



TAX SERVICES



- Business Services & Consulting
- Accounting & Payroll
- IT Sales & Services
- Tax & Legal



Invest in Poland 2019

Societies and taxes
(with amendments from 01 January 2019)





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FIRST-CLASS PERFORMANCE FOR FULL SERVICE FINANCE & ACCOUNTING SOLUTIONS

Many companies are confronted with the need to reduce accounting costs and to comply with the required financial reporting standards. Compounding this problem is the requirement that they must address these requirements, with resource constraints on their capital budget and staffing. These compliance standards have also added complexities to many of the financial processes.

getsix[®] has set itself the aim to support companies and entrepreneurs in Poland in addressing these challenges. **getsix**[®] in Poland offers a variety of outstanding professional and complementary services in the following areas:

- Business Services & Consulting
- Accounting & Payroll
- IT Sales & Services
- Tax & Legal

The customer base of **getsix**[®] includes Polish clients, but also a variety of international companies with Polish subsidiaries and/or branches, especially from German speaking areas. In order to facilitate our mutual co-operation with our clients, we operate at their disposal a **getsix**[®] English Desk with a fluent English speaking team of dedicated specialists. As well as offering our services in the English language, we also offer in German and Polish.

With over 130 dedicated staff members who have many years of experience in their different areas of expertise, will gladly assist you with your business

activities in Poland. The range of services we offer can be individually tailored and structured in line with the needs of your company.

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During 2014 **getsix**[®] joined HLB International, a leading network of independent professional accounting firms and business advisers with member firms well-established in Poland, and world-wide mostly ranked among the top 12 nationally. Once we realised the importance for an alliance in Poland with member firms, we set-up HLB Poland. This makes us even stronger, even more flexible with a combined staff of over 210, covering all areas of accounting, auditing, payroll, HR, along with advisory, tax and financial services, complimented with a fully developed and sophisticated range of technical IT solutions.

The main advantages for clients stemming from the fact that **getsix**[®] belongs to HLB:

- an established quality network
- local knowledge, with global expertise
- partner-run service which guarantees loyalty of cooperation
- a range of value added services

If you have any questions or queries, or just have a question to ask - please do not hesitate to contact us.

getsix[®] is at your service.

INVESTMENT BASICS

Currency - Polish Złoty (PLN)

Accounting principles / financial statements - Polish GAAP or, in some cases, IFRS. Financial statements must be prepared annually. Special rules apply to stock listed companies.

Foreign exchange control - None (generally) for transactions with EU, EEA, OECD and certain other countries. Permission may be required for certain transactions with other jurisdictions and to conduct certain transactions in a foreign currency.

Principal business entities - These are the limited company (Sp. z o.o.), joint stock company (SA), limited joint-stock partnership, limited partnership, sole proprietorship and branch of a foreign corporation.

TAX SYSTEM IN POLAND CONSIST OF 16 TYPES OF TAXES

Direct taxes:

- Corporate income tax (CIT)
- Personal income tax (PIT)
- Social security
- Inheritance and Gift tax
- Civil law transactions tax (PCC)
- Stamp duty
- Market fees
- Visitor's tax
- Tax on certain financial institutions (so-called bank tax)
- Hydrocarbon tax
- RTV subscription

Indirect taxes:

- Value Added Tax (VAT)
- Excise duty
- Lottery tax

Local taxes:

- Real property tax
- Transport vehicle tax
- Agricultural & Forest tax
- Dog ownership fee
- Tourist tax



ADMINISTRATION & COMPLIANCE

Tax year	The personal income tax year is the same as the calendar year. In the case of taxpayers subject to corporate income tax, the tax year is the calendar year, unless the taxpayer decides otherwise and notifies the applicable head of the tax office.
Taxation procedure	<p>Taxpayers must self-assess and pay advance income tax during the year and may use a simplified method based on previous years' results. The final calculation and reconciliation of the tax due should be made within three months of the end of the tax year.</p> <p>In contrast to other European countries where a general assessment is used by the tax authorities, Poland uses the principle of reverse charge by taxpayers.</p> <p>The taxpayer must calculate the tax themselves to issue a tax return and to pay the amount due on time.</p>
Penalties	Persons responsible for the tax reconciliation, as well as members of the management board in certain cases, are subject to penalties for non-compliance. In certain cases, corporate entities may be subject to penalties.
Criminal Tax Law	<ul style="list-style-type: none"> • Penalty for tax evasion - criminal charges • Penalty for deliberate tax evasion - fine or imprisonment • Penalty for non-submission (failing to send) or untimely submission (sending) of the Standard Audit File for Tax (SAF-T) - Fine • As a general rule, administrative procedures
Limitation period:	<p>In principle tax debts become time-barred after 5 years.</p> <p>Once the limitation period expires, the tax liability along with accrued default interest ceases to exist default interests</p>
Registration and licensing	<p>Polish law protects intellectual property, and the licensing of foreign brand names and products is accepted practice. Licensing is prevalent in high-tech industries, pharmaceuticals and retail franchises. Licensed products produced in Poland may be exempt from import tariffs and excise duty and may also benefit from being classified as a Polish product.</p> <p>The granting of licences is not subject to official restrictions or approval. A licensor may not sublicense.</p>

FOREIGNERS' STARTING UP A BUSINESS IN POLAND

Legal basis

In accordance with the Economic Activity Freedom Act a foreigner is:

- a natural person holding no Polish citizenship,
- a legal person with the seat abroad,
- an organisational entity which has no legal personality and is furnished with legal capacity, possessing its seat abroad.

A. Foreigners from:

- member states of the European Union
- member states of the European Free Trade Agreement (EFTA) - parties to the agreement on the European Economic Area
- states that are not parties to the agreement on the European Economic Area and that enjoy freedom of established under agreements concluded by those states with the European Community and its member states - may establish and conduct economic activity based on the same terms as the Polish citizens

B. The above rule also applies to foreigners who are not citizens of the states indicated in point A and who:

- have received a permit to settle in Poland
- have received a permit to stay in Poland under the status of a long-term resident of the European Community
- have received a residence permit in Poland for a specified period of time due to circumstances referred to the Foreigners Act of **13 June, 2003**
- have a refugee status in Poland or enjoy supplementary protection
- have received a permit for tolerated residence
- have received a residence permit in Poland for a specified period of time and have been married to a Polish citizen residing in Poland
- enjoy temporary protection in Poland
- have a valid Pole's Card
- are family members of citizens of states indicated in point A above and join or stay with them in Poland

C. Business activity forms:

Unless international agreement state otherwise. Foreigners other than those indicated above in points A and B have the right to establish and conduct business activity (including joining below-mentioned partnerships/companies and acquiring their shares) only in the form of:

- a limited partnership
- a limited joint-stock partnership
- a limited liability company and
- a joint-stock company

Moreover, foreign entrepreneurs, i.e. a foreign person conducting economic activity abroad and a Polish citizen conducting economic activity abroad, may conduct business activity in the form of a branch office or they may establish a representative office in Poland.

BUSINESS REGULATIONS

Limited liability company (Sp. z o.o.)

A limited liability company is the most popular and flexible form of conducting business activity in Poland. It is Polish equivalent of the private limited liability company in the UK, a société à responsabilité limitée (sarl in France, or a Gesellschaft mit beschränkter Haftung (GmbH) in Germany. Limited liability companies may be established for any purpose allowed by law. They are often used as special purpose vehicles, holding companies and as national companies controlled by international corporations. The personal structure of the limited liability company may be, in general, changed without affecting the legal structure of the limited liability company, which is normally not the case with a partnership. a limited liability company may also be run by a single founder/shareholder. However, a single-shareholder limited liability company cannot incorporate another single-shareholder limited liability company. Although a limited liability company is a capital company, it still preserves some personal elements, such as the possibility to limit the disposal of the company's shares or establish the shareholder's right of individual control of the limited liability company. The shares of a limited liability company do not take the form of a document and cannot be listed on the stock exchange.



