics of a sign that make it unsuitable for registration as a distinctive sign (e.g. descriptive nature). Such applications are refused by the UPRP (EUIPO) *ex officio*.

Relative grounds are those relating to rights of third parties, in particular earlier marks or other rights. These circumstances can be raised in opposition by the affected parties before the UPRP (EUIPO), which opens contentious proceedings. The possibility of registering the mark depends on the outcome of the litigation. The **opposition** may be submitted to the UPRP (EUIPO) within **3 months** of the date of publication of the trade mark application.

The condition of using the international application is to own a trademark registered in one of the Madrid System member states. For trademarks registered in Poland, the right holder can file an application through the UPRP, which will be then subject to formal examination in the WIPO. After that, the intellectual property office of each designated Madrid System member performs substantive examination of the application. Registered protection rights are obtained separately in each Member State – only the procedure is uniform.

The trademark protective right can be transferred or licensed pursuant to rules similar to patents and other industrial property rights. Polish provisions require that both the trademark right assignment and the licence agreements is executed in writing. The license must be entered into the register to have effect vis-à-vis third parties (in the UPRP or EUIPO register, depending on the type of trademark right).

Licensees can pursue trademark claims regardless of whether the licence is exclusive or not, on the condition that the right holder consented to it. This is important especially for business (corporate) groups, in particular with a view to potential infringement litigation. Usually one company owns the trademark and another (e.g. the local company) gets involved in the dispute. Before Polish courts, standing must be demonstrated by presenting a license agreement along with such statement of consent.

Trademark owner obtains a legal monopoly to use the mark for profit or professionally in the entire territory of Poland. However, the cease and desist claims can be addressed only against those, who use identical or similar marks in relation to identical or similar goods or services. Unless a double identity exists (identical marks and goods/services), it is required to prove the likelihood of confusion, except where a reputable mark has been infringed.

Trademark protection is granted for the period of 10 years, but contrarily to patents, utility models or industrial designs, it can be renewed without limitations.

Timelines before the UPRP

According to 2019 official data, the average time taken to process patent applications from filing to decision was 32,6 months. The examination of a trademark application took an average of 11,5 months.

If an opposition for trademark registration is filed, the duration of the proceedings may be significantly prolonged.

Fees due in the UPRP

Patents – PLN 550 (~EUR 130) basic application fee. Renewal fees increase over time, starting from PLN 480 (~EUR 110) for years 1-3 up to PLN 1550 (~EUR 365) for the year 20.

Utility models – PLN 550 (~EUR 130) basic application fee. Renewal fees increase over time, starting from PLN 250 (~EUR 60) for years 1-3 up to PLN 1100 (~EUR 260) for years 9-10.

Industrial designs – PLN 300 (~EUR 70) basic application fee. Renewal fees increase over time, starting from PLN 150 (~EUR 35) for years 1-5 up to PLN 2000 (~EUR 470) for years 21-25.

Trademarks – PLN 450 (~EUR 105) basic application fee. Renewal fee is PLN 400 (~EUR 95) for each 10-year period for one class of goods/services. If trademark is registered for e.g. 4 classes, the renewal fee is PLN 1600.

Online filings of patent, utility model or trademark applications are cheaper by PLN 50.

Combatting unfair competition

Apart from specific intellectual property rights, businesses are protected by the rules on combatting unfair competition as regulated separately in a special legislation. For example, even if a distinctive sign (trademark) is not officially registered in the EUIPO or UPRP, it can be still protected from e.g. free riding on that basis, as industrial property enjoys so-called cumulative protection.

The prerequisite for pursuing unfair competition claims is having the place of business in Poland. As a rule, the claims can only be directed against competitors. According to the Supreme Court, however, this condition must be interpreted broadly, i.e. as impacting the market situation of another trader, regardless of the field of business operations ("competition" in the strict sense). According to the case law, if a company is a licensor to a local subsidiary, both have standing in such cases – the parent company is legally perceived as partaking in business activities in Poland through the licensing relationship.

Trade secrets and NDAs

Under Polish law trade secrets (know-how) are not *per se* assignable IP rights. They are protected based on tort law. Any agreements to transfer confidential business information or know how are based on contractual obligations to keep it confidential.

Trade secret, including know-how, belongs by default to the enterprise, not to the individual person (e.g. employee or associate) who uses it. There is no need to assign it, if know-how has been developed by employees or associates acting within the enterprise.

The non-disclosure agreements are legally binding and enforceable. However, for evidentiary reasons, such agreements should contain provisions on the liability of the person who discloses confidential information in breach, in particular in the form of contractual penalties.

Contract specificity of cooperation with IT developers

Being successful in business without a well-qualified team of specialists on board is rather impossible. Even with artificial intelligence skills growing rapidly – we still need a lot of human intelligence. And that is why one of the reasons for foreign companies to invest and do business in Poland is a great variety of highly skilled professionals – especially in the IT sector. There are around 300 higher education institutions in Poland with many IT graduates every year. According to the HackerRank ranking, which examined countries with the best developers in the world, Polish employees were in third place in terms of being the best at programming and in first place with performing tasks in Java.

Cooperation with IT specialists or the expansion of IT departments in the organisation should be thoroughly analysed in order to be effective. In this article we provide a short overview of most common ways of working with IT professionals in Poland.

Firstly, we start with a situation where a company would like to hire an IT developer in-house or cooperate directly with him or her. Agreements that should be considered in this regard are employment contract, civil law contracts and collaboration on a business to business basics.

