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# About PAIiZ

Polish Information and Foreign Investment Agency S.A. (PAIiZ) was established in 2003, as a result of a merger between the Polish Agency for Foreign Investment and the Polish Information Agency.

PAIiZ's activities include:

- increasing the inflow of foreign direct investments to Poland;
- encouraging foreign companies to invest in Poland;
- assistance in the selection of attractive investment locations;
- advisory services at each stage of the investment process;
- assistance in the interpretation of legal procedures and regulations;
- providing full access to the economic information;
- creating a positive image of Poland in the world and the promotion of Polish products and services through the organization of conferences, seminars and exhibitions, publishing books on economic topics, organization of publicity campaigns and cooperation with the media.

Our Agency's task is to present to different companies interested in investing in the region the favorable factors of conducting business activity in Poland.

PAIiZ offers foreign investors quick access to information and assistance throughout the whole investment process.

The Agency also supports Polish entrepreneurs abroad and promotes the export of Polish products and services on foreign markets.

# About MDDP

MDDP offers professional advisory services to foreign and local investors planning to do business in Poland. We provide comprehensive support at every stage of project implementation. We combine international experience with in-depth knowledge of the legislation and real-life practice on the Polish market.

Our clients include leading international corporations, major Polish companies from all industries, and individual customers. We have advised half of the top ten Fortune Global 500 companies.

The quality of our services is appreciated by both our clients and the industry. More and more rankings, both in Poland and abroad, have named MDDP as the leading advisory firm on the Polish market.

MDDP is also one of the leading Polish companies providing comprehensive advisory services. We offer our clients a full range of specialised services:

**MDDP Tax Advisory** consists of a team of more than 70 experts in the area of VAT, customs and excise tax, income tax, transfer pricing, international taxation and tax and court proceedings.

**MDDP Law Firm** offers the multi-layered legal support necessary for conducting business securely and effectively. The firm specialises in conducting litigation with the State Treasury in pursuit of compensation for unlawful actions by public authorities.

**MDDP Business Consulting** offers a wide range of services, from developing and implementing strategies, to process optimisation, to supporting cost cutting solutions at the operational level. It supports clients in implementing projects at the strategic and operational levels.

**MDDP Finance & Accounting Solutions** is a team of experts with many years of experience, offering comprehensive solutions in the areas of financial management, accounting policy and IFRS implementation.

**MDDP Outsourcing** provides accounting and payroll outsourcing services. It offers clients comprehensive support for all accounting processes.

**MDDP Audit** offers auditing services in the area of financial and managerial reporting and accounting.

**MDDP Business Academy** conducts professional trainings and seminars on taxes, finance, accounting, and business administration control systems.

# Tax system in Poland

## Overview of the Polish tax authorities

There are two tiers of tax authorities:

- public government (CIT, PIT, VAT, excise tax, tax on civil law transactions);
- local government (property tax, motor vehicle tax).

The tax administration is a two-instance system, whereby decisions made by a first-instance body may be appealed to a second-instance body.

The Finance Minister is also a tax authority, responsible for issuing tax law interpretations (general and individual) and concluding advance pricing agreements.

## Competent tax offices for large taxpayers

Poland has twenty tax offices that specialise in offering support for large taxpayers, in particular:

- entities that generated a revenue of at least EUR 5 million in the last tax year;
- entities that are managed, directly or indirectly, by a non-resident (foreign entity) or a non-resident that holds at least 5 per cent of the votes at the general meeting of shareholders;
- entities that, as residents, were directly or indirectly involved in managing or controlling companies located abroad or which hold a share in their capital;
- entities that, as residents, are also directly or indirectly involved in managing or controlling a Polish or foreign entity and which hold a share in its capital;
- tax capital groups, banks, insurance companies;
- branches or representative offices of foreign companies.

## Dealings with tax authorities

The official language of Poland is Polish. This means that any foreign-language documents (applications, appeals, complaints) filed with tax authorities must be translated into Polish.

As a rule, any communication with the tax authorities must be in writing. If a specific deadline is assigned to an action (filing an application or appeal, submitting documents



requested by the authority), in order for the deadline to be met, the filing must be made in person or posted at a Polish post office no later than on that date.

A letter sent to a tax office by courier or international mail should be posted sufficiently early for it to be received by the tax authority before the deadline elapses.

## **Tax proceedings in Poland**

The amount of tax due is determined by a tax return (prepared by the taxpayer itself) or by a decision issued by a tax authority. The deadline for the payment of tax is set forth by the applicable laws.

If a taxpayer disagrees with the decision of a first-instance body, it may appeal against that decision.

As a rule, filing an appeal suspends the enforcement of a decision, but does not suspend the accrual of late payment interest.

If a decision issued by a second-instance body is unfavourable for the taxpayer, the taxpayer may appeal against that decision to an independent administrative court. Proceedings before an administrative court consist of two instances.

## **Tax rulings**

Minister of Finance issues official tax rulings which contain interpretation of tax laws. Minister of Finance issues general (addressed to all taxpayers) and individual tax rulings (addressed to a specific entity).

A tax ruling may be requested by anyone who wishes to confirm tax consequences of particular transactions. Tax ruling may be also obtained by potential shareholders, foreign investors or foreign entities considering starting business activity in Poland.

Tax rulings may be issued for events that took place or events that will take place. The main difference between such rulings is the scope of protection available to the addressee of such ruling. In case of future events, protection applies to all consequences, i.e. taxpayer who acted in line with the tax ruling will not be required to pay tax. In case of transactions that already took place, the taxpayer who has obtained tax ruling will be required to pay solely interests on tax arrears.



If taxpayers obtains unfavourable tax ruling it is possible to apply to an administrative court.

A request for tax ruling is subject to a PLN 40 fee for each tax case described in application.

## **Signing returns via authorised representatives**

Tax returns may be signed not only by taxpayers (remitters) but also by their authorised representatives. Granting a power of attorney relieves the taxpayer from the obligation to sign a return.

The authorisation to sign a return must be granted by all the persons obliged to sign the return. The power of attorney, which must be sent in to the tax office, must be granted separately for each type of return.

## **Online tax returns**

Any business may file tax returns online. An electronic signature is required in order to file online tax returns.

# Corporate Income Tax (CIT)

## Overview

The 19-per cent corporate income tax is the only levied on profits. As a rule, the provisions of EU directives have been implemented into the Polish taxation system.

CIT rate:	19%
Withholding tax (WHT):	
dividends	19%
interest	20%
licence fees	20%
intangible services	20%
Branch profit tax	N/A

### Corporate income tax payers include:

- limited liability companies, joint-stock companies and other legal entities,
- corporations in formation,
- organisational units without legal personality except for companies without legal personality,
- companies without legal personality with offices or management boards in another state, if, pursuant to the tax laws of that state, they are treated as legal entities and are subject to taxation in that state on their total income regardless of where it is earned,
- tax capital groups.

Partnerships are not subject to CIT. Income earned by partnerships is allocated to the partners and subject to CIT at the partners level, together with their other earnings.





Taxpayers with offices or management boards in Poland are subject to CIT in Poland on their total income. Taxpayers who do not have offices or management boards in Poland are subject to CIT only on income earned in Poland.