BUSINESS REGULATIONS *CONTINUATION*

Joint-stock company (S.A.)

A joint-stock company is the Polish equivalent of the public liability company in the UK, société anonyme (SA) in France and the German Aktiengesellschaft (AG). Joint-stock companies are rather expensive to run and are primarily used for large-scale business activities, in particular, if public is to be considered as a way of obtaining capital.

Formally it is more structured than the limited liability company.

The shares of joint-stock companies may be publicly traded (listed on the Stock Exchange). The Polish law provides stricter and more complex rules with respect to public joint-stock companies regarding their capitalisation, composition of the governing bodies, compliance and reporting duties.

Detail requirements for a limited liability company (Sp. z o.o.) and a joint-stock company (S.A.)

Capital

Sp. z o.o.: The minimum capital required to establish a limited-liability company is **5,000.00 PLN**. A limited-liability company may have a single shareholder. **S.A.:** The minimum start-up capital for a joint-stock company is **100,000.00 PLN** of which **25%** must be paid up before registration. A joint-stock company can be established by one or more founding members, who must sign an articles of association agreement.

Taxation of capital companies (CIT)

Capital companies are separate taxpayers to CIT. In principal, the companies are subject to taxation on their global income. With regards a management board, taxation on their global income only if they have a Polish certificate of residence. Taxable income consists of all revenues earned in a tax year (financial and operational), net of deductible costs. This income is subject to CIT at the rate of **19%**. Capital companies are payers of VAT and other taxes in an ordinary fashion

Reserve

Sp. z o.o.: None. **S.A.:** **8%** of annual net profits, until reserve reaches one-third of share capital.



BUSINESS REGULATIONS *CONTINUATION*

Detail requirements for a limited liability company (Sp. z o.o.) and a joint-stock company (S.A.)

Founders, shareholders

Sp. z o.o.: There are no restrictions on nationality or residence of shareholders. **S.A.:** The company must be founded by at least one natural or legal person. Once the company has been established, one shareholder may buy out others. There are no residence or nationality requirements

Supervisory board

Sp. z o.o.: If share capital exceeds **500,000.00 PLN** and there are more than 25 shareholders, the company must have a supervisory board with at least three persons. **S.A.:** a supervisory board with at least three members, each appointed for a term of up to **5 years**, is required. **Both:** No residence or nationality requirements, but the chairman of the board for banks registered in Poland must have a working knowledge of Polish.

Management

There are no residency requirements. Management need not be shareholders for either joint-stock or limited-liability companies. **Sp. z o.o.:** The term of office is not defined. **S.A.:** The management board may be appointed for an initial term of up to **2 years**, with subsequent terms of up to **3 years** each.

Labour

Employees have no influence over the management of private-sector firms unless they are shareholders. Employees appoint one-third of the supervisory board of firms undergoing privatisation, but this right expires once **51%** of shares are sold. Employees are entitled to form trade unions.

Disclosure

Both types of companies are required to prepare annual balance sheets and profit and loss accounts, which must be filed with the local court in file format JPK_SF.

Sole proprietorship

A sole proprietor is an individual who conducts business activity in his/her own name and on his/her own behalf. There is no legal requirements regarding the amount of the initial capital to undertake business activity as a sole proprietor in Poland. Also, no new legal entity is established as a result of such undertaking. The business of the sole proprietor may be transformed into a capital company, i.e. a limited-liability company or a joint-stock company

BUSINESS REGULATIONS *CONTINUATION*

Civil law partnership	<p>Two or more sole proprietors as well as other legal entities, i.e. partnerships and capital companies, may decide to establish a civil law partnership. A civil law partnership is not a separate legal entity and does not possess legal personality. It also cannot acquire rights or incur obligations in its own name and on its own behalf, it can not sue or be sued. Contributions and possessions generated during the business operations of the civil law partnership are owned by partners as joint co-ownership.</p> <p>Civil law partnerships may be transformed into registered partnerships based on a unanimous decision of the partners.</p>
Professional partnership	<p>Professional partnerships may be established by specific professionals as defined and listed in the Polish Commercial Companies' Code (lawyers, architects, tax advisers, accountants, doctors, dentist, and others). The professional partnership may be formed for the purpose of pursuing more than one profession, unless the law prohibits this specifically. As in the case of registered partnerships, professional partnerships do not have legal personality, but have legal capacity and capacity to perform legal actions (they may acquire rights, including ownership of a real estate, and incur obligations in their own name, as well as sue and be sued).</p>
Limited partnership	<p>A limited partnership is usually preferred when investors seek a way to differentiate their involvement in the partnership entity and consequently their liability for the transactions performed by partnership. The distinctive feature of this partnership is that the legal positions of partners are not equal - general partner(s) and limited partner(s) - which results in significantly different levels of rights and liabilities.</p>
Limited joint- stock partnership	<p>A limited joint-stock partnership is the most complex type of partnership, as its structure combines the elements of both the registered partnership and the joint-stock company. Like other partnerships, the limited joint-stock partnership has no legal personality, but it has legal capacity, which means that it may acquire rights, and incur obligations in its own name. The limited joint-stock partnership may also sue and be sued. Limited joint-stock partnerships are established by at least one general partner and one shareholder. Participation of shareholders is a consequence of a capital-focused character of the limited joint-stock company.</p>

BRANCH OF A FOREIGN COMPANY

Basis

According to the Polish law, foreign entrepreneurs may set up branch offices to carry out business activity in the Polish territory. An entrepreneur from a foreign country is allowed to establish a branch on condition that a Polish entrepreneur enjoys equivalent rights in the country of origin of the foreign entrepreneur (reciprocity rule), unless the international agreements ratified by Poland state otherwise. The above does not concern entrepreneurs from EU and EEA countries as well as from countries that are parties to association agreements with the EU in the area of the freedom of establishment. Such entrepreneur's may freely set up branch offices in the Polish territory.

A branch does not possess legal personality, it constitutes an integral part of the foreign enterprise and cannot acquire rights or incur obligations in its own name, cannot sue or be sued. However, branches have significant independence with respect to employment matters. The scope of business activity of the branch may not go beyond the foreign entrepreneur's scope of activity. Some special regulations (both in Poland and European Union) regarding opening a branch may be applicable to specific industries, e.g. when opening a branch of a foreign bank, insurance company or investment company. In such cases, the opening of a branch should be seen in light of those specific regulations (which may differ from the general rules).

REPRESENTATIVE OFFICE

Basis

Foreign entrepreneurs may set up their representative offices in Poland. The representative office does not constitute a separate legal entity and is treated as part of a foreign enterprise's organisational and functional structure.

It cannot acquire rights or incur obligations, sue or be sued. The representative office may be established by the foreign entrepreneur only to advertise and promote the business of the entrepreneur in Poland.