Employment contracts to which all the labour law provisions apply is characterised by subordination through the performance of work under the direction of the employer. This means that the employee is obliged to follow employer's orders and directions. Hiring employees allows for long-term commitment but may be less flexible and generate more costs for both employer and employee. It should be noted that the employer is responsible for social security contributions' payment, as well as other benefits resulting from labour law provisions.

Civil law also gives us two more contractual opportunities while cooperating with individuals. First, **Contract of Mandate** which may regulate the provisions of repetitive services by the developer and is commonly used for freelance or part-time work. It offers fewer protections but provides flexibility for both parties. And second, **Contract for Specific Work** which is typically used for projects with a defined scope and deliverables. It is task-oriented and does not provide social security benefits. However, pursuant to the labour law provisions, it is not permissible to replace an employment agreement with a civil law agreement (including contract of mandate, as well as contract for specific work) while maintaining the features of an employment relationship.

So called **self-employment** or business to business cooperation characterise with more flexibility and the relationship of partnership between the parties. The clear distinction between business to business cooperation and an employment agreement is IT developer's "greater" freedom in choosing the manner, the time and the place of performance of assigned services. To cooperate in such terms the developers should be registered as sole traders in Polish registry CEIDG (Central Registration and Information on Business). They invoice the company for their services and are responsible for their own social security contributions and benefits. As a result, from the hiring company point of view administrative burdens are much less strict than in employment contract. It may also be profitable for the IT developer as it enables the contractors to chose a more favourable form of taxation. However, contractors must bear in mind that such a form of cooperation is usually associated with considerably higher liability for the service provision on their part. Moreover, it is essential to ensure that the relationship with the company is genuinely that of a contractor and not an employee,

to avoid potential risk arising of the labour law that the parties' cooperation will be regarded as an employment relationship. In the event of reclassification of business to business cooperation as an employment relationship, former contractor will be entitled to all entitlements under the labour law provisions, e.g. overtime allowance, benefits, the appropriate number of leave days.

When hiring IT developers, it is crucial to address the issue of **intellectual property rights**. In Poland, by default, the employer is entitled to the copyright to work created by employees during the course of their employment (article 12 of the Polish Act on Copyright and Related Rights). However, this principle does not apply to contractors and persons hired under civil law contracts. You should remember to include in such agreements the provisions which transfer the copyright from the developer to your company (and incorporate broad fields of exploitation as it is a specific requirement in Polish law). Otherwise, it may turn out that you won't be able to use the works and software that IT developers created during your cooperation. We point out that regulating the IP transfer in the agreement will also be relevant from the IT developers' point of view as they may benefit from tax relief – called 50% of tax deductible costs.

Secondly, you can also cooperate with IT developers without the necessity to hire them in the organisation through temporary work agencies that search for IT specialists on the market. Another, quite popular solution is Outsourcing IT.

Temporary Work Agency

According to the Polish perspective, if an employee is hired by an entity in Poland other than the one for which the employee performs work, then, as a rule, the hiring entity must be registered on the list of temporary work agencies. The employee's work through an intermediary can last in one place for a maximum of 18 months. Provisions concerning Temporary work agency enable IT developers to be employed by one entity and directed to work for and under the direction of another entity.

The employment model under which one legal entity is a formal employer of a given employee while such an employee performs work for benefit of another entity (i.e. legal entity that is not formally the employer) is not permitted under the provisions of the Polish law, except as set out above.

Outsourcing IT

Outsourcing of services, as this is how this business model and the service agreement entered into under this model should be classified according to the case law developed in Poland, is not directly regulated by Polish law, but it is not directly prohibited either. It will involve transferring full responsibility for the entire IT area of your company, or a designated part of it, to an external company. It may also involve support of external company in providing services on the specific projects in your company by dedicated consultants or teams (this is usually called body leasing). IT outsourcing enables to save costs by not having to invest in equipment or staff. It gives an access to global talent pool or various technologies and the ability to focus on core business activities.

When outsourcing IT projects, it is essential to have a well-drafted contracts that clearly define the scope of outsourced work. The contract should outline the roles and responsibilities of each party, including payment terms and intellectual property rights. Account should be taken to the fact that the company will not have a direct contractual relationship with individual consultants. Thus, it is crucial to ensure that the contract clearly describe the transfer of copyright to our company and includes the assurance of the third-party provider that it has the necessary agreements in place with its contractors entitling the provider to transfer copyrights. Together with the transfer of the copyright, the subsidiary right should be transferred as well as they enable the modification of the delivered work. To protect your company's interests, you should include provisions that ensure the confidentiality of sensitive information if the provider may have access to any. We also note here that if your company provides services in the regulated sector, special attention should also be paid to the outsourcing regulations.

We also draw your attention to the fact that the lack of regulation means that the provision or use of IT outsourcing in an improper manner can be fraught with risk. An improperly structured service contract or an improperly executed service contract could lead competent authorities to conclude that the supplier should conduct regulated activities in Poland as a temporary work agency, or that the end customer using the supplier's services is the actual employer of the IT developers.

Contractual employment of developers in Poland offers various options tailored to different business needs and employment situations. The decision to implement a specific model for IT services in the company should be preceded by a thorough analysis of the needs and capabilities of our organisation. Understanding the nuances of Polish law on each contract type or form of cooperations is essential for both employers and developers to arrange cooperation effectively.