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

	Branch	Company
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.
Separate accounting	Yes	Yes
Other comments	Possibility of deducting the CIT paid in Poland in the home country of the foreign 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 to apply participation exemption.

The taxable base is the difference between revenue and the costs incurred to earning it; if the difference is negative, the taxpayer declares a tax loss. In certain cases, revenue may be subject to taxation.

Tax loss
may be deducted from income 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;
the following losses are not taken into account: losses of businesses subject to transformation, merger, acquisition or de-merger - in the event of a transformation of the legal form, a merger or a de-merger, with the exception of a transformation of a corporation into another corporation.



## Profit distribution

Dividends distributed by corporations with offices in Poland are subject to 19% WHT, collected by the company making the disbursement. Dividends disbursed to a Polish company is not subject to CIT at the shareholder level.

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

WHT exemptions apply to dividends disbursed to companies with their registered office in Poland or another EU/EEA state or in Switzerland, if the shareholder has continuously and directly held at least 10 per cent (25 per cent for shareholders with offices in Switzerland) of the shares in the company disbursing the dividends for at least two years. The two-year requirement does not need to be met at the time of the dividend disbursement. The company disbursing and the company collecting the dividend must be subject to CIT on its total income in Poland or in an EU/EEA state or in Switzerland.

In order to take advantage of the WHT exemption or apply the lower rate set out in the treaty, the company disbursing the dividend must have the shareholder's tax residency certificate, and a statement of the recipient that it is not applying a CIT exemption to its total income, regardless of source.

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

## Tax on foreign earnings

Income earned by a Polish taxpayer from sources located abroad is subject to 19-per cent CIT together 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.

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 two years. The two-year requirement does not need to be met at the time of the dividend disbursement. The company disbursing and the company collecting the dividend must be subject to CIT on its 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, WHT paid abroad and, if other 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.

## Capital gains

Earnings from the sale of shares and other securities are subject to 19-per cent CIT in accordance with general principles. Tax loss in this respect is accounted for in accordance with general principles.

As a rule, tax treaties state that sales of shares/securities by foreign entities may be subject to taxation in the country where the seller has its registered office. Exceptions may apply if the sale concerns shares in a company whose assets comprise primarily properties located in Poland. In such a case, the profits may also be subject to taxation in Poland. The so-called “property clause” is found in agreements concluded by Poland, among others with Austria, Belgium, Denmark, Germany and Sweden.

As a rule, a sale of shares/securities is subject to 1-per cent tax on civil law transactions on the value of the instruments sold, unless it is conducted through a brokerage house or subject to VAT. The purchaser is taxpayer.

## Real estate

Earnings from the sale of real estate are subject to 19-per cent CIT in accordance with general principles.

## Restructuring efforts

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



Furthermore, restructuring is often conducted using partnerships or closed-end investment funds, because of its effect of consolidating performance and reducing or eliminating CIT.

## Withholding tax (WHT)

WHT applies to income disbursed in Poland on shares in the profits of legal entities, interest, licence fees and remuneration for intangible services.

As a rule, the rate of WHT on **dividends** is 19 per cent, but tax treaties may stipulate a lower rate (5, 10 or 15 per cent).

WHT exemptions apply to dividends disbursed by Polish corporations to companies with offices in other EU/EEA states or in Switzerland, if the shareholder has continuously and directly held at least 10 per cent (25 per cent for shareholders with offices in Switzerland) of the shares in the company disbursing the dividends for at least two years. The two-year requirement does not need to be met at the time of the dividend disbursement. 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.

In order to take advantage of the WHT exemption or apply a lower rate, the company disbursing the dividend must have the shareholder's tax residency certificate, and a statement by the recipient that it is not using a CIT exemption on its total income, regardless of source.

**Interest and licence fees** are subject to 20-per cent WHT 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).

As of 1 July 2013 (during the transitional period from 1 July 2009 to 30 June 2013, the maximum rate of 5 per cent applies), interest and licence fees will be exempt from WHT in Poland if they are disbursed by a corporation with its registered office in Poland to a company with its registered office in an EU/EEA state other than Poland or in Switzerland, and if:

- the company disbursing the interest/licence fees holds a minimum of 25 per cent of the shares in the capital of the company collecting the interest/licence fees, or
- the company collecting the interest/licence fees holds a minimum of 25 per cent of the shares in the capital of the company disbursing the interest/licence fees, or



- the company subject to taxation on its total income in an EU/EEA state holds at least 25 per cent of the shares in the capital of the disbursing company and in the capital of the company collecting the interest/licence fees; and
- a minimum 25-per cent share has been held directly and continuously for at least two years - this requirement does not need to be met at the time of the disbursement of the above fees/interest.

The application of the above rules depends on whether the Polish company has the recipient's tax residency certificate and a statement that the recipient or the company referred to in c) 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.

**Payments for intangible services**, such as advisory services, advertising, data processing, etc. are subject to 20-per cent WHT unless otherwise stated by a tax treaty concluded between Poland and the recipient's country of residence, and the entity disbursing the remuneration has the recipient's tax residency certificate. As a rule, treaties concluded by Poland do not provide for the possibility of collecting WHT on payments for intangible services, however there are some exemptions.

## **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 statute 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: accrued but unpaid interest, business entertainment costs, 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, but depreciation write-offs made in accordance with applicable laws.



### Interest

as a rule, the tax cost at the time of 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.

### Exchange rate differences

may be accounted for at the time they are incurred (tax method) or on the accrual basis (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-offs are based on the cost of acquisition or manufacturing of the depreciated asset. The legislation stipulates the following depreciation methods:

- linear method (as a rule);
- reducing balance depreciation method (possible for some assets: 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 (available for 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).

For assets depreciated using the linear method, the rate may be decreased in a given tax year.

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

The following items are not subject to depreciation:

- land and the right of perpetual usufruct of land;
- expenditures incurred to purchase them are a tax cost at the time of their paid 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% (10.000 PLN)	n/a	
Truck - PLN 100,000	60 months	20% (20.000 PLN)	30 months	40% (PLN 40,000 in the first year)
Computer - PLN 5,000	3 years	30% (1.500 PLN)	18 months	60% (PLN 3,000 in the first year)
Construction equipment - PLN 1,000,000	60 months	20% (200.000 PLN)	30 months	40% (PLN 400,000 in the first year)
Office building - PLN 10,000,000	40 years	2,5% (250.000 PLN)	n/a	

## Leases

Income from leases is subject to 19-per cent 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. 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.



# 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.	The beneficiary.
Term	At least 40 per cent of the statutory depreciation period (or at least 10 years for real properties).	Fixed term - no minimum or maximum.

## Thin capitalisation

As a rule, interest on loans constitutes a cost at the time of payment. However, interest on loans extended to the company by certain affiliates is not a tax cost if the following requirements are met (thin capitalisation rules):

- the loan is extended by: shareholder(s) holding at least 25 per cent of the shares in the company receiving the loans, or by a sister company (i.e. a company in which at least 25 per cent of the shares are held by a company holding also at least 25 per cent of the shares in the company receiving the loan), and
- the debt of the company receiving the loan towards the shareholders holding at least 25 per cent of the shares in its capital and entities holding at least 25 per cent of the shares in those shareholders (and towards the sister company if the loan was extended by a sister company) exceeds three times the value of share capital of the lender.