FORMING OF COMPANIES IN POLAND

	POLISH TERM	ENTRY INTO COMPANY REGISTRY / LEGAL PERSONALITY	MINIMUM CAPITAL	SINGLE-MEMBER COMPANY
Limited Liability Company (Ltd.)	Spółka z ograniczoną odpowiedzialnością	Yes / Yes	5,000.00 PLN Minimum face value 50.00 PLN	Yes
Incorporated Company	Spółka Akcyjna	Yes / Yes	100,000.00 PLN Minimum face value 0.01 PLN	Yes
Co-operative (Co-op.)	Spółdzielnia	Yes / Yes	No	No at least 10 members (5 in anagricultural co-operative). Does not apply if at least 3 members are legal persons.
General Partnership	Spółka jawna	Yes / No	No	No
Limited Partnership	Spółka komandytowa	Yes / No	No	No
Limited joint-stockpartnership	Spółka komandytowo-akcyjna	Yes / No	50,000.00 PLN	No
Partnership under the Civil Code	Spółka cywilna	No / No	No	No
Branch	Oddział	Yes / No	No	
Permanent tax establishment	Zakład	No / No	No	

	START-UP DUTY	WRITING / NOTARIAL	TRANSPARENCY	REGISTRATION WITH THE TAX AUTHORITIES	STATUTORY AUDIT: TURNOVER ≥ 5,000,000.00 EUR; BALANCE SHEET TOTAL ≥ 2,500,000.00 EUR; EMPLOYEES ≥ 50
Limited Liability Company (Ltd.)	0.5% tax on the articles of association / Entry in the Commercial Register	Yes / Yes	No	Yes	Provided that at least 2 of those requirements are met
Incorporated Company	0.5% tax on the articles of association / Entry in the Commercial Register	Yes / Yes	No	Yes	Compulsory
Co-operative (Co-op.)	No / Entry in the Commercial Register	Yes / No	No	Yes	Mandatory
General Partnership	0.5% tax on the articles of association / Entry in the Commercial Register	Yes / No	Yes	Yes	Provided that at least 2 of those requirements are met
Limited Partnership	0.5% tax on the articles of association (Yes for the Limited Partnership having a Limited Liability Company as general partner) / Entry in the Commercial Register	Yes / No	Yes	Yes	Provided that at least 2 of those requirements are met
Limited joint-stockpartnership	0.5% tax on the articles of association / Entry in the Commercial Register	Yes / Yes	Yes	Yes	Provided that at least 2 of those requirements are met
Partnership under the Civil Code	0.5% tax on the articles of association / Entry into the CEIDG free of charge	Yes / No	Yes	Yes	Provided that at least 2 of those requirements are met
Branch	As a rule no; Entry in the Commercial Register	-	-	Yes	In the context of any audit of the parent company
Permanent tax establishment	-	-	-	Yes	In the context of any audit of the parent company

CORPORATE INCOME TAX (CIT)

Legal basis	Act of 15 February, 1992 , on corporation tax with all amendments
Basic information	<p>Sources of revenues:</p> <ul style="list-style-type: none"> • from capital gains, • from business activity and from special departments of agricultural production. <p>The consequence of this amendment is the separate calculation of the amount of income from these two sources and the lack of possibility to compensate losses from money capitals with income from other business activity. The exceptions apply only to banks (their revenues will be allocated to one source).</p> <p>Subject of taxation</p> <p>The subject of CIT taxation is income constituting the sum of income from both sources: capital gains and other economic activity. This means that if both of these sources generate a profit, it will be subject to a joint taxation at the rate of 19% (9%).</p> <p>As a rule, also revenues from capital gains will be created on an accrual basis (due revenues). The exception in this respect is to be related to revenues of a typically cash nature, i.e. revenues from shares in profits of a legal entity.</p> <p>Residents are taxed on worldwide income; non-residents are taxed on Polish-source income only. Foreign-source income derived by residents is generally subject to corporation tax in the same way as Polish-source income, usually with a foreign tax credit available, unless a tax treaty provides otherwise. Branches are generally taxed the same as subsidiaries.</p>
Tax rate (CIT)	<p>There have been two corporate tax rates:</p> <ul style="list-style-type: none"> • 19% - corporate income tax rate for unlimited and limited taxable corporations, however, no minimum corporate income tax, • 9% - corporate income tax rates for: <ul style="list-style-type: none"> » so-called 'small taxpayers'. These are all taxpayers whose income in the previous tax year does not exceed 1,200,000.00 EUR, including value added tax, » taxable people starting a business (in the tax year of commencement of the business) - there are limitations in using the 9% rate for some corporations which were transformed.

CORPORATE INCOME TAX (CIT) CONTINUATION

Payment method

Monthly advance payments, amounting to the difference between the tax due at the beginning of the year and the total sum of already made advance payments, where applicable settlement of the advance payments in simplified form possible.

The obligation to pay advance payments does not apply to taxpayers who have had a tax loss.

Advance payments do not have to be paid by those PIT and CIT taxpayers, whose advance payment for a given month did not exceed **1,000.00 PLN**. These are cases in which the tax due on income earned from the beginning of the year less the amount of advance payments paid since the beginning of the year does not exceed **1,000.00 PLN**. If the tax due on income earned from the beginning of the year, less the amount of advance payments paid since the beginning of the year, exceeds **1,000.00 PLN**, then the current advance payment must be paid. After exceeding the advance payment amount in the given period, the amount of **1,000.00 PLN** is in fact also paid an advance payment for months not previously covered by such an obligation, in which the taxpayer has used the possibility of not paying the advance payment.

This method is applicable both to taxpayers paying advance payments monthly and quarterly. In addition, in the case of PIT taxpayers, such a rule applies to taxpayers who generate revenues from lease subject to taxation according to the general rules.

The CIT and PIT taxpayers who use a simplified method of advance payments are not exempt from the obligation to make advance payments.

Tax loss settlement

Tax loss can be settled within **5 years**. In each year no more than **50%** of the loss may be deducted (and the remainder in subsequent years), alternatively it is allowed to make a one-off reduction of income in one of the next consecutive tax years by the amount not exceeding **5,000,000.00 PLN**. The amount not deducted is subject to the settlement in the remaining years of the five-year period, provided that the amount of the reduction in any of these years may not exceed **50%** of the tax loss amount.

CORPORATE INCOME TAX (CIT) *CONTINUATION*

Tax liability

- unlimited: corporations with their executive board or headquarters in Poland
- limited: corporations having no executive board or headquarters in Poland - tax liability on the revenue generated in Poland

In addition to income from business activities in the territory of Poland and real estate located in Poland, claims are also included on the income obtained in Poland, which is paid by corporations with their registered office or address in Poland, irrespective of the place of conclusion of the contract and the provision of services. The income generated in Poland also includes income from securities and the derivatives authorised for exchange listing in Poland, as well as through the direct or indirect transfer of company shares and investment fund units in which at least **50%** of the assets comprise real estate or rights to real estate which are attributable to the territory of Poland. Dividends, interest and other claims subject to withholding tax and paid by a Polish corporation are considered to be in Poland.

The catalogue is open and does not exclude the possibility that other categories of revenue can be considered as income generated in Poland. Also, worthy of note are the double tax treaties recognised by Poland, which in practice could, however, ensure that certain revenues are not taxed in Poland.

From **2018** the so-called property clause that justifies the location of revenue in Poland when the subject of the transaction are the rights in the entity whose assets, at least in half, are properties located in Poland, e.g. investment funds.

Affiliated companies

According to the OECD convention (OECD-MA), an affiliated entity exists whenever::

- Company is involved directly or indirectly in the management, control or capital of the other company (subsidiary), or
 - The same persons participate directly or indirectly in the management, control or capital of both companies (sister company)
-

CORPORATE INCOME TAX (CIT) CONTINUATION

Estimating the value of the service provision transactions

If the value expressed in the price specified in the contract significantly differs from the market value of such goods, rights or services, the tax authority requests the parties to the contract to change that value or indicate the reasons justifying the disclosure of the price significantly deviating from the market value. If no answer is given, no change in value is made or no reasons justifying the indication of a price significantly deviating from the market value are provided, the tax authority calculates the value taking into account the expert's opinion. If the value so determined deviates by at least **33%** from the value expressed in price, the costs of the expert's opinion are borne by the seller or services provider.