The challenges in the field of the judicial system

1. The Polish economy – advantages and limitations of investment

As the largest country in Central and Eastern Europe and the sixth largest country in Europe with a population of 37.6 million, Poland is an interesting investment destination for international companies. Poland's presence in the European Union since 2004 has contributed to economic growth and an influx of foreign investment. This has led to a situation where the Polish GDP per capita in purchasing power parity terms is 79.9% of the EU average, and according to estimates by Credit Agricole Bank Poland, it will reach 99.6% of the EU average in 2033. Poland has become the sixth largest economy in the European Union. Moreover, this economy appears relatively immune to crises and economic problems, as the examples of the global financial crisis, the eurozone debt crisis or the COVID-19 pandemic and the war in Ukraine have shown. Poland also continues to receive significant funding from the European Funds – since its accession in 2004, Poland has received EUR 261 billion, of which the balance after taking into account the membership fee payment is plus EUR 175 billion for Poland. European funds from the National Reconstruction Plan and cohesion policy funds totaling €137 billion have also been unlocked in 2024, which will provide significant investment capital for the development and transformation of the Polish economy.

This rather optimistic economic picture unfortunately clashes with the situation of the Polish judicial system and legislation, which constitute one of the most significant areas of risk, or difficulties, to be overcome by investors allocating their funds in Poland and cooperating with Polish entities.

In the ranking of the global organization TMF Group, which publishes the 'Global Business Complexity Index' report, which assesses almost 300 different criteria affecting the conduct of business in a given country, Poland was ranked 12th in 2023 in terms of having the most complicated regulations governing the conduct of business (first place meant the country with the most complicated regulatory system). Poland's situation is also not the best in light of a ranking by the US-based non-governmental organization The World Justice Project, which publishes the Rule of Law Index. Poland was ranked 36th out of 142 countries in the 2023 ranking, where the first place went to Denmark as the country with the highest rating in respecting the rule of law, and the list was closed by Venezuela.

An excessive, complex and ambiguous legal and regulatory environment, a complicated tax system and an inefficient judicial system are the main issues facing foreign entrepreneurs and investors. This is compounded by the systemic chaos intensified over the last eight years of ruling by a populist coalition of right-wing parties in relation to the situation of the judicial system and the Constitutional Tribunal, leading to the formation of an essentially dualistic legal system in the area of constitutional law.

Despite these problems, Poland remains and will continue to be an economic direction that brings more opportunities than threats and that will attract foreign investment. In 2022, the value of foreign direct investment amounted to PLN 140.3 billion, while in 2023, the value of direct investment is estimated at around PLN 133 billion, which means that in 2023, the scale of foreign investment in Poland amounted to around 3.9 per cent of GDP. Indeed, the relatively low investment and labor costs, as well as the high quality of work and qualified personnel, combined with a stable and developing economy, are the prevailing factors in the choice of investment direction and thus indicate Poland's high attractiveness in Europe and the European Union.

2. Characteristics of the Polish judicial system

The perception of doing business in any country, in addition to favorable macroeconomic conditions and profit prospects, requires the provision of a stable legal system to protect capital and commercial relations. This involves both a layer of transparent legislation and the provision of effective legal instruments in the event of an infringement of the rights of an investor or foreign partner. Indeed, each process of locating capital and establishing commercial relations requires a certain level of legal protection. Legislation and the judicial system therefore play a key role in this respect. An efficient judicial system, which respects the principles of fair trial, as well as the predictability of a ruling by an independent court of independent and impartial judges within a reasonable period of time, while at the same time supporting alternative methods of dispute resolution, is a fundamental value in the context of doing business.

The Polish judicial system is exercised by constitutionally empowered courts and tribunals. Courts and tribunals are a separate and independent authority from other authorities. In the judicial system one can distinguish:

- Supreme Court,
- common courts: district, regional and appellate courts,
- administrative courts: voivodeship administrative courts and the Supreme Administrative Court; and
- military courts.

Judicial proceedings (civil, criminal or administrative) are, as a rule, two-instance. In special situations, the parties are entitled to extraordinary remedies before the Supreme Court. It is also possible to submit a constitutional complaint to the Constitutional Tribunal. Judges are appointed by the President of Poland, and in the exercise of their office they are independent and subject only to the Constitution and statutes. A judge may not belong to a political party, a trade union or engage in public activities incompatible with the principles of judicial independence and the independence of judges. Their independence is guaranteed by their non-removal from office and by immunity, which means that a judge cannot, without the prior consent of the court, be held criminally responsible or deprived of his or her liberty, and cannot be detained or arrested.

Judicial proceedings are based on the principle of equality of parties, publicity of proceedings, the possibility of realizing the initiative of evidence, ensuring the right of defence and the right to appeal against an unfavorable decision. Despite these guarantees, however, there is a noticeable tendency of the legislator to impose ever new formal requirements and evidentiary impediments in order to concentrate evidence and speed up the adjudication of cases. The civil procedure in commercial cases, introduced in 2019, requires the parties to the proceedings (entrepreneurs) to present evidence in their first pleadings (statement of claim or statement of defence) and also introduces formal restrictions on the conduct of proceedings. The formal discipline of the Polish trial, especially in commercial cases, actually forces the use of professional legal assistance by entrepreneurs, as a possible mistake and failure to comply with the requirements usually results in an unfavorable outcome of the case.

Despite the tightening discipline and piling up of further formal requirements, they have not served to ensure an effective system of dispute resolution by the courts. The length of proceedings is one of the main ills of the Polish judicial system. The duration of court proceedings is increasing from year to year. Although official statistics do not look dramatic (according to data from the European Commission for the Efficiency of Justice (CEPEJ) for 2022, the average length of proceedings in Poland is 317 days, compared to 674 days in Italy and 637 days in France), official statistics also present cases issued in accelerated procedures (payment order in writ proceedings) and cases that have been completed in the court of first instance. The actual length of commercial proceedings in which the parties litigate fiercely and present a range of evidence ranges from 5 to even 10 years before a final judgment entitling a party to enforcement is reached.