Interest on the portion of the loan that exceeds three times the value of the share tax of the lender (debt to equity ratio - 3:1) is not treated as a cost. Interest constitutes a tax cost in the portion not exceeding that threshold. The value of debt is calculated as on the date of payment of interest. For the purpose of thin capitalisation, a loan is also understood as, among other things, bonds and deposits; also, the value of the share capital is calculated in accordance with special rules.





As a rule, loan agreements are subject to 2-per cent tax on civil law transactions.

#### Examples of civil law transaction tax exemptions for loans

loans extended to a corporation by its shareholders

loans extended by foreign companies conducting lending activity

loans that are eligible for VAT exemptions (as financial intermediation services)

## Tax capital groups

It is possible to consolidate for tax purposes within a tax capital group. However, due to the stringent requirements of the applicable laws, capital groups are not a popular means of consolidation for tax purposes in Poland.

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

- having a registered office (for companies that belong to a group in Poland);
- average capital of each group company of PLN 1,000,000 (approximately EUR 250,000; assuming that 1 EUR = 4 PLN);
- minimum share in subsidiaries by the parent company - 95 per cent;
- group companies do not take advantage of income tax exemptions under other acts;
- minimum share of income in the revenue of the tax group - 3 per cent;
- specific requirements regarding the form and wording of the agreement;
- minimum term of the agreement - 3 years;
- no option to expand the agreement to include other companies (and other restrictions).

#### Partnerships

Conducting business via partnerships may be an alternative to tax groups. Income earned by partnerships is allocated to the partners and subject to CIT at the partners level, together with their other earnings. There are no additional administrative requirements such as those applicable to tax capital groups.



## 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 CIT upon meeting appropriate requirements. Furthermore, CIT does not apply to agricultural business, with the exception of income from special departments of agricultural production.

### Funds

The income of Polish investment funds is CIT exempt. The same applies to funds investing in real estate. Moreover, foreign investment funds may also be exempt from CIT if they meet the requirements set forth in the CIT act.

## Special Economic Zones (SEZs)

Companies operating in SEZs may typically be CIT exempt. The rate of exemption depends on the region/province, and currently ranges from 30 per cent to 50 per cent of:

- investment costs incurred during the completion of an investment in the SEZ, or
- the sum of two-year employment costs for newly-created jobs.

A CIT exemption is available if the taxpayer:

- obtains a business permit for activity in the SEZ;
- incurs eligible expenses after the date of obtaining the permit;
- incurs eligible expenses for a new investment;
- does not transfer the ownership of the assets subject to capital expenditures during three or five years (depending on whether the taxpayer is a large, medium-sized or small enterprise) from the date of entry in the register of fixed assets and intangible assets;
- will conduct business for no less than three or five years (depending on whether the taxpayer is a large, medium-sized or small enterprise).

As a rule, SEZ business permits are issued for manufacturing activity. However, in most SEZs, it is also possible to provide the following services: accounting, other than tax returns, bookkeeping, call centres, IT services, technical surveys and analyses, research services.



The exemption applies solely to the company's activity within the SEZ.

Companies operating in SEZs may also take advantage of property tax exemptions.

## Returns/filing requirements

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

Returns/CIT withholdings	
Monthly	No requirement to file returns. CIT advances must be paid by the 20th of month following the month for which is calculated. In certain case it is possible to choose simplified advance payments.
Annual	Annual tax return CIT-8 is filed by the end of the third month after the end of each tax year. The CIT set forth in the annual return must also be paid by the above deadline.

Due to their nature, intangible services must be documented in detail. Tax authorities pay special attention to this matter; an agreement on the provision of such services itself is not sufficient proof in this regard.

Other tax-deductible costs must also be documented.

## Property tax

Property tax rates depend on property type and location. Tax is paid annually. Tax rates are determined by district authorities, and in 2012, they cannot exceed:

Property type	Tax rate
Land	PLN 0.84/sq. m
Residential buildings	PLN 0.70/sq. m.
Buildings designated for the conduct of business	PLN 21,94.m2/sq. m.
Structures	2 per cent of the property value (entered as the basis for depreciation)

# Payroll taxes

## Personal Income Tax (PIT)

### Unlimited tax obligation in Poland

Individuals with their place of residence in Poland are taxed on their total 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 taxable 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.

### Sources of revenue subject to PIT:

- 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;
- other sources.

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



## Tax scale

Natural persons in Poland are subject to personal income tax calculated, as a rule, according to a progressive tax scale. Tax rates vary depending on the income earned, defined as the total revenue minus tax deductible costs, earned in a given taxable year.

### In 2012, personal income tax is calculated according to the following tax scale:

Taxable base in PLN		Tax
More than	Up to	
	85.528	18 per cent minus tax-reducing amount of PLN 556.02
85 528		PLN 14,839.02 + 32 per cent of the surplus over PLN 85,528

## Business activity

Natural persons conducting business activity are taxed according to the tax scale.

These individuals, at their request, may tax their income with 19-per cent flat-rate tax, taking into account restrictions on services for former/current employers and management service benefits.

Depending on the scale of business conducted, upon meeting specific criteria, the taxpayer may request the application of simplified taxation forms, i.e.:

- tax on registered income (tax calculated without deducting tax-deductible costs),
- a flat rate tax (tax determined by the tax office depending on the type of business).

## Tax rates - special types of revenue

The following income (revenue) categories are taxed in accordance with separate rules:

- private lease (at the taxpayer's request - 8.5 per cent tax on registered income);
- dividends (19 per cent flat tax);
- interest on savings (19 per cent flat tax);
- gains from the sale of securities (19 per cent income tax);
- selling private properties (as a rule, 19 per cent income tax).



Some revenue categories disbursed by Polish withholding agents to non-residents are subject to flat-rate tax of 20 per cent of the revenue. These include proceeds from:

- serving on management or supervisory boards;
- civil law agreements;
- entertainment or sports activity;
- accounting benefits;
- 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 2012, personal income tax payers may take advantage of a number of tax credits, such as:

- deduction of mandatory social security contributions paid in Poland or abroad;
- an Internet credit;
- a credit for charitable donations;
- deduction of mandatory health insurance contributions paid in Poland or abroad;
- a child tax credit;
- contributions to individual account of age old security.



## Tax returns

The deadline for filing an annual tax return is 30 April of the year following the taxable year. This rule does not apply to revenue subject to tax on registered income or a flat rate tax.

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 EEA Member State other than Poland or in the Swiss Confederation,
  - 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.

## 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.

**Mandatory contributions on the employer and employee's side, in force as of February 2012, are set forth below:**

Premium % 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% *	—



Premium % of total monthly salary	Total	Employee	Employer
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%

\* partly deducted from the monthly tax withholding

\*\* 1.93% payable in the first year of the employer's activity

\*\*\* in 2012, the cap on the basis for the calculation of retirement and disability contributions is PLN 105,780

\*\*\*\* the premium payable for employees born after 31 December 1948 and performing work in harmful conditions

Social security contributions should be paid by the 15th day of each month.