Deductible operating expenses

Tax deductible expenses are expenditures that have been incurred to achieve revenues from a source of revenues or to maintain or secure a source of revenues, with the exception of costs listed in Article 16(1) of the CIT Act. See the part: **“Non-tax-deductible expenses” on page 20.**



CORPORATE INCOME TAX (CIT) CONTINUATION

Taxation of non-monetary contributions

The revenue from a non-cash contribution is not the nominal value of the shares acquired in exchange for a contribution in kind, but the value of the subject of the contribution, as specified in the statute, articles of association or other document.

If the value of the contribution differs from its market value, the proceeds are determined in the amount of the market value of the contribution.

This amendment removes the controversies regarding the taxation of assets in kind. At the same time, however, it can make intra-group restructuring more difficult.

Transfer prices

The taxpayer is required to prepare local transfer pricing documentation for a controlled transaction of a homogeneous nature whose value, less value added tax, exceeds the following documentation thresholds in the financial year:

- **10,000,000.00 PLN** - in the case of a commodity transaction;
- **10,000,000.00 PLN** - in the case of a financial transaction;
- **2,000,000.00 PLN** - in the case of a service transaction;
- **2,000,000.00 PLN** - in the case of a transaction other than the transactions described in sections 1–3.

Documentation thresholds will be established separately for:

- any controlled transaction of a homogeneous nature irrespective of the allocation of the controlled transaction to commodity, financial, service or other transactions;
- cost and revenue side.

Transfer pricing is verified using the most appropriate method in the circumstances, selected from the following methods:

- a comparable uncontrolled price;
- a resale price;
- plus cost;
- net transaction margin;
- division of profits.

Where none of the above methods can be applied, another method, including valuation techniques, are used which is the most appropriate under the circumstances.

The taxpayer is obliged to submit a TP-R declaration by the end of the ninth month after the end of the tax year.

In the catalogue of exemptions from the obligation to prepare local documentation, the most important is the exemption from the obligation to prepare local documentation for transactions concluded exclusively by affiliates having their residence, registered office or management in the Republic of Poland in the tax year in which each of these affiliates meets certain conditions, in particular none of them suffered a tax loss.

If the consolidated income of the capital group in the previous tax year exceeded the limit of **200,000,000.00 PLN**, the capital group is obliged to submit Master File documentation.

CORPORATE INCOME TAX (CIT) CONTINUATION

Interests of credit/ externally financed stakeholdings

Generally deductible

Thin capitalisation rules

Insufficient capitalisation - debt financing

The Corporate Income Tax Act introduced a limitation on the possibility of recognising interest on bank and non-bank loans in costs.

Taxpayers are required to exclude the costs of debt financing from the tax deductible expenses in the part in which the excess of debt financing costs exceeds **30%** of the amount corresponding to the surplus of revenues from all revenue sources less interest income over the sum of tax deductible expenses less the amounts of depreciation and amortisation expenses counted as tax deductible expenses, as well as costs of debt financing not recognised in the initial value of a fixed asset or an intangible asset.

Ways of depreciation

Depreciation methods: straight-line, declining, balance method only allowed for special machinery, equipment and transport. An immediate write-off is possible for low-value assets with an acquisition value up to **10,000.00 PLN** (net)

Depreciation rates:

- Residential buildings: **1.5%**
- Non-residential buildings: **2.5%**
- Other buildings and structures: **4.5%**
- Machinery and equipment: **7% - 25%**
- Cars and lorries: **20%**
- Computers: **30%**

If technically verifiable or in case of used assets, other rates are permitted.

Taxpayers may use authorisation premium. Using such a solution, the taxpayer may make a one-off depreciation and amortisation write-off up to **100,000.00 PLN** and include it in costs in the year in which he adopted the brand new fixed asset for use.

Provisions

Balance Legal Provisions are not recognised for tax purposes in general (a few very restrictive exceptions)

CORPORATE INCOME TAX (CIT) CONTINUATION

Non-tax-deductible expenses

Examples of non-deductible costs (detailed list in Article 16, Paragraph 1 of the Tax Act)

- Expenses for the purchase of land plots in ownership or the purchase of beneficial interests (usufruct rights) for a specified in advance limited period in time except the fees and commissions related to the purchase of beneficial interests
- Write-offs for the wear and tear of a passenger car in the portion determined on the basis of the value of the car exceeding the amount of:
 - » **225,000.00 PLN** - in the case of a passenger car being an electric vehicle within the meaning of Article 2(12) of the Act of 11 January 2018 on Electromobility and Alternative Fuels,
 - » **150,000.00 PLN** - in the case of other passenger cars,
- Interest, bank charges and exchange rate differences of loans, which increase the investment costs in the acquisition stage
- Charged but unpaid interests or interests waived, payable for debts including loans
- Most of the accruals set up on the balance sheet
- Expenses for the acquisition or purchase of shares
- Entertainment expenses, mainly for entertainment
- Consulting services, market research, advertising, data processing, management and control, insurance costs, guarantees and sureties, and services for transferring the debtor's insolvency risk due to non-bank loans and co-operative savings and credit unions, including under derivative financial instrument contracts and similar benefits

Special regulations for intangible services

Taxpayers are obliged to exclude the following expenses from the tax deductible costs:

- services purchased from related entities or tax havens directly or indirectly,
 - however, it does not apply to the costs of services, licenses and fees paid to unrelated entities,
 - the limitation concerns the amount over **3,000,000.00 PLN** a year,
 - » if the taxpayer's tax year is longer or shorter than **12 months**, the threshold amount of **3,000,000.00 PLN** is calculated by multiplying the amount of **250,000.00 PLN** by the number of the tax year months, which have commenced,
 - » the amount of costs not deducted in the tax year can be settled in the next 5 tax years, on principles and within limits applicable in a given year.
-

CORPORATE INCOME TAX (CIT) CONTINUATION

Commercial real properties tax

The so-called 'minimum income tax' was introduced in relation to taxpayers who own commercial and service properties as well as buildings classified as office (Article 24b, Article 24c of the Corporate Income Tax Act) - commonly referred to as 'commercial property tax'.

This tax is a tax on revenues from ownership of a fixed asset being a commercial and service building, which initial value exceeds **10,000,000.00 PLN**. Properties must be properly classified in accordance with the Classification of Fixed Assets.

The solution is covering to the following commercial properties:

- commercial and service buildings classified as: shopping centres, department stores, independent shops and boutiques, other commercial and service buildings
- office buildings included in the Classification as office buildings

What is the tax rate?

- **0.035%** monthly
- **0.42%** yearly

Withholding tax

Interest, royalties and others

Interest and royalties paid to a non-resident and fees for certain intangible assets and legal services (e.g. consulting, accounting, legal and technical services, advertising, data processing, market research, recruitment, management, inspection services and guarantees, etc.) are subject to **20%** withholding tax, provided that the rate is not reduced under the agreement on the avoidance of double taxation, or the EU Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

According to the expected changes to come into force as of **1 July 2019**, if the payout for the same taxpayer exceeds **2,000,000.00 PLN** per taxpayer, the payer will be obliged to collect the full amount of tax (**19%** or **20%**) at the rate resulting from the Polish regulations, notwithstanding whether it is possible to apply a reduced rate, exemption or no tax deduction.

The tax charged in this way will be refunded on the request of:

- taxpayer or
- withholding agent - where the taxable person has paid the tax from his own resources and has borne the economic burden of that tax.

The application shall be made in electronic form and the provisions shall specify the information to be included in it and the list of attachments to be attached to it.

CORPORATE INCOME TAX (CIT) *CONTINUATION*

Withholding tax cont. Requirements for exemption from withholding tax on interest and royalties

The condition for exemption from the withholding tax, in the case of interest and royalties arising between affiliated companies, is that the recipient of the claims is the actual beneficial owner of these claims.

For the exemption to be applied, the Polish taxpayer must obtain a certificate which, in addition to the previous elements, contains an order that the company or the foreign enterprise, which is the recipient of the creditor claims, is the actual economic owner.