The deficiencies of Poland's judicial and legal system therefore need to be considered in detail in the context of potential investment and business risks and the establishment of cooperation with Polish entities.

3. Problems of the Polish judicial system from the point of view of investors and entrepreneurs – mitigation of risks

The judicial system in Poland is negatively assessed by the society and business representatives. According to research conducted by the European Commission, the indicator of companies' trust in the judicial system in Poland is 25%. In turn, according to a survey conducted by the Public Opinion Research Centre (CBOS), 55% of respondents assess the functioning of the judicial system negatively, while a positive assessment was expressed by only 28% of respondents.

These assessments are primarily based on the length of the proceedings, although concerns about the impartiality of judges and the independence of the courts have also

increased in recent years due to changes to the judicial system introduced by the coalition of parties ruling the country until 2023, led by the Law and Justice party, and allegations of violations of the rule of law by the Polish authorities. This resulted in the politicization of the Constitutional Tribunal and the introduction of organizational chaos in the Supreme Court and the entire judicial system.

Still, the length of court proceedings remains the biggest problem for the judicial system in Poland. According to research conducted by the already mentioned European Commission for the Efficiency of Justice (CEPEJ), Poland ranks third in Europe in terms of the number of cases submitted to courts per population. Despite a significant number of judges (25.2 per 100,000 residents), courts, especially in large cities and with regard to commercial proceedings, have become inefficient as a result of a significant increase in cases at the turn of the 20th and 21st centuries. As a result, the mere delivery of a statement of claim can take up to several months, and there is a wait of more than a year for the first hearing to be scheduled, and hearings do not take place day after day, so it sometimes takes 5-8 years to complete in the first-instance court evidence proceedings requiring several or more hearings. Added to this is the problem of the waiting time for a judgment in the courts of appeal (lasting up to 2 years) and the problems associated with the paralysis of the Supreme Court, to which the parties can, in exceptional cases, file extraordinary remedies.

When deciding to submit a dispute to the public judicial system in Poland, investors and foreign entities must be aware of the limitations related to the above systemic problems. It appears that the main drawback (lengthiness of proceedings) can be minimized by choosing alternative dispute resolution (ADR) methods, in particular arbitration and mediation. Both forms of dispute resolution are quite popular in Poland, although they are obviously used much less frequently than the common courts – which is rather due to the individual nature of the above-mentioned instruments. Mediation, despite being promoted by the legislator, is moderately popular in Poland, and especially the percentage of cases that end with a settlement as a result of mediation is low.

On the other hand, Poland has a large number of arbitration courts adjudicating disputes between business entities, and at least two of them can be considered internationally recognized and prestigious, i.e. the Arbitration Court at the National Chamber of Commerce in Warsaw and the Arbitration Court at the Lewiatan Confederation. The time for the resolution of complex commercial proceedings in these courts is approximately 2 years, and they are single-instance proceedings in which the issued award, after it has been given an enforceability clause by a Polish court, may form the basis for enforcement. Importantly, there is no restriction or compulsion to choose Polish arbitration institutions. Polish law also honours arbitration clauses indicating the jurisdiction of any arbitral institution worldwide, including reputable international arbitration courts such as the International Court of Arbitration at the International Chamber of Commerce in Paris (ICC International Court of Arbitration) or The London Court of International Arbitration (LCIA). The choice of an *ad hoc* arbitral tribunal is also available. The professional nature of arbitration, its confidentiality and speed makes it a frequent choice of international entities, *private equity* funds and corporations in commercial or investment relations with entities from Poland.

Arbitration from the point of view of foreign investors and companies, in the sense described above, is in the nature of commercial arbitration. It will apply to commercial disputes between parties to a contract, provided that those parties have agreed to this method of dispute resolution in the form of an arbitration clause. It is important that such a clause requires it to be in writing and should indicate the subject matter of the dispute or the legal relationship from which the dispute has arisen or may arise. Polish law allows an arbitration clause (also referred to as an arbitration agreement) to be concluded before a dispute arises (usually in a contract) or after it arises, in an additional agreement (known as a compromise). In contrast, an arbitration clause covering labour law disputes can only be made after the dispute has arisen and requires written form. The same applies to an arbitration clause covering disputes arising from contracts to which the consumer is a party.

An arbitration clause may also be included in the contract (articles of association) of a commercial company (in which case it is binding on the company, its shareholders and the company's bodies and their members). Since arbitration is provided for in Poland on the basis of an agreement (consent of the parties), it is also permissible to determine the rules of the proceedings before the arbitral tribunal and, in particular, to determine the number of arbitrators, the language of the arbitration and its venue (which, in turn, is relevant for the application of Polish procedural regulations). The far-reaching freedom of choice means that it is recommended that lawyers be assisted in the selection of the method and rules of dispute resolution, especially with regard to commercial relations involving Polish law or Polish entities. Indeed, in the absence of a choice of arbitration, the dispute will be resolved by a state court under the common judicial system.

However, it should be borne in mind that even when alternative dispute resolution (ADR) methods are chosen, some actions remain still within the cognition of the common judicial system, such as the approval of mediation settlements, requests for the exclusion of arbitrators, the recognition and enforceability of arbitral awards, or proceedings to set aside an arbitral award.