## Compensation for the duration of unfitness for work

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

Duration of unfitness for work	Paid by the employer	Paid by the Social Security Office
1-14 days of illness for employees over 50 years of age	80% of average salary**	
1-33 days of illness for other employees	80% of average salary**	
more than 14 days or more than 33 days of illness		80% average salary**

\* the benefit for the duration of an employee's unfitness for work is paid by the ZUS, reduced to 70 per cent in the case of hospital treatments.

\*\* average salary for the previous twelve months

In the event of unfitness for 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 salary.





## 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, 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: the spouse, descendants, ascendants, son-in-law, daughter-in-law, siblings, stepfather, stepmother, in-laws
- Tax group 2 includes: parents' siblings, siblings' descendants, siblings' spouses
- 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, stepson, siblings, stepfather and stepmother. 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, and
- in the case of cash donations - the taxpayer documents the receipt with a bank statement or postal order.



# Tax rates

Currently, tax-exempt amounts are as follows:

- for acquirers from tax group 1 - PLN 9,637.
- for group two - PLN 7,276.
- for group three - PLN 4,902.

# The tax scale is set out as follows:

PLN surplus		Tax
More than	Up to	
from acquirers from tax group 1		
-	10.278	3%
10.278	20.556	PLN 308.30 + 5 per cent of the surplus over PLN 10,278
20.556	-	PLN 822.20 + 7 per cent of the surplus over PLN 20,556
from acquirers from tax group 2		
-	10.278	7%
10.278	20.556	PLN 719.50 + 9 per cent of the surplus over PLN 10,278
20.556	-	PLN 1,644.50 + 12 per cent of the surplus over PLN 20,556
from acquirers from tax group 3		
-	10.278	12%
10.278	20.556	PLN 1,233.40 + 16 per cent of the surplus over PLN 10,278
20.556	-	PLN 2,877.90 + 20 per cent of the surplus over PLN 20,556

# 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.

# Value Added Tax (VAT)

## Overview

The Polish Value-Added Tax Act of 11 March 2004 [the **VAT Act**] is based on EU legislation, and in particular, on the provisions of Directive 2006/112/EC on the common system of value added tax [the **VAT Directive**].

**In 2012, the main VAT rates applicable in Poland are as follows:**

	Tax
the standard VAT rate	23%
the reduced VAT rate (applied to supplies of select food items, medical products, hospitality services and community housing)	8%
the super-reduced VAT rate (applied to supplies of select food items, such as bread, dairy products, meats, and selected book types)	5%

## VAT in international trading - supply of goods

Taxpayers selling goods to buyers in EU states may apply the zero-per cent VAT rate as part of intra-Community acquisition of goods.

The zero-per cent VAT rate also applies to exports of goods defined as exports of goods out of Poland outside of the European Union in performance of taxable activities. In order to apply zero-per cent VAT rate, the taxpayer must have appropriate customs forms stating that the goods have left the territory of the European Union.

In the event of purchasing goods transferred from other EU Member State to Poland, the Polish taxpayer must ensure self-assessment of VAT. This means that the taxpayer should disclose both the output VAT resulting from the taxable activity and the input VAT (due to the fact that this activity constitutes a “purchase” for the purpose of its business). Consequently, as a rule, intra-Community acquisition of goods is a VAT-neutral activity for the Polish taxpayer (the amount of output VAT equals the amount of input VAT).

Imports of goods subject to VAT in Poland are deemed to mean imports of goods from outside the European Union into Poland. In such cases, VAT due on import is typically paid to the customs office that clears the imported goods. Furthermore, a taxpayer who has paid VAT to the customs office may deduct this tax on the basis of the cus-



toms documents received. In selected cases, it is possible to avoid paying VAT to the customs office and settle the import of goods in a VAT return (postponed accounting system) on the terms applicable to intra-Community acquisitions of goods. However, the implementation of this solution applies solely to entities using the simplified customs procedure. VAT exemption applies, among others, to imports of goods subject to inward processing, goods subject to temporary clearance with full customs duty exemption, advertising materials, and product samples.

## VAT in international trading - provision of services

In case of cross-border services, VAT obligation in Poland may arise if the place of supply of a transaction, on the basis of VAT Act, is Poland.

In that respect, Polish VAT Act implements the VAT Directive - for services provided between taxpayers (on a B2B basis) with their registered office/place of residence/permanent place of business in different countries, the primary place of taxation is the country of the registered office/place of residence/permanent place of business of the entity purchasing the service. The opposite applies to services provided by a taxpayer to a non-taxpayer entity (B2C basis).

As a result, under the fundamental principle, VAT will be payable in Poland on service transactions between taxpayers from different countries only if the service recipient has its registered office/place of residence/permanent place of business in Poland. However, in case of services provided by a Polish taxpayer to a non-taxpayer, VAT will be payable in Poland if the service recipient has its registered office/place of residence/permanent place of business in Poland.

There are several exceptions from the above rules - for instance, the place of taxation of real property-related services is, in each case, the place (country) in which the property is located, while the place of taxation of restaurant services is the place (country) of their actual provision.

## VAT exemptions

The VAT Act contains a list of activities that may be exempt from VAT. Typical VAT-exempt activities may include (no optional taxation of these services):

- financial services (lending, maintaining bank accounts, currency exchange), other than leasing, factoring and consultancy;



- insurance and reinsurance services;
- certain medical services;
- certain educational services;
- welfare services;
- social security services;
- certain culture and sports-related services.

The Polish VAT Act also introduces a VAT exemption for supplies of certain real properties. On the other hand, in some cases taxpayers may choose opt for taxation.

## VAT deduction and refund

Taxpayers may reduce the amount of output VAT by the amount of input VAT when purchasing goods and services, provided that the purchases are related to their taxable business activity (so, as a rule, activity subject to VAT).

The limited input VAT reduction concerns the purchase of passenger cars (up to 60 per cent of the VAT on the invoice, but no more than PLN 6,000) or real estate, used partly for non-business purposes (according to actual use).

The VAT Act prohibits the deduction of input VAT at the acquisition of fuel for cars or restaurant services.

In case of input VAT concerning both purchases related to taxable business activity and VAT exempt activity, the taxpayer is entitled to a partial deduction of VAT.

## Registration

Entities that wish to conduct activities subject to VAT in Poland must file a registration form before the date of the first taxable activity. Taxpayers who intend to conduct intra-Community transactions must be EU VAT registered.

Taxpayers whose annual sales do not exceed PLN 150,000 are VAT exempt. However, they may choose to pay tax on their business activity upon notifying the head of the tax office.



In order to register for VAT purposes in Poland, entities without a registered office, permanent place of residence or place of business in the European Union must appoint a tax representative. Tax representatives are responsible for the tax liabilities of the taxpayers they represent.

The VAT Act does not permit the establishment of tax groups for VAT purposes.

## Returns

Taxpayers file monthly VAT returns by the 25th of the month following the month in which the tax obligation arose, or quarterly, by the 25th of the month following the quarter in which the tax obligation arose. As a rule, VAT is paid to the tax office at the time of filing an appropriate VAT return. However, in the case of taxpayers paying VAT quarterly, monthly VAT withholdings must be made if the tax due results from the return filed for the previous quarter. Minor taxpayers with annual sales of less than EUR 1,200,000 are not required to make monthly withholdings (VAT paid quarterly).