Flight tickets

The obligation to collect withholding tax on the purchase of flight tickets (in the amount of **10%**) was abolished, if the purchase of such flight ticket concerns a scheduled passenger flight.

Dividends

The taxation of dividends is as follows **19%** respectively the particular double taxation treaty, the application and adherence of the EU-Parent-Subsidiary Directive for the taxation of parent and affiliated companies.

Domestic corporations:

Exemption from withholding tax for payments done by a Poland resident corporation towards another Poland resident corporation.

Condition:

The entitled to the dividends must dispose of minimum **10%** of the shares of the liable to pay dividends corporation for an uninterrupted period of **2 years**. The beneficiary of the dividends shall not make use of a tax exemption with respect to his whole income independent from the source of its realisation (declaration of the beneficiary of the dividends required).

If you have questions related to particular tax topics, please contact us at your earliest convenience.



CORPORATE INCOME TAX (CIT) *CONTINUATION*

Dividends paid by a Polish company

International:

Dividends paid by a company established in Poland.

Dividends received by a Polish resident company (with certain exceptions in the case of limited joint-stock partnerships) from another Polish company or an EU/EEA or a Swiss company are exempt from taxation if certain holding and participation requirements are met. If the exemption does not apply, dividends received are subject to taxation. On the other hand, any deduction of withholding tax from the amount of due tax in Poland should be preceded by the verification of the existence and records of the relevant double taxation conventions.

European Union (EU), European Economic Area (EEA):

Exemptions from withholding tax for dividends, paid by a resident in Poland corporation towards a corporation resident in a country of the EU or the EEA.

Condition:

The entitled to the dividends must dispose of minimum **10%** of the shares of the liable to pay dividends corporation for an uninterrupted period of **2 years**.

The beneficiary of the dividends shall not make use of a tax exemption with respect to his whole income independent from the source of its realisation (declaration of the beneficiary of the dividends required).

Switzerland:

Exemption from withholding tax for dividends, paid by a corporation resident in Poland towards a corporation resident in Switzerland.

Condition:

The entitled to the dividends must dispose of minimum **25%** of the shares of the liable to pay dividends corporation for an uninterrupted period of **2 years**.

The beneficiary of the dividends shall not make use of a tax exemption with respect to his whole income independent from the source of its realisation (declaration of the beneficiary of the dividends required).

CORPORATE INCOME TAX (CIT) CONTINUATION

Dividends a Polish corporation receives from:

European Union (EU), European Economic Area (EEA)

Tax exemptions for dividends which a corporation resident in Poland receives from a corporation being resident in one of the European Union (EU) or European Economic Area (EEA) countries.

Condition:

The Polish corporation must dispose of minimum **10%** of the shares of the liable to pay dividends corporation for an uninterrupted period of **2 years**.

The beneficiary of the dividends shall not make use of a tax exemption with respect to his whole income independent from the source of its realisation (declaration of the beneficiary of the dividends required).

Switzerland

Tax exemptions for dividends which a corporation resident in Poland receives from a corporation being resident in Switzerland.

Condition:

The Polish corporation must dispose of minimum **25%** of the shares of the liable to pay dividends corporation for an uninterrupted period of **2 years**.

The beneficiary of the dividends shall not make use of a tax exemption with respect to his whole income independent from the source of its realisation (declaration of the beneficiary of the dividends required).

Other countries with Double Taxation Treaties

Set-off of already paid withholding tax and pro-rata corporate income tax for Polish corporations, which dispose for an uninterrupted period of **2 years**, at least **75%** of shares of the liable to pay dividends corporation with its registered headquarters in another country with which Poland concluded a double taxation treaty.

Other countries (without double taxation treaties)

Set-off of already paid withholding tax for Polish corporations, which dispose of shares of the liable to pay dividends corporation with its registered headquarters in another country with which Poland did not conclude a double taxation treaty.

Directive for the taxation of the parent and affiliated company

Exemption from withholding tax of capital gains distributions provided that:

- Holding period **2 years**
- Minimum shareholding: **10%**

Payments for interest and royalty to non-residents

Tax exemption applies to:

- Only for interest and royalty payments made between associated companies (parent-subsidiary relationship, or sister-sister-company)
- Thereby, the beneficiary of the payment must maintain a capital shareholding of minimum **25%**

CORPORATE INCOME TAX (CIT) *CONTINUATION*

Choice of the settlement method of accounting of exchange differences

Corporation and Income taxpayers (CIT and PIT) that are obliged to produce financial reports have the right to choose the accounting method to calculate the exchange differences mentioned in Article 9b, Paragraph 1, Point 2 (CIT) or Article 14b, Paragraph 2 (PIT).

The accounting method chosen depends on certain conditions. Above all, the taxpayers are obliged to notify the competent tax office in writing, of the chosen method by the end of the first month of the tax year in which the method will apply (in the case of taxpayers who start their business activities - within **30 days** of start-up).

In addition, during the period of applying a specific accounting method to calculate exchange differences, the annual financial statements of taxpayers must be audited by state-authorized public accountants. In this case the reported and audited exchange differences are tax deductible. The introduction of statutory audits aims to confirm the accuracy of the calculated exchange differences.

The period of applying the accounting method cannot be less than **3 years**.

If you select the balance method of calculating exchange differences, taxpayers on the first day of the fiscal year from which this method was chosen, include income or deductible expenses accrued, exchange rate differences, determined on the basis of the accounting regulations on the last day of the previous fiscal year. From the first day of the tax year for which you have chosen this method, apply the principles of the Accounting Act for calculating the differences

Capital gains

Capital gains are taxed as ordinary income at the standard corporation tax rate **19%**.

Foreign tax credit

Foreign tax paid may be credited against Polish tax on the same profits, but the credit is limited to the amount of Polish tax payable on the foreign income.

Research and development relief

Tax on qualified income earned by the taxpayer from qualified intellectual property rights will amount to **5%** of the taxation basis;

The following rights are deemed eligible intellectual property rights:

- patent,
- utility model protection right,
- registered design right,
- topographical and integrated circuit registration right,
- additional protection right for a patent for a medicinal product or plants protection product,
- the right of registration of a medicinal product and a veterinary medicinal product,
- the exclusive right referred to in the Act on the Legal Protection of Plant Varieties,
- copyright to a computer program;

CORPORATE INCOME TAX (CIT) CONTINUATION

Incentives

Expenses incurred for acquiring technological knowledge may reduce the taxable base in certain cases. a one-time depreciation write-off up to **50,000.00 EUR** also may be available for small and start-up taxpayers.

Merger and division of companies

The transactions of merger and division of companies must have economic justification. If they do not have such justification, and the tax authorities find that the main objective was the tax advantage, the acquiring company will have to pay a penalty tax on the income (no possibility to deduct tax deductible costs).

In addition, the tax authorities may impose a tax on shareholders. In total, the authorities may require payment of tax as many as three times: twice from the company (if another company is taken over and its subsequent sale) and from shareholders.

Amortisation of enterprise value (goodwill)

- Possible for an asset deal, but only performing the purchase of the whole company respectively a separable part of the business operations
- Not possible in case of a share deal

Taxation of taxable groups of companies

All the following conditions must be met:

- The parent company must have at least **75%** of shares in the equity of other companies in the Group
- These other companies within the Group must have a minimum of **500,000.00 PLN**
- To be able to generate income of at least **2%** of the gross income in each tax year
- Part of a capital Group should be a limited liability company and public company limited by shares

Companies operating within tax capital groups cannot count donations to tax deductible expenses.