Polish law also provides for the admissibility of so-called investment arbitration. This, in contrast to commercial arbitration, does not take place between the parties to a given commercial relationship, but between foreign investors and host states. Thus, it implies, among other things, the possibility for investors to bring an action against the Polish State in certain cases. This arbitration has been provided for primarily in international agreements (bilateral or multilateral), of which the bilateral investment treaties (BITs) popularized in the 1990s hold a special place. However, the popularity of this method of dispute resolution has declined significantly following the judgment of the Court of Justice of the European Union of 6 March 2018. (reference C-284/16). Indeed, the Court found that the dispute resolution model provided for in the BIT agreement between Slovakia and the Netherlands was incompatible with European Union law. This ruling has, in practice, resulted in the effectiveness of the aforementioned clauses being limited only to relations with third countries outside the European Union. Poland is an experienced country in investment arbitrations, as it has participated in 30 such proceedings (which ranks seventh in the world).

It is worth noting that Poland is not a party to the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, which provides for a system of dispute resolution through the International Centre for Settlement of Investment Disputes (ICSID). Poland is instead a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, drawn up in New York on 10 June 1958 (also known as the New York Convention), allowing for the efficient conduct of the process of recognition and enforcement of an arbitral award in the territory of Poland (as if the award had been made by a court under the general judicial system).

Another problem also linked to the judicial system is the issue of debtors' solvency. This is because the length of court proceedings often means that, on the day of a final ruling, the debtor no longer has assets from which the claim could be satisfied. This is also important because the number of companies that have declared bankruptcy in Poland has been steadily increasing since 2016. In 2023, 4,701 entrepreneurs were declared bankrupt, which means an increase by approximately 2,000 in relation to 2022. An effective remedy to mitigate the above-mentioned problem is the skilful securing of claims, often even before a lawsuit is filed, and taking legal action within the scope of bankruptcy or restructuring proceedings conducted against the debtor.

Also noteworthy is the issue of the significant repressive nature of Polish law, including the prescribed broad catalogue of penalties related to improper participation in business dealing. Indeed, Polish law provides for financial or criminal sanctions and management board members' liability for, inter alia, company debts, breaches of competition law, fiscal offences and offences against economic activity, as well as breaches of sanctions imposed in connection with the invasion of Ukraine by Russia and Belarus. Financial sanctions can, in some cases, amount to PLN 41 million (approx. EUR 9.5 million), while prison sentences can be as long as 30 years. For the sake of management security, it is therefore reasonable to carry out relevant legal analyses and verifications from the point of view of the compliance of planned activities with Polish law.

As can be seen from the above, Polish law and judicial system constitute a complex regime, the shortcomings of which are not successively remedied by the highest judicial and legislative authorities. The low quality of legislation combined with the problems affecting the judicial system make the professional assistance of law firms specialized in servicing international entities seem indispensable in legal relations on the territory of Poland or with Polish entities. This is also an important economic trend and market standard among foreign investors and corporations, not only from the point of view of M&A transactions, but any element of doing business that involves Polish law or dispute resolution with Polish entities. This allows for a reduction of risk exposure in the area of investments and commercial relations with Polish entities and greater legal security for investors and foreign entities and board members of entities that operate in Poland.

ESG as a driving force for companies

Employees, consumers, investors, and regulators are increasingly concerned about the environmental, social, and corporate governance impacts of companies.

Consumers are becoming more environmentally and socially conscious and want to support companies that align with their values.

Good ESG performance could help companies stand out from the competition. Moreover, keeping positive ESG values can help protect a company from potential public relations risks resulting from negative ESG issues.

The ESG strategy allows in the long term to plan the company's development based on the goals of sustainable development - environmental (E- environmental), social (S-social), and corporate governance (G- governance) issues. Therefore, the ESG strategy should be an integral part of an organization's business strategy.

ESG strategy should become a key tool for sustainable management in organizations obliged to publish ESG reports.

The legal framework for reporting non-financial data is based in the EU on, among other things, the CSRD Directive.

All large companies, as well as medium and small companies listed on regulated markets (excluding microenterprises), will be obliged to report. Moreover, sustainable reporting will cover also selected third-country entities with significant activities in the EU (have a subsidiary or branch EU territory and generate a net turnover in the EU exceeding EUR 150 million (for each of the last two consecutive fiscal years). The smaller entities (i.e., small and medium-sized enterprises, small and non-complex credit institutions, and in-house insurance companies and in-house reinsurance companies) will report on a limited basis.

Starting in 2025, the following of the entities are required to report.

Among the information subject to disclosure are:

- double materiality principle;
- disclosures regarding the company's strategy, metrics, goals on sustainability;
- reporting covering the value chain;
- GHG emissions reporting across the value chain;
- ESRS reporting standards;
- digitization of reporting;
- mandatory auditing.

Even, if some entities will be not required to report – could be obliged to provide information on their impact on the environment – like that information could demand contractors.

Sustainably conducting business, i.e. respecting the environment, society, and corporate governance, allows for efficient management of resources, making the right decisions, and adapting to changing market conditions. The ESG is becoming a pillar of business strategy today, a necessary aspect of long-term success.

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, customs, 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

In Poland there are 20 special tax offices dedicated to specific entities. 19 of these support such taxpayers as:

- entities (including foreign enterprises) with an annual income between EUR 3 milion and EUR 50 million in the previous year;
- branches and rep offices of the foreign entities;
- universities, independent public health care institutions, cooperative banks or local governments units.

Special tax office for the largest taxpayers

Additionally, there is also a special tax office in Warsaw (First Masovian Tax Office in Warsaw) for:

- the largest entities with an annual income of at least EUR 50 million in the previous year, or
- entities operating as, for example, capital tax groups, banks or insurance companies.

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 and subsequentely to Supreme 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 Supreme Court.

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

GAAR advance tax rulings

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.

Taxpayers that want 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 may be appealed against to the administrative courts.

Tax cooperation agreement

A 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 returns 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).