Taxpayers conducting intra-Community transactions and providing services (for which the place of provision is determined in accordance with general principles) to EU taxpayers are required to file monthly EC Purchase / Sale. Quarterly Lists may be filed by taxpayers who do not exceed certain value thresholds in commodity transactions and taxpayers providing services solely to EU taxpayers. Furthermore, taxpayers are required to file statistical information (INTRASTAT) on intra-Community commodity transactions.

## Related parties

In case of transactions between related parties, tax authorities may assess turnover on the basis of the market value if it turns out that the relationship affected the calculation of the compensation 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 turnover 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 voting rights that represent at least five per cent of all voting rights, or disposes of such rights directly or indirectly.

# Transfer pricing

## Laws

Polish Transfer Pricing regulations generally follow the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines"). However, the scope and level of detail of the Polish Transfer Pricing regulations is limited in comparison to the OECD Guidelines.

## Related parties

Parties are considered related if:

- a domestic entity controls a foreign entity,
- a foreign entity or foreign individual controls a domestic entity,
- the same legal entity or an individual controls both the domestic entity and the foreign entity
- a domestic entity controls another domestic entity
- the same legal entity or individual controls two or more domestic entities.

According to Polish regulations, an entity is controlled, when another entity or an individual participates directly or indirectly in management or supervision of this entity, or directly or indirectly holds at least five (5) per cent of the shares in this entity.

Polish Transfer Pricing regulations also apply to Polish entities in a relationship of a family nature or arising from an employment or property relationships (between these entities or people who perform management or supervisory functions in these entities).

## Arm's length conditions

Profit (incomes or costs) of a Polish entity from a related party transaction (domestic or foreign) might be assessed at the market value and adjusted. The adjustment may be made, if the transaction conditions agreed by this entity with a related party differ from those which would be agreed between independent entities (and the tax income is not disclosed or is disclosed but in a smaller amount than might be expected, if the parties to the transaction were independent).



## Transfer pricing methods

The Polish tax regulations indicate five OECD transfer pricing methods which may be applied by the tax authorities for the assessment of the market value in the related parties transaction:

- traditional methods (comparable uncontrolled price, resale price and cost-plus),
- transactional profits methods (profit split and transactional net margin method).

Traditional methods have priority in application (before transactional profits methods). The comparable uncontrolled price method should be applied first, if any other method does not provide that the value of the transaction between related parties is closer to its market value.

The detailed rules on profit assessment performed by tax authorities with use of the abovementioned transfer pricing methods are included in the Ordinance of the Minister of Finance of 10 September 2009.

## Special rules

Polish legislation stipulates detailed rules of determining the market value of transactions involving:

- loans (credits) or guarantees;
- advertising costs;
- contract research;
- cost sharing related to the creation of intangibles.

## Transfer pricing documentation

The specific transfer pricing documentation should be prepared for the transactions between related parties if the total transaction value in a tax year exceeds the PLN equivalent of:

- EUR 100,000 – if the value of the transaction does not exceed 20 per cent of the share capital;
- EUR 30,000 – in case of provision of services and sales or licensing of intangible assets;
- EUR 50,000 – in all other cases.





The value of the transaction is translated from EUR into PLN with use of the average National Bank of Poland exchange rate for the last day of the tax year preceding the tax year for which the transfer pricing documentation is prepared.

The transfer pricing documentation also needs to be prepared for a transaction where the Polish permanent establishment of a foreign company is involved.

Furthermore, the transfer pricing documentation is also required for a transaction in which payment is made by the Polish entity, directly or indirectly, to an entity in a country or territory applying harmful tax competition, if the transaction value exceeds the PLN equivalent of EUR 20,000. The list of countries and territories applying harmful tax competition is included in the Ordinance of the Minister of Finance of 10 September 2009.

The Polish Transfer Pricing regulations define the information that should be included in the transfer pricing documentation. However, they do not specify a certain sequence, format or level of detail to be maintained in the transfer pricing documentation. There is no statutory deadline for preparation of the transfer pricing documentation. However, the taxpayers are required to provide the transfer pricing documentation within seven days upon the tax authorities' request. The transfer pricing documentation must be prepared in the Polish language. The Polish regulations require taxpayers to disclose in their annual corporate income CIT-8 tax return whether or not they were obliged to prepare specific transfer pricing documentation.

## Penalties

The tax authority may assess the profit (incomes or costs) from a transaction with a related party if the conditions in such transaction is not arm's length and, as a result therefore, Polish entity discloses a smaller income (than could be expected if the transaction was concluded between unrelated parties). The difference between the income assessed by the tax authority and the income disclosed by the Polish entity for tax purposes is treated as a tax arrear and is subject to a tax rate appropriate for the tax year in which the tax arrear arose (e.g. 19% in 2010). Moreover the Polish entity is required to pay interest on such tax arrears.

If the Polish entity fails to submit the required transfer pricing documentation within seven days of the tax authorities' request, and the taxpayer's profit is adjusted as a result of a tax inspection, then the difference between the incomes assessed by the authorities and declared by the taxpayer is subject to a 50 per cent penalty tax rate. Moreover, the individuals responsible for tax settlements and the company may be subject



to penalties stipulated in Penal Fiscal Code and Law on the responsibility of joint entitles for tax profit deficiency or failure to submit the transfer pricing documentation.

## Transfer Pricing Agreements (APA)

Taxpayers may apply to the Minister of Finance for a confirmation of the choice and manner of application of their transfer pricing methodology. This confirmation is effected by means of the tax authorities' administrative decision (APA). Unilateral, bilateral and multilateral APAs are available in Poland. The APA is valid for up to five years and may be prolonged for the following five years periods, if the taxpayer applies to prolong the APA before it expires.

## Corresponding adjustments

The Polish regulations allow the taxpayer to apply for correcting its taxable profit in a situation where such profit was already taxed by a foreign tax administration relevant for taxpayer's related party. These regulations allow avoidance of double taxation of the profit from the transaction between related parties located in different countries. This applies to those situations where such profit was subject to transfer pricing adjustment made by tax administration relevant for the foreign related party. The detailed procedure for applying for a corresponding adjustment is described in the Minister of Finance ordinance of 10 September 2009.

The above principles also apply to foreign entities which operate in Poland through permanent establishments (with respect to income earned through such permanent establishments), and Polish entities which operate through foreign permanent establishments.

# Excise and customs duty

## Excise Duty

The excise duty system in Poland in principle covers two categories of goods:

- products for which common tax rules are set out in EU directives (petroleum products, coal and electricity; alcohol and tobacco products) - commonly known as “harmonised” goods, and
- passenger cars.

In view of the above, the Polish system is largely based on EU provisions as set out in relevant directives. EU directives define the common rules, minimum/maximum levels of excise duty rates, and exemptions relating to petroleum products (motor fuels and heating fuels), electricity and coal, as well as alcohol and tobacco products. In principle, however, those directives are not applied directly in individual member states, including Poland. That is why trading in “harmonised” excise goods requires the above directives to be implemented in domestic law.