CORPORATE INCOME TAX (CIT) *CONTINUATION*

Tax collection dates and deadlines	<ul style="list-style-type: none"> Annual tax declaration: filing until the 31st March of the following year, having a deviating tax year until the last day of the third month following the closing date of the tax year During the fiscal year monthly payments on corporate income tax are due. Payments must be settled until the 20th of the following month
Residence	A corporation or a limited joint-stock partnership (with some temporary exceptions) is tax resident in Poland if its registered seat or management is located in Poland.
The consequences of settlement of liabilities by type of transferring (Corporate Income Tax CIT, VAT & Private Income Tax PIT)	<p>The settlement of liabilities through non-cash contributions generates taxable income by the debtor. The taxable income is defined as the amount of debts, which shall be settled through non-cash contributions. If the market value of the non-cash contribution exceeds the nominal amount of the debt, this may be applied with the restriction that in these cases the market value of the non-cash contribution is taxable.</p> <p>If payables are settled through non-cash contributions, the amount of the claim is tax deductible, but reduced by:</p> <ul style="list-style-type: none"> the VAT payable for the non-cash contribution, as well as the sum of the depreciation carried out <p>A provision will be added, according to which the value of the received non-cash contribution is the same amount as the repaid loan (credit), will not be considered as taxable income.</p> <p>Another regulation added, which states that the purchase value of properties, as well as the intangible and tangible assets, which have been received as non-cash contributions for the settlement of payables, are defined by the value of the settled debt.</p>

CORPORATE INCOME TAX (CIT) CONTINUATION

Opodatkowanie dochodów kontrolowanych jednostek zagranicznych (CFC)

Taxation of Foreign Controlled Entity Income (CFC) In the CIT and PIT acts there are regulations providing for taxation of foreign income of Controlled Foreign Corporations (CFCs).

A controlled foreign corporation is, as a general rule, a company that meets jointly the following criteria regarding:

- the scope of control, i.e. the taxpayer has continuously for a period of at least **30 days** at least **50%** of shares in the capital or **50%** of rights voice in control bodies or in state bodies or **50%** of the share in profits of a foreign company
- the nature of the revenue generated, i.e. at least **33%** of the revenue the foreign company is a so-called „passive income“, i.e. revenue of a financial nature: dividends, shares, receivables, rights and obligations authorial, etc.
- the income tax actually paid by the company is lower than the tax it would have paid in the State of residence or on the board of directors taxpayer, namely in Poland (when calculating this difference, the following are not taken into account: a foreign controlled foreign plant of a foreign controlled company which is not taxable or exempt in the State of residence).

In some cases, a CFC is exempt from taxation (this is due to statutory requirements, among other things, it can depend on the country of residence of the foreign company, the nature of their business and the amount of income received).

The taxable amount of a CFC shall be the income according to CIT-/PIT-Law, but only for income attributable to the Polish taxpayers and the corresponding period of ownership share in the company profits.

The Polish taxpayer will have the opportunity to deduct the dividend received from the CFC and the amount realised from the sale of share in the CFC from the income mentioned above.

The taxpayers will be required to:

- Registration of the CFC
- Independent management of the accounting, event recording, which will have influence on the income of the CFC, as well as
- Notification of the profit of the CFC

The registration and the recording will not be necessary, if the CFC's entire income is subject to taxation in a country within the EU or the EEA and also exerts its actual business in this country.

Currently, whether the entity should be recognised as a foreign company is determined by what share in such entity the Polish taxpayer has, both individually and jointly with other related entities. It is about having shares directly or indirectly.

CORPORATE INCOME TAX (CIT) CONTINUATION

Income taxes of Controlled Foreign Companies (CFC)

cont.

For the purposes of the above clarification in the provisions of income tax acts, in Article 24a of the CIT Act and Article 30f of the PIT Act, a definition of what constitutes a related party is included. By this definition, the related entity means:

- a) a legal entity or an organisational unit without legal personality in which the taxpayer holds at least **25%** of equity or at least **25%** of voting rights in control or constituting bodies, or at least **25%** of shares related to the right to participate in profits,
- b) a natural person, a legal entity or an organisational unit without legal personality which holds in the taxpayer at least **25%** of equity or at least **25%** of voting rights in control or decision-making bodies, or at least **25%** of shares related to the right to participate in profits, [in the PIT Act - the taxpayer's spouse, as well as his relatives up to the second degree],
- c) a legal entity or an organisational unit without legal personality in which the entity indicated in b) holds at least **25%** of equity or at least **25%** of voting rights in control or decision-making bodies, or at least **25%** of shares related to the right to participate in profits (Article 24a (2)(4) of the CIT Act).

The scope of activities to be performed by a foreign company was significantly changed so that its income would be covered by Polish income tax under the CFC regulations. The threshold of obtained passive revenues was reduced from **50%** to **33%**, while the catalogue of such revenues was broadened.

As of 2018 this category includes revenues from:

- dividends and other revenues from shares in profits of legal entities,
- the sale of shares,
- receivables,
- interest and benefits from all types of loans,
- the interest part of the leasing instalment,
- sureties and warranties,
- copyrights or industrial property rights, including the sale of these rights,
- the sale and exercise of rights from financial instruments,
- insurance, banking or other financial activity,
- transactions with related entities if the company does not economically generate an added value in relation to these transactions or such value is negligible (Article 24a (3)(3b) of the CIT Act, Article 30f (3)(3b) of the PIT Act).

CORPORATE INCOME TAX (CIT) CONTINUATION

Income taxes of Controlled Foreign Companies (CFC)

cont.

For the same category of companies, the requirement for the tax rate applicable in the country of residence of the company was changed. The legislator departed from the principle of comparing income tax rates for the sake of a fixed amount of tax. As a consequence, a comparison of the actual (effective) taxation of a given CFC was made. Thanks to this, an actual reference of tax amounts and verification of mutual relations is to be made. This means that a simulation is necessary in which effective taxation in the country of the company's registered seat is compared to the hypothetical taxation of the Polish CIT. The condition for the controlled company is met if the difference between the tax actually paid in the country of residence and the company's hypothetical Polish tax (i.e. which the company would pay if it were a Polish resident) is higher than the tax actually paid by the company (the actually paid tax is one that is not subject to return or deduction in any form). However, when calculating such a difference, the foreign plant of the controlled company is not taken into account, the tax from such plant is not paid in the country of residence of the company.

There is an obligation for controlled companies to include by taxpayers in the register of foreign companies established in other EU or EEA Member States, even if these companies carry out a real business activity, unless it is a significant actual economic activity. Previously, the legislator did not require materiality. At the same time, it was clarified that "in assessing whether the actual business activity is material, the ratio of revenues earned by a foreign controlled company from its actual business activity to its total revenues is taken into account" (Article 24a (18a) of the CIT Act, Article 30f (20a) of the PIT Act).

In the current legal status, the CFC provisions also apply to fixed plants of foreign taxpayers located in Poland.

The taxation of transformed companies with profits that have been transferred to other types of capital than share capital

In the case of converting a company, that is an income taxpayer, into a company that is not such a taxpayer, the taxable income from shared profits and non-distributed profits will be increased by profits that are transferred into other types of capital stock.

CORPORATE INCOME TAX (CIT) CONTINUATION

So-called equity loans

Article 20, Paragraph 16 of the Corporate Income Tax law (CIT) introduced that it excluded tax exemptions for dividends or other income from profit shares of legal persons, payable between associated enterprises. However, this only applies to dividends, which are in another country, or other income-paying company, which may thus be deducted from the taxable income or tax base by the paying company.

Regulations regarding the validity of Certificates of Residence (CoR)

The presentation of a valid CoR will allow entrepreneurs to apply the provisions concerning the avoidance of double taxation in the case of payments for foreign business partners (e.g. dividends or royalties). The absence of a valid CoR, at the moment in which the payments are executed, this will allow the Polish entrepreneur to be charged and pay the withheld tax according to the rates settled in Polish income tax acts, without any tax credits or exemptions from withholding the tax.