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) and introducing VAT grouping (in 2023) and an option to tax financial services.

In 2024 there are no new significant changes to the VAT taxation in force. But in 2025 new rules on taxation of returnable and non-returnable packaging are expecting due to implementation of DRS (deposit refund system). Also in 2025 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 individuals, 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.

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.

There are some specific rules regarding voucher, depending on their qualification:

- single purpose vouchers are VATable upon their transfers or emission,
- multi purpose vouchers are taxable at a moment when they are exchanged for goods or services.

Transfer of a going concern is outside the scope of VAT.

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.

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.

VAT rates

In 2024, 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%

In 2024 extraordinary and temporary reductions of VAT rates apply only to some foodstuffs, which are subject to 0% VAT (in force until 31/03/2024, prolongation is uncertain).

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 sureties-hips 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 (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 2025.

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 2 mil.

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.

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.

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 place of management 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.

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 tax residents of Poland are subject to withholding tax at the 19-per cent rate (WHT).

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.

Withholding tax on interest, royalties and intangible 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, a*ccrued 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.

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 individuals.

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

Minimum Income Tax

Starting January 1, 2024, Poland will implement new regulations concerning the minimum Corporate Income Tax (CIT). This 10% minimum tax will affect companies with Polish tax residency and domestic tax capital groups under certain conditions during the tax year:

- If they experienced a loss from any income source aside from capital gains.
- If their non-capital gains profit was less than 2% of their total income from non-capital gains sources.

The legislation provides guidelines for determining a loss for minimum tax purposes, meaning that an accounting loss may not always result in minimum taxation.

The tax outcome will be adjusted by factors such as depreciation write-offs, leasing costs, and 20% of employment costs, among others. These items are to be excluded from the minimum tax calculation. Consequently, after deducting these expenses, the taxpayer's income will rise. If the tax profit, calculated after these adjustments, exceeds 2%, then the minimum tax will not be applicable.

GLoBE

Global minimum tax isexpected to be due from 2025 with desire to apply it from 2024.

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

Individuals 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).

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 2024, the limit amounts to PLN 9 388,80 (or PLN 14 083,20 for taxpayers running business activity).

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; this exemption is not covered by the relief for young workers),
- 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 2024, 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 disa[1]bility 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 ca[1]lendar year (in 2024 it is PLN 234 720).
** 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 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 36,120,
- for tax group 2 – PLN 27,090,
- for tax group 3 – PLN 5,733.

The tax scale is set out as follows:

Taxable base in PLN		Tax scale
more than	up to	
1) from acquirers from tax group I		
-	11,833	3%
11,833	23,665	PLN 355 + 5 per cent of the surplus over PLN 11,833
23,665		PLN 946.60 + 7 per cent of the surplus over PLN 23,665
2) from acquirers from tax group II		
-	11,833	7%
11,833	23,665	PLN 828.40 + 9 per cent of the surplus over PLN 11,833
23,665		PLN 1,893.30 + 12 per cent of the surplus over PLN 23,665
3) from acquirers from tax group III		
-	11,833	12%
11,833	23,665	PLN 1,420 + 16 per cent of the surplus over PLN 11,833
23,665		PLN 3,313.20 + 20 per cent of the surplus over PLN 23,665

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 2024:

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 in the previous tax year exceeded PLN 3,250 million (if the group prepares consolidated financial statements in PLN) or EUR 750 million or its equivalent (in other cases).

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 (including the TP statement) filled to tax office –** declaration about information with IC-transactions concluded for FY 2023 and the level of ranges from benchmarking analysis. The TP-R form includes the statement that TP documentation was prepared in accordance with the actual state and the transfer prices covered by the TP documentation are determined on the terms that unrelated parties would have agreed.
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.

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	1.34 PLN/m^2
Other lands, including those occupied by public benefit organizations conducting benefit activity	0.71 PLN/m^2
Residential buildings	1.15 PLN/m^2
Buildings designated for business activity	33.10 PLN/m^2
Other buildings, including those occupied by public benefit organizations conducting benefit activity	11.17 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 **individuals** 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 individuals are obliged to submit a tax return and pay RET on the terms applicable to legal persons.

Changes in taxation of structures and buildings from 2025

Changes in the taxation in Poland are expected from 2025, which results from the Constitutional Tribunal questioning the current regulations. Various scenarios are being considered, from those involving minimal changes in practice to comprehensive amendments to the rules, including, for example, the introduction of a tax on the market value of buildings in business activities (cadastral tax). Due to the long legislative process, the details should be known in the 4Q of 2024.

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.

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.

Rules regarding 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 planned Central Register of Excise Goods (CEWA) has not been implemented.

The Central Register of Excise Goods (CEWA) was intended to keep records by the tax authorities in Poland for 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 should allow data to be transferred for the preparation of records via API.

On the other hand, the taxpayers would be able also to keep records directly in the CEWA (online).

In the absence of the introduction of the CEWA, it is still possible to keep excise registers on paper and in electronic form.

However, the legislation introducing CEWA still needs to be monitored.

Accounting system in Poland

1. Who needs to keep accounting records in Poland?

Commercial companies (partnerships and joint-stock companies, including companies in organization e.g., limited liability company, limited partnership, public limited company) and individuals and private partnerships (if their turnover for the previous year amounted EUR 2 million). From 2025 the limit increases to €2.5 million.

Organizational units operating under banking law, regulations on trading in securities, regulations on provision of crowdfunding services for economic undertakings, regulations on investment funds and management of alternative investment funds, regulations on insurance and reinsurance activities, regulations on cooperative saving and credit unions or regulations on the organization and functioning of pension funds, regardless of the amount of revenue.