In Poland, trading in excise goods is governed by the Excise Duty Act and the secondary legislation thereto. Since 1 March 2009, a new legal system has been in force in Poland, i.e. a new Excise Duty Act and new regulations. The aim of amending the provisions was primarily to eliminate inconsistencies between the earlier legislation and EU directives, as well as to bring order to the system.

### **Taxation of “harmonised” goods - petroleum products, electricity, coal, alcohol and tobacco products**

As indicated above, the taxation rules on these products are subject to harmonisation at EU level, which means that in each member state the excise duty system for such goods should be in accordance with EU assumptions.

The greatest harmonisation is visible with regard to petrochemical, alcohol and tobacco products, for within that scope the EU directives define the rules for their movement and supervision, as well as institutions specific only for them, such as the tax warehouse, the excise duty suspension arrangement, and activities subject to taxation. As regards those goods, in Poland activities subject to excise duty include: production, introduction of goods to a tax warehouse, importation, intra-Community acquisition, acquisition or possession of goods on which excise duty has not been paid, as well as losses of excise goods.



The obligation to pay excise duty arises in connection with the performance of a taxable activity or at the moment a product is removed from the excise duty suspension arrangement.

In principle, the above excise goods may only be produced in tax warehouses, which may be established only after obtaining a permit from the tax authorities. The production of goods outside a tax warehouse is conditional upon the obligation to make an excise duty prepayment in the amount of 100 per cent of the tax due in the month preceding production. Excise goods may also be stored in tax warehouses. The collection of excise duty is suspended until the moment the goods are removed from the tax warehouse.

If excise goods are designated for sale in another member state, excise duty is not collected in Poland, provided that the goods are to be shipped from the tax warehouse under the excise duty suspension arrangement, and that the recipient is an entity which holds a permit to run a tax warehouse or a permit to acquire excise goods as a registered consignee. Analogous rules apply in the case of a shipment of goods into Poland, i.e. the sender of the goods from another member state does not pay excise duty if it sends them from a tax warehouse under the excise duty suspension arrangement, and the recipient in Poland is an entity running a tax warehouse or which is a registered consignee.

Since 1 January 2011, control over the movement of excise goods between member states under the excise duty suspension arrangement is exercised using electronic accompanying documents (eAD) sent in the EMCS system. Previously, paper documents known as Administrative Accompanying Documents were used for that purpose. Since 1 January 2012, the obligation to use electronic documents also applies with respect to the movement of excise goods in Poland. Paper documents, however, may be used in the case of a breakdown in the EMCS electronic system.

The above rules of control and institutions do not apply to trading in electricity and coal. With respect to these goods, the events under which an obligation to pay excise duty arises are also defined somewhat differently. For example, one of the actions subject to taxation for electricity is the sale to an end user (i.e. the entity which actually consumes the electricity).

The amount of excise duty on excise goods is primarily related to their quantity (or amount of energy), not their value.

As from 2 January 2012, coal (and coke) are effectively subject to excise duty. Until 1 January 2012, those goods were covered by an unconditional exemption from excise duty negotiated by Poland in the treaty of accession.



Alcohol (excluding beer) and tobacco products must bear excise markings in the form of a label affixed to each unit package. Trading in such products without a label constitutes a fiscal crime.

## **Tax on passenger cars**

Excise duty on passenger cars is not based on EU directives. Thus, the system of taxation is specific to Poland.

The subject of excise taxation is actions concerning passenger cars not previously registered in Poland in accordance with the provisions on road traffic, including:

- importation;
- intra-Community acquisition;
- the first sale in Poland of a passenger car produced in Poland or on which excise duty was not paid for an importation or intra-Community acquisition.

The excise rate on passenger cars is:

- 18.6 per cent of the tax base - for passenger cars whose engine capacity is above 2000 cubic centimetres;
- 3.1 per cent of the tax base - for other passenger cars.

## **Customs duty**

An effect of Poland's membership in the European Union is that Poland is covered by EU customs regulations, whose fundamental principles include the absence of internal customs borders, and a common trade policy with regard to countries outside the EU (known as 'third countries') which sets out a common customs duty rates for imports of goods.

Belonging to the customs union means that the same customs regulations adopted at EU level in the form of regulations apply in Poland and in other member states. The provision of those regulations, as opposed to other regulations such as tax directives, are applied directly in every member state. This means that there is no need to implement them into domestic law, since they are directly effective towards each member state and every entity operating within the EU.



## **The basic acts of law regulating the EU customs provisions are:**

- the Community Customs Code (Council Regulation [EEC] 2913/92 of 12 October 1992);
- the Implementing Provisions to the CCC (Council Regulation [EEC] 2454/93 of 2 July 1993);
- the Common Customs Tariff, and
- the Council Regulation of 16 November 2009 laying down a community system of customs duty exemptions.

Because EU regulations are directly effective, in all member states the same customs procedures (e.g. release for free circulation, customs warehousing, inward processing, or exportation), customs duty rates, rules for applying exemptions from duty, simplified procedures and customs institutions apply.

## **The domestic provisions of individual member states regulate certain autonomous and procedural issues, as well as detailed and technical matters. In Poland, domestic provisions govern, for example:**

- appeal and court proceedings concerning decisions of customs authorities;
- the material and territorial competence of customs authorities;
- the form of certain customs applications and permits;
- the rules for conducting customs inspections;
- the types of goods to which simplified procedures cannot be applied.

At the same time, despite the direct effectiveness of EU regulations in all member states, the manner in which those regulations are applied by the local authorities may vary in practice. Examples are the simplified procedures, and a more liberal or more restrictive approach of customs authorities to the conditions which an entity must meet in order for these to apply. Differences in how EU regulations are applied in practice in member states also arise with respect to customs procedures rarely applied. One such procedure, for example, is that of release for free circulation of goods destined for a certain type of treatment (known as the 'end-use' procedure).

Over the past several years, there has been within the EU (including in Poland) a departure from submitting paper customs declarations. These are being replaced by electronic



communications. For example, declarations for export are compulsory throughout the EU and must be made in the electronic Export Control System. They can be in paper form only in the case of a breakdown in the electronic system.

As regards import procedures, in Poland customs declarations may be submitted electronically. The Polish customs authorities are encouraging businesses to switch over to that method of submitting customs declarations, and it is likely that by mid-2012 only two types of import declarations will be accepted (electronic or paper).

Businesses exporting or importing goods to and from the EU are obliged to send pre-departure and pre-arrival declarations to the customs authorities in the form of electronic documents. The purpose of sending such information is for the business to provide the customs authorities with the data necessary for conducting a risk analysis concerning the goods exported or imported from/to the EU.

Businesses involved in customs trading are also obliged to obtain an EORI (Economic Operators' Registration and Identification) number and to register in the Reference Data Subsystem (Polish abbreviation PDR). The EORI number is valid and recognisable in all member states, whereas the Reference Data Subsystem is a Polish system.