The CoR without an expiry date, which shall become invalid automatically **12 months** after the issue date.

In exceptional cases, it is possible to use a copy of the certificate of tax residence.

A declaration on the actual beneficiary

According to the Act, from **13 October 2019**, the activity has had a public and publicly accessible Central Register of Real Beneficiaries. In connection with the creation of the Central Register of Real Beneficiaries, companies are obliged to the transmission of information on their beneficial owners (natural persons exercising effective control over legal persons) - within **7 days**, counting from from an entry or update in the National Court Register.

Entities that are already registered in the National Court Register have half a year to provide the relevant information

CORPORATE INCOME TAX (CIT) CONTINUATION

The issuance value of shares

The issuance value of shares means the price at which the shares are subscribed, specified in the company's statute or articles of association, and in their absence - in another document of a similar nature, not lower than the market value of these shares" (Article 4a(16a) of the Corporate Income Tax Act).

This definition has been introduced for the purposes of regulations regulating the issue of restructuring operations to determine the amount of revenue for restructuring events (mergers and divisions).

The legislator now refers to the nominal value of shares and as a consequence, the revenue of the divided company's shareholder is the issuance value of shares in the acquiring company or newly-established company, if the assets taken over as a result of division, and for the division by separation - the assets acquired as a result of the division or remaining in the company, are not an organised part of the enterprise.

Similarly, the tax-deductible expense from the sale of shares of the company taking over the assets of the company being divided or the newly-established company is the value previously representing the revenue of the divided company's shareholder, i.e. the issuance value of the shares received.

The obligation to submit financial statements to tax offices in an electronic form

From **2019**, there is no obligation to submit financial statements to tax offices or tax authorities. The KRS repository will be automatically transferred to the tax authorities. However, it does not apply to resolutions approving financial statements, they will have to be filed separately with the proper tax office.

The introduction of a limit for cash transactions

As of **2018**, the biggest taxpayers (with revenues above **50,000,000.00 EUR**) and companies that are members of a tax capital group have to accept that the Minister of Finance will make public in the Public Information Bulletin information on them included in their tax statements.

The threshold for the amount of transactions that - in relations between entrepreneurs - may be paid in cash is up to **15,000.00 PLN**.

In the event of a cash payment in excess of this amount, the expenses on this account cannot constitute a tax deductible cost in CIT.

OTHER TAX ON CORPORATIONS

Capital duty

Capital duty is levied at **0.5%** of the nominal value of share capital.

Real property tax

Tax is generally levied on the owner of real estate (land, buildings and construction) at rates imposed by the local authorities.

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

Property type	Tax rate
Land designated for the conduct of business	0.93 PLN/m²
Residential buildings	0.79 PLN/m²
Buildings designated for the conduct of business	23.47 PLN/m²
Structures	2% of the property value (entered as the basis for depreciation)

Property tax

Article 7(2a) adds a new property tax exemption.

The following are also exempted from the property tax:

- universities, the exemption does not apply to subjects of taxation used for business activity;
- public and non-public organisational units covered by the education system and bodies running these units, where properties are used for educational activities;
 - » nurseries and children's clubs as well as the entities running them, where properties are used as nurseries or children's clubs.

Social security

Employers and employees must make social security contributions in an amount that is approximately **35%** of an employee's remuneration (with certain caps).

Stamp duty

Stamp duty is levied, for example, when filling a power of attorney and when the (central or local) authorities are requested to perform activities such as issuing certificates, grant permission, etc. The applicable rates or fixed amounts are specified in the stamp duty law.

Transfer tax

Tax is imposed at a rate of **0.5%-2%** on certain types of transactions (e.g. sales, exchanges of rights, loans) that are not generally covered by VAT. As a rule, transactions exempt from VAT are exempt from transfer tax (except for real estate and shares).

Other

- Excise tax is charged on turnover of selected goods.
- Shipping companies may opt to pay tonnage tax on certain types of income.
- A special tax is imposed on the excavation of silver and copper.

If you have any further questions related to the information within this booklet, please contact us.



ANTI-AVOIDANCE RULES

Transfer pricing

Discussed in detail in the “**Transfer prices**“ on page 18.

Standard Audit File (Jednolity Plik Kontrolny)

There is an obligation for taxpayers who keep tax books using computer programs to submit these documents in total or in part along with accounting evidence documents, to tax authorities for a certain settlement period, in the form of a strictly defined electronic format (i.e. „structures“).

The concept of the standard audit file is based on the recommendations of the OECD for the Standard Audit File - Tax 2.0 and was introduced in many European countries, among others, Austria, the Netherlands, France, Slovenia, Luxembourg, Portugal and the Czech Republic.

Currently, the following reporting structures are subject to:

- Structure 1 - Accounting - JPK_KR,
- Structure 2 - Account Statements - JPK_WB,
- Structure 3 - Stock - JPK_MAG,
- Structure 4 - VAT register for purchases and sales - JPK_VAT,
- Structure 5 - Invoices for VAT purposes - JPK_FA,
- Structure 6 - Tax Revenue and Expense Ledgers - JPK_PKPIR,
- Structure 7 - Revenue Ledger - JPK_EWI.

The obligation to transfer the data to the tax authorities in the form of the standard audit file can be divided into two areas:

- At the request of the tax authorities (JPK_KR, JPK_EWI, JPK_PKPIR, JPK_FA, JPK_MAG, JPK_WB, JPK_VAT),
- Without the request of the tax authorities (only JPK_VAT).

The VAT account in the form of the Standard Audit File (JPK_VAT) must:

- Without request,
- Every month - to the **25th day of the following month** to which they relate (notwithstanding if the entity is a VAT taxpayer paying VAT quarterly),
- The Minister of Finance and Economic Growth,
- Via an interface of the MFIR (saving the JPK_VAT on a data carrier or sending it via email is not allowed).

Clause for circumventing the law on the exchange of shares:

The amendment to the Act on Corporate Income Tax (CIT) provides that the postponement of taxation in the case of exchange transactions involving shares, does not apply if one of the principal interests of the exchange transaction of shares is the avoidance or circumvention of taxation. This situation is particularly true if the exchange of shares is not based on justified economic aspects.

In addition:

Individual interpretations issued before the clause comes into force on tax evasion do not protect the taxpayer if tax advantages are challenged on the basis of this clause, after **01 January, 2017**.

ANTI-AVOIDANCE RULES *CONTINUATION*

Disclosure Requirements	Certain transactions must be reported to the tax authorities and/or National Bank of Poland.
MDR	<p>There is an obligation to provide the Head of the National Tax Administration with information on Mandatory Disclosure Rules (MDR).</p> <p>MDR is a solution developed on the basis of knowledge of tax law provisions and its practical application.</p> <p>Reporting of national MDR is limited to relevant ones only:</p> <ul style="list-style-type: none"> • subjectively: revenues, costs or assets of the beneficiary or its affiliate's exceed the equivalent of 10,000,000.00 EUR (43,000,000.00 PLN in 2019) or • objectively: the agreement refers to an asset or right with its value exceeding 2,500,000.00 EUR (10,750,000.00 PLN). <p>The entities obliged to report MDR are:</p> <ul style="list-style-type: none"> • promoters, i.e. entities that develop, offer, make available or implement the agreement or manage the implementation of the agreement; • supporting entities, i.e. entities which, with due diligence generally required in the performed activities, taking into account the professional nature of the activity, the area of specialisation and the subject matter of the performed activities, undertook, directly or indirectly through other persons, to provide assistance, support or advice concerning developing, marketing, organising, making available for implementation or supervising the implementation of the agreement; • beneficiaries, namely. entities to which an arrangement is being made available or implemented, or which are prepared or have taken action to implement the arrangement (taxpayers in principle).
Exit Tax	<p>Taxation of unrealised gains by a taxpayer on income is subject to the transfer by the taxpayer to another State of assets, including assets forming part of a foreign permanent establishment or from a change of tax residence.</p> <p>Thus, by its nature, exit tax does not apply to any transfer of assets, but only to that with which the State loses its right to tax the income effectively generated before the transfer.</p> <p>In the CIT Act, the rate is 19% of the tax base.</p>