Branch offices and representative offices of foreign entrepreneurs.

Other entities, not specified above, if they receive donations or subsidies from the state budget, budgets of local governments or special funds for the realization of their assigned tasks – from the beginning of the financial year in which such donations or subsidies were granted to them.

2. General information on keeping accounting records in Poland

The books must be kept in accordance with the conditions set in the Accounting Law. If a company does not meet all the conditions, it may decide to keep its books in accordance with the contents of IFRS. In addition, entities that are part of a group in which the parent company prepares consolidated financial statements in accordance with IAS, branches of a foreign entrepreneur, if the entrepreneur prepares financial statements in accordance with IAS.

In practice, the accounts are kept only with the use of computer software that allows obtaining clear information with regard to entries made in the accounts through printing or storing it on IT data carriers.

The accounting documentation must be stored according to the deadlines presented below:

Type of document	Storage period
Approved annual financial statements along with possible signature refusals described in Art. 52 section 2 of the act, declarations or refusals to submit them described in Art. 52 section 2b of the act	5 years, starting from the beginning of the year following the financial year in which they were approved
Ledgers	5 years*
Pay slips of employees or their equivalents	for the period required for access to such information under regulations on pensions, retirement and taxes; however, period not shorter than 5 years*

Type of document	Storage period
Accounting documents regarding proceeds from retail	until the date of approval of the financial statement for a particular financial year; however, period not shorter than until the date of settlement with persons entrusted with assets covered by retail
Accounting documents regarding: tangible assets under construction, loans, credits, trade agreements, claims pursued in civil proceedings or covered by criminal or tax proceedings	for 5 years starting from the beginning of the year following the financial year in which operations, transactions and proceedings were finally completed, paid, settled or became time-barred
Documentation on the adopted method of bookkeeping i.e., the accounting (policy) principles	for a period not shorter than 5 years from the expiry of its validity
Documents regarding statutory warranty and complaints	1 year after the expiry of the statutory warranty or settlement of the complaint
Inventory documentation	5 years*

The entity should have documentation describing (in Polish) the adopted accounting principles i.e., the so-called "Accounting Policy" that, in particular, provides information on the following:

- specification of the financial year and the reporting periods thereof,
- the methods used for valuation of assets and liabilities and determination of the financial result,
- the bookkeeping method, including at least:
  a. the corporate chart of accounts establishing the list of accounts of the main ledger, the adopted rules for event classification, rules for keeping auxiliary ledgers and their relations with the accounts of the main ledger, as well as the possibility of using a standard chart of accounts,
  b. list of accounts, and in case of accounts managed with the use of a computer – the list of data sets forming the accounts on IT data carriers,
  c. a description of the data processing system, and in case of accounts managed with the use of a computer – a description of the IT system,
- the system used for protection of data and data sets, including accounting documents, ledgers and other documentation constituting the basis for the entries made therein.

Ledgers include sets of accounting entries, turnovers and balances that form logs, the main ledger, auxiliary ledgers, a list of turnovers and balances of the main ledger and the auxiliary ledger as well as the list of assets and liabilities.

At the end of the financial year, it is mandatory to carry out the inventory of the assets held.

In general, **the financial statement** consists of the balance sheet, the profit and loss account, the list of changes in equity, the cash flow statement and additional information – if no simplification is used.

The financial statement is drawn up only in an electronic form, as an xml file, according to the logical structures provided by the Ministry of Finance, and it is signed with a qualified electronic signature, certified signature or personal signature. In tree months after the end of the financial year, the financial statement should be signed by the head of the entity and then approved within up to 6 months after the end of the financial year. After the approval, the entity has 15 days to submit the financial statement to the National Court Register.

Apart from the obligation to draw up financial statements, Polish regulations also impose additional reporting obligations on certain entities, particularly the obligation to draw up statistical reports to the National Bank of Poland and the Polish Central Statistical Office. In general, the reporting is carried-out electronically (through web portals).

The obligation to file reports to the National Bank of Poland must be verified for the entity on the basis of the total amount of assets and liabilities i.e., whether the value resulting from foreign exchange with non-residents does not exceed the thresholds provided for in the ordinance.

monthly obligation – within up to 20 days from the end of the month – in case of entities the total amount of assets and liabilities of which at the end of the year exceeds PLN 300 million.

- quarterly obligation – within up to 26 days from the end of the quarter –

  in case of other residents the total amount of assets and liabilities of which at the end of the year exceeds PLN 10 million but, at the same time, does not exceed PLN 300 million.

Moreover, entities are subject to the annual reporting obligation by the 31st day of May of the following year, if:

- they also have – at the beginning or the end of the year — at least 10% of votes in the entity's decision-making body seated abroad,
- they have a branch seated abroad,
- residents hold at least 10% of votes in bodies constituting a non-resident — at the beginning or the end of the year,
- branches of foreign enterprises have a registered office in the country.