Another customs law institution worthy of mention is that of an Authorised Economic Operator (AEO). Given the number of requirements that a business must meet in order to attain AEO status, such an entity is treated by EU customs authorities as a credible partner, and therefore in a privileged manner, for example during customs clearances and inspections. It is also planned to introduce additional privileges for entities having AEO status in the EU, as well as for that status to be mutually recognised among, for example, customs authorities in the EU and the USA, as the institution of an AEO is based on WCO (World Customs Organisation) Guidelines.

# Foreign exchange limitation

Foreign exchange transactions are permitted in Poland, with a few restrictions stipulated in the act. Restrictions apply to certain transactions with non-residents with offices in third countries, which include countries that are not Member States of the European Union:

- purchase (subscription) by residents of shares in companies seated in third countries (does not apply to purchases made in Poland);
- purchase by residents of participation units in investment funds having their registered offices in third countries (does not apply to purchases made in Poland);
- purchase by residents of debt securities with a maturity of one year or more, issued by non-residents from third countries (does not apply to purchases made in Poland).

Restrictions do not apply to:

- transactions with non-residents having their registered offices in third countries who are members of the European Economic Area or the Organisation for Economic Co-operation and Development;
- certain transactions with non-residents having their registered offices in third countries with which Poland has signed a bilateral investment treaty (BIT states).

In the case of restricted actions, concerned parties may request that the President of the National Bank of Poland issue an individual foreign exchange permit.

Foreign exchange permits are issued for specific transactions (the conclusion of an agreement, settlement).

By way of individual arrangement, a permit may be obtained for settling a certain volume of transactions or effecting restricted actions over a specific time period.



# Starting business in Poland

## Overview

Under the Act on Freedom of Economic Activity, persons from European Union Member States and European Free Trade Association (EFTA) Member States may undertake and conduct business activity on the same terms as those applicable to Polish entrepreneurs.

Persons from outside the EU and EFTA may undertake and conduct business activity solely as: limited partnerships, limited joint-stock partnerships, limited liability companies and joint-stock companies. Unless international agreements state otherwise, these persons may also participate in such companies and partnerships and purchase their shares.

When starting a business in Poland, entrepreneurs may choose from among the following company types (bearing in mind the restrictions referred to above):

- registered partnership;
- civil law partnership;
- limited partnership;
- limited joint-stock partnership;
- partnership;
- limited liability company;
- joint-stock company.

Depending on the type of business selected, in order to commence business activity, the founders must:

- draft a memorandum of incorporation and articles of association or statute;
- enter the business in the National Court Register (KRS);
- register the business with the Statistical Office (in order to obtain a REGON statistical number);
- open a bank account for the business;
- register the business with the Tax Office (in order to obtain a tax identification number (NIP) and for VAT purposes);
- register the business with the Social Security Office (ZUS);
- open books of account and commence statutory reporting activities or contract these to a specialised business partner;
- establish necessary authorisations.



In practice, the registration of a business takes a few weeks and boils down to filing in quite lengthy forms with the competent authorities. Any defects or errors in the forms will prolong the process. Due to the level of complexity of the required forms, investors often take advantage of the expertise of consultants, who assist them in selecting the best possible solutions for the newly-established business.

A registered business that is commencing operations must bear in mind a number of obligations imposed on companies. Aside from industry-specific obligations, each business will have to:

- maintain books (under the Accounting Act, a company must keep accounting records in Polish and in the Polish currency. Furthermore, under the applicable laws, the company's books and records must be kept in Poland);
- report and pay income tax;
- report and pay VAT;

It must be noted that, as part of the above obligations, companies may be audited, and any documents and explanations must be provided in Polish. Furthermore, in many cases, the manager of the entity is fully responsible for the fulfilment of the obligations.

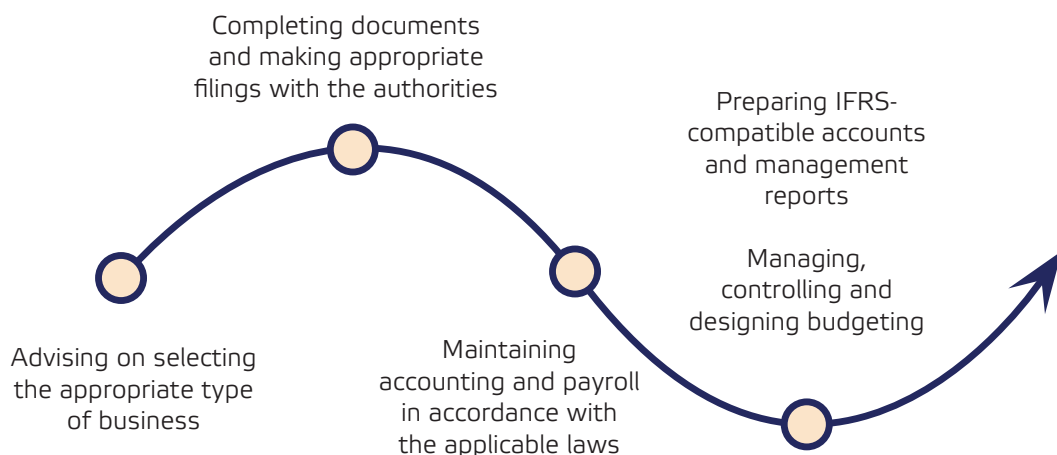


## Before you get started

Starting a business in a foreign country presents new opportunities but also carries a risk for the investor. The first step already requires a decision on the type of business that will be the most tax- and cost-effective and carry the least liability.

The next step is registering the business, which requires visiting numerous offices and completing various documents.

This takes time and extensive knowledge of the legal and fiscal system. The advisory firm MDDP, which has cooperated with foreign investors since its inception, has successfully completed numerous business ventures. With our support, investors can quickly start their business activity in accordance with Polish laws. On the basis of the projects we have completed and drawing on our experience, we advise businesses at every stage of their activity. Investors starting a business in Poland might particularly benefit from fully outsourcing their accounting and payroll services together with calculating and reporting all applicable taxes, and reporting in accordance with international standards or specific group requirements.



Moreover, MDDP Outsourcing can help you in processing high volume AP / AR documents, free up resources to focus on what matters most and cut your accounting costs. By outsourcing your AP/AR function to us, you can achieve greater cost flexibility. We offer AP/AR processing excellence and dedicated IT solutions (a workflow system provided to you) at costs well below those in Western Europe. We can provide you with a dedicated team of experienced accountants, with the necessary language and communication skills, at an attractive price.

# Withholding taxes under Poland's tax treaties (table)

Country	WHT in Poland (%)		
	Dividend	Interest	Licence payments
Albania	5/10 (d)	10	5
Armenia	10	5	10
Australia	15	10	10
Austria	5/15 (a)	5	5
Azerbaijan	10	10	10
Bangladesh	10/15 (a)	0/5 (k)	10
Belarus	10/15 (e)	10	0
Belgium	5/15 (bb)	0/10 (k)	5
Bulgaria	10	10	5
Chile	5/15 (c)	0/5 (k)	5/15 (h)
China	10	0/10 (k)	7/10(h)
Croatia	5/15 (d)	15	10
Cyprus	10	0/10 (k)	5
Montenegro	5/15 (d)	0/10 (k)	10
Czech Republic	5/10 (c)	0/10 (k)	5
Denmark	0/5/15 (t)	10	5
Egypt	12	0/10 (k)	12
Estonia	5/15 (d)	0/5 (k)	10
Philippines	10/15 (d)	0/12 (k)	15
Finland	5/15 (d)	0/10 (k)	5
France	5/15 (a)	0/10 (k)	0/10 (p)
Greece	19	0/5 (k)	10
Georgia	10	0	8
Spain	5/15 (d)	10	0/10 (f)
Holland	5/15 (a)	0/8 (k)	5
India	15	0	20 (aa)
Indonesia	10/15 (c)	0/5 (k)	15
Iceland	5/15 (d)	0/15 (k)	10
Iran	7	0/10 (k)	10



Country	WHT in Poland (%)		
	Dividend	Interest	Licence payments
Ireland	0/15 (d)	0/10 (k)	0/10 (v)
Israel	5/10 (b)	5	5/10 (h)
Japan	10	0/10 (k)	0/10 (i)
Jordan	10	0/10 (k)	10
Canada	15	0/15 (k)	0/10 (f)
Qatar	5	0/5 (k)	5
Kazakhstan	10/15 (c)	0/10 (k)	10
Kyrgyzstan	10	0/10 (k)	10
South Korea	5/10 (a)	0/10 (k)	10
Kuwait	0/5 (y)	0/5(k)	15
Lebanon	5	0/5 (k)	5
Lithuania	5/15 (d)	0/10 (k)	10
Luxembourg	5/15 (d)	0/10 (k)	10
Latvia	5/15 (d)	0/10 (k)	10
Macedonia	5/15 (d)	0/10 (k)	10
Malaysia	0	15	15
Malta	0/10 (cc)	0/5 (k)	5
Morocco	7/15 (d)	10	10
Mexico	5/15 (d)	0/5/15 (k)(z)	10
Moldavia	5/15 (d)	0/10 (k)	10
Mongolia	10	0/10 (k)	5
Germany	5/15 (a)	0/5 (k)	5
Norway	0/15 (cc)	0/5 (k)	5
New Zealand	15	10	10
Pakistan	15 (j)	0	15/20 (n)
Portugal	10/15 (o)	0/10 (k)	10
Russia	10	0/10 (k)	10
South Africa	5/15 (d)	0/10 (k)	10



Country	WHT in Poland (%)		
	Dividend	Interest	Licence payments
Romania	5/15 (d)	0/10 (k)	10
Serbia	5/15 (d)	10	10
Singapore	0/10 (r)	0/10 (k)	10
Slovakia	5/10 (c)	0/10 (k)	5
Slovenia	5/15 (d)	0/10 (k)	10
Sri Lanka	15	0/10 (k)	0/10 (l)
Syria	10	0/10 (k)	18
Switzerland	0/15 (cc) (t)	10	0/10
Sweden	5/15 (d)	0	5
Tajikistan	5/15 (d)	0/10 (k)	10
Thailand	19	0/10/20 (k) (m)	5/15 (f)
Tunisia	5/10 (d)	12	12
Turkey	10/15 (d)	0/10 (k)	10
Ukraine	5/15 (d)	0/10 (k)	10
USA	5/15 (g)	0	10
Uzbekistan	5/15 (c)	0/10 (k)	10
Hungary	10	0/10 (k)	10
Vietnam	10/15 (d)	10	(q)
Great Britain	0/10 (cc)	5 (k)	5
Italy	10	0/10 (k)	10
Zimbabwe	10/15 (d)	10	10
United Arab Emirates	0/5 (y)	0/5 (k)	5



- (a) A lower rate applies if the entity receiving the dividend holds at least 10 per cent of the shares in the entity paying the dividend.
- (b) A lower rate applies if the entity receiving the dividend holds at least 15 per cent of the shares in the entity paying the dividend.
- (c) A lower rate applies if the entity receiving the dividend holds at least 20 per cent of the shares in the entity paying the dividend.
- (d) A lower rate applies if the entity receiving the dividend holds at least 25 per cent of the voting rights in the entity paying the dividend.  
In reference to the agreement with Ireland, if Ireland charges tax at source for dividends paid, a rate of 5 per cent applies (instead of an exemption).
- (e) A lower rate applies if the entity receiving the dividend holds at least 30 per cent of the shares in the entity paying the dividend.
- (f) A lower rate (exemption) applies to licence payments paid for selected copyrights. Tax is charged on revenue from a patent, trade mark, construction solution or model, plan, secret or production technology, or industrial, commercial, scientific equipment or know-how.
- (g) A lower rate applies if the entity receiving the dividend holds at least 10 per cent of the shares in the entity paying the dividend, converted into voting rights.
- (h) A lower rate applies to licence payments due for the use of or right to use industrial, commercial or scientific equipment.
- (i) A lower rate applies to licence payments due for copyrights.
- (j) A lower rate applies if the entity receiving the dividend holds at least one third of the shares in the entity paying the dividend.
- (k) An exemption applies on interest paid to the government or a governmental unit or on loans insured/guaranteed by governmental units (the list of which varies from country to country) or a bank, and on interest on a sale for credit of industrial equipment.
- (l) An exemption applies to licence payments due for copyrights. A rate of 10 per cent applies to revenue from a patent, trade mark, construction solution or model, plan, secret or production technology, or industrial, commercial or scientific equipment or know-how.
- (m) A rate of 20 per cent applies to interest paid to recipients that are not financial or insurance institutions or state units.
- (n) A lower rate applies to know-how; a higher rate applies to copyrights, patents and trade marks.
- (o) A rate of 10 per cent applies if, on the dividend payment date, the recipient has held at least 25 per cent of the shares in the entity paying the dividend, without interruption for at least two years. In other cases the tax rate is 15 per cent.
- (p) A lower rate applies to licence payments due for copyrights to a literary, artistic or scientific work, for remuneration paid in any form for the use of or right to use industrial, commercial or scientific equipment, services comprising scientific or research studies or consulting services, and supervisory and management services.
- (q) A lower rate applies to know-how, patents and trade marks.
- (r) A lower rate applies to certain dividends paid to governmental units or enterprises.
- (s) An exemption applies if the recipient of the dividend has held at least 25 per cent of the shares in the capital of the entity paying the dividend for at least one year, and no dividends were declared during that period.
- (u) Given that, under Polish law, the income tax rate at source on a dividend is 19 per cent, the rate of 20 per cent resulting from the agreement does not apply. A lower rate applies to fees for technical services.
- (v) A rate of 10 per cent applies to fees for technical services.
- (y) A lower rate applies if the owner of the dividend is the government or a governmental institution.
- (z) A rate of 5 per cent applies to interest paid to banks or insurance companies and to interest on vouchers.
- (aa) Given that under Polish law the CIT rate at source on licence payments is 20 per cent, the rate of 22.5 per cent resulting from the agreement does not apply.
- (bb) A lower rate applies if the entity receiving the dividend holds at least 25 per cent of the shares in the entity paying the dividend, or if the recipient holds at least 10 per cent of the shares in the entity paying the dividend but the cost of acquiring the shares was at least EUR 500,000 (or the equivalent of that amount).
- (cc) An exemption applies if the recipient has held at least 10 per cent of the shares in the entity paying the dividend, without interruption for at least two years.