PRIVATE INCOME TAX (PIT)

Legal basis	Law dated 26 July, 1991 , on Income Tax with all amendments
NIP Registration <i>For tax purposes, if PESEL is not applicable</i>	Needs to be performed in the relevant tax office before the date when first PIT advance is due.
Tax period	For natural persons: Calendar year
Tax rates <i>(provided that no flat rate taxation scheduled)</i>	<p>The amount reducing the tax depends on the amount of income:</p> <ul style="list-style-type: none"> • 1,440.00 PLN - based on the tax calculation up to 8,000.00 PLN, • 1,440.00 PLN - $(883.98 \text{ PLN} \times (\text{taxable basis} - 8,000.00 \text{ PLN}) \div 5,000.00 \text{ PLN})$. For tax bases exceeding 8,000.00 PLN up to 13,000.00 PLN, • 556.02 PLN - for the tax base exceeding 13,000.00 PLN up to 85,528.00 PLN. <p>556.02 PLN - $(556.02 \text{ PLN} \times (\text{taxable basis} - 85,528.00 \text{ PLN}) \div 41,472.00 \text{ PLN})$ for amounts exceeding 85,528.00 PLN up to 127,000.00 PLN.</p> <p>From the amount exceeding 127,000.00 PLN there is no amount reduces the tax.</p>
Tax-free income <i>(income tax allowance)</i>	8,000.00 PLN
Tax period	For natural persons: calendar year
Tax liability	<ul style="list-style-type: none"> • unlimited tax liability on worldwide income (unless a Double Taxation Treaty does confine the taxation obligation) • limited tax liability in certain domestic income
Revenue streams	<p>Different revenues from:</p> <ol style="list-style-type: none"> 1. Special areas in agriculture 2. Economic activity 3. Self-employed (personally performed) activity 4. Employed activity 5. Capital investment and property rights 6. Rent & leasing 7. Capital gains from transfers 8. Activities carried out by a foreign controlled entity 9. Unrealised gains 10. Other income
PIT progressive rates	18% and 32% for the excess over 85,528.00 PLN (ca. 21,000.00 EUR) (applicable e.g. to employment income or income on dependent services)

PRIVATE INCOME TAX (PIT) CONTINUATION

PIT flat rate	<p>20% (applicable to board members, being Polish tax non-residents after having completed certain requirements)</p> <p>19% (e.g. interest, capital gains, the sale of virtual currencies, income from employment capital schemes, etc.)</p>
5% Innovation Box	Described in detail in “Research and development relief“ on page 26.
The exit tax amounts to (Exit Tax)	<p>The exit tax amounts to:</p> <ul style="list-style-type: none"> • 19% of tax base - if the tax value of an asset is established • 3% of tax base - if the tax value of an asset is not established.
Lease subject to lump-sum taxation	<ul style="list-style-type: none"> • 8.5% up to 100,000.00 PLN • 12.5% over 100,000.00 PLN
Monthly tax compliance	<p>PIT advances for a given month to be paid by 20th day of the following month</p> <p>Advance payments do not have to be paid by those PIT and CIT taxpayers, whose advance payment for a given month did not exceed 1,000.00 PLN. These are cases in which the tax due on income earned from the beginning of the year less the amount of advance payments paid since the beginning of the year does not exceed 1,000.00 PLN.</p>
Annual tax compliance	An annual tax return for a certain year must be filed from 15th February to 30th April in the year following the tax year.
Relevance of the tax authorities	Both registrations as well as payments of amounts due on personal income tax and the annual PIT settlement for non-residents posted to work in Poland should be made at the tax office competent for non-resident taxpayers in the area in which the foreigner resides or III Tax Office Warszawa-Śródmieście, if the work is rendered in more than one region.
Tax residency	<p>Foreign individuals arriving to Poland may become Polish tax residents if their centre of vital (economic or personal) interest moves to Poland, or if they spend in Poland more than 183 days in a tax year.</p> <p>Foreign individuals having their domicile in Poland (i.e. having status of Polish tax residents) are subject to unlimited tax liability in Poland, i.e. they are subject to taxation in Poland on their worldwide income, while individuals not domiciled in Poland (i.e. having status of Polish tax non-residents) possess limited tax liability status in Poland, i.e. they are subject to taxation in Poland only with respect to income earned on the territory of Poland.</p> <p>It should be noted that in order to determine the tax residency status, the regulations of the relevant Double Tax Treaty concluded by Poland should be also taken into consideration.</p>

PRIVATE INCOME TAX (PIT) CONTINUATION

Legal basis for rendering work in Poland

Employment contract with the Polish entity

Regardless of the tax residency of the foreign individuals, income received by them under the employment contract concluded with the Polish entity is always subject to the Polish PIT according to the progressive rates of **18%** and **32%**. The Polish employer is obliged to pay monthly PIT advances on the discussed income calculated according to the progressive PIT rates. Foreign individuals are obliged to calculate their final annual tax liability for given year as well as submit the annual PIT return until **30th April** of the following year.

Foreign employment contract and secondment to Poland

a) Polish tax non-residents

The foreign individuals are personally responsible for all PIT compliance activities required by Polish PIT law, i.e. neither foreign employer nor host entity have any obligations in this respect. Please note that the taxable income for Polish PIT purposes includes all income obtained in connection with work in Poland, including remuneration, bonuses of all kind and benefits-in-kind. Thus, most benefits provided by the employer or host entity along with or in place of salary are taxable as regular employment income. Income earned by the foreign individuals in Poland may not be subject to PIT in Poland starting from the first day of his or her stay in Poland, only if the following conditions defined in the relevant Double Tax Treaty are simultaneously met:

- presence in Poland last in the aggregate less than **183 days** during the particular tax year of 12 consecutive months (depending on the Double Tax Treaty, and
 - the remuneration is paid by, or on behalf of, an employer who is not a resident of Poland (it should be however noted that appropriate analysis of economic employer concept should be performed to assess if this condition is met), and
 - the remuneration is not borne by a permanent establishment of the employer in Poland
-

PRIVATE INCOME TAX (PIT) CONTINUATION

Legal basis for rendering work in Poland *cont.*

If one of the above conditions is not met remuneration from the foreign employment contract is subject to progressive PIT taxation in Poland, as of the first day of his/her stay in Poland. PIT advances on income received from foreign employment contract should be paid on a monthly basis for the months, in which the discussed income was received. Advance payments for PIT for a given month are to be paid up to **20th** day of the next month, applying the **18%** PIT rate (the **32%** rate may also be applied after exceeding the tax threshold). Foreign individuals are obliged to calculate their final annual tax liability with the use of progressive PIT rates. Foreign individuals are also obliged to submit the annual PIT return until **30th April** of the following year. Only income related to work performed in Poland is reported for Polish PIT purposes.

b) Polish tax residents

Generally, the same rules applicable to Polish tax non-residents as mentioned in point a) above should be also applied in case of foreigners being Polish tax residents. As a consequence, the foreign individuals are personally responsible for all PIT compliance activities required by Polish PIT law, i.e. neither foreign employer nor host entity have any obligations in this respect. Please also note that the taxable income for Polish PIT purposes includes all income obtained in connection with work in Poland, including remuneration, bonuses of all kind. As well as the total world income accounted for in accordance with the provisions