The list of transactions that must be analyzed for the purposes of reporting to the National Bank of Poland:

- AZ-DEP – Current accounts and deposits in credit institutions and foreign banks,
- AZ-NZR – Real property abroad,
- AZ-UDZ – Holdings of non-resident entities in the possession of the reporting entity,
- AZ-KRE – Loans granted to non-residents and receivables from non-residents on financial leasing,
- AZ-REP – Receivables on securities purchased from non-residents with a buy-back guarantee,
- AZ-POZ – Other financial assets and receivables from non-residents,
- PZ-KRE – Credits and loans received from non-residents and obligations under financial leasing towards non-residents,
- PZ-REP – Obligations towards non-residents for sales of securities with a buy-back guarantee,
- PZ-POZ – Other financial obligations towards non-residents,
- IP-ASA – Derivatives with asymmetric risk (options) – assets,
- IP-ASP – Derivatives with asymmetric risk (options) – liabilities,
- IP-SYM – Derivatives with asymmetric risk (other),
- PW-ADN – Debt securities without an ISIN code, issued by non-residents, in the possession of the reporting entity,
- PW-AUN – Equity securities without an ISIN code, issued by non-residents, in the possession of the reporting entity,
- PW-AFN – Participation units (shares) in money market funds and investment funds that are not money market funds, without an ISIN code, issued by non-residents, in the possession of the reporting entity,
- PW-RIN – securities with an ISIN code, issued by residents, acquired outside the domestic market, in the possession of the reporting entity,
- PW-AIN – Securities with an ISIN code, issued by non-residents, in the possession of the reporting entity,
- AZ-KRH – Trade receivables from non-residents and advance payments paid to non-residents,
- PZ-KRH – Trade liabilities towards non-residents or advance payments received from non-residents,
- PZ-UDZ – Holdings of the reporting entity in the possession of non-residents,
- PW-PAN – Stocks without an ISIN code, issued by the reporting entity, in the possession of non-residents.

The Polish Central Statistical Office (GUS) is the central office of public administration that collects and provides statistical information. The obligation to file reports to the Polish Central Statistical Office applies to all entities of national economy i.e., legal persons, organizational units without legal personality and individuals who conduct economic activity.

The entity will by informed on their obligation to file a report by e-mail, to the address specified when creating an account on the Reporting Portal (PS) of GUS. Newly-established entities that have not used the Reporting Portal yet will receive a notification on the first reporting obligation assigned to them by mail, to the correspondence address indicated upon registration of their business activity. The said notification includes a description of the account activation procedure on the Reporting Portal as well as the required temporary authentication details to complete the procedure.

Among others, report refer to the following range of data:

- AK-H/m – Economic prosperity questionnaire – trade
- DG-1 – Report on economic activity
- DNU-K – Quarterly report on international exchange of services
- DNU-R – Annual report on international exchange of services
- F-01/I-01 – Report on revenue, costs and the financial result and expenditures on tangible assets
- KZZ – Report on entities with foreign units
- PNT-01 – Report on research and development activity (R&D)
- SP – Annual enterprise questionnaire
- Z-05 – Work demand survey

It is impossible to exempt any entity of national economy from the obligation to file the report. The Act on public statistics does not provide for a set of situations in which the entity could be exempt from the reporting obligation for the purpose of public statistics.

Failure to fulfill the reporting obligation or providing factually inaccurate data is subject to criminal liability under Chapter 8 of the Act on public statistics.

3. Simplifications

Entities can use **simplifications** if such simplifications do not have a significant negative effect on the presentation of a reliable and transparent description of the entity's assets, financial situation and financial result. The matter of significance is determined on an individual basis.

The most popular simplifications include the lack of obligation to present operating leasing as financial leasing in accounts, the possibility of drawing up a simplified version of the statement for "micro" and "small" entities (the thresholds vary, but in general it is sufficient to meet two out of three conditions – total assets below 25.5 million, PLN 51 million of revenue and 50 employees – to have access to some of the simplifications).

Entities that are not subject to the audit of financial statements do not need to prepare the list of changes in equity and the cash flow statement in the financial statement.

4. Audit of financial statements

The obligatory audit applies to consolidated financial statements of capital groups and annual financial statements of **entities that continue their operations**, such as:

1. domestic banks, branches of credit institutions, branches of foreign banks, insurance companies, reinsurance undertakings, main headquarters and branch offices of insurance companies, main headquarters and branch offices of reinsurance undertakings, as well as branches of foreign investment companies, a) cooperative saving and credit unions;
2. entities operating under regulations on trading in securities, regulations on provision of crowdfunding services for economic undertakings, and regulations on investment funds and management of alternative investment funds, as well as entities specified in Art. 2 section 2b;
   a. entities operating under regulations on organization and functioning of pension funds;
   b. national payment institutions and institutions of electronic money;
3. joint-stock companies, except for companies being a member of an organization as of the balance sheet date;
4. other entities that, in the year preceding the year for which the financial statement was drawn up, met at least two of the following conditions:
   a. the average annual employment in full time equivalent units amounted at least **50 persons**,
   b. the total of **balance sheet assets** at the end of the financial year amounted the equivalent in PLN of at least **EUR 2,500,000** (from 2025 amount EUR 3,125,000),
   c. **the net revenue on sales** of goods and products and on financial operations for the financial year amounted the equivalent in PLN of at least **EUR 5,000,000** (from 2025 amount EUR 6,250,000).

5. Electronic documentation

In light of the regulations applicable in Poland, taxpayers can both submit tax returns and issue invoices in an electronic form.

What is more, accounting entries are verified with the use of the Standard Audit File (JPK). It is prepared according to an xml pattern and covers seven structures:

- accounts – JPK_KR,
- bank statement – JPK_WB,
- inventory – JPK_MAG,
- VAT invoices – JPK_FA,
- VAT invoices, flat-rate farmers – JPK_FA_RR,
- revenue and expense ledger for tax purposes – JPK_PKPIR,
- revenue registry – JPK_EWP.
- Structures of the JPK file, upon the request of tax authorities, are delivered during tax proceedings, verification activities, tax inspections and customs and tax control.

In case of sending an e-statement/JPK, apart from the installed and properly configured software, it is also necessary to have a qualified verified electronic signature which is also needed to sign the financial statement.

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Your Notes

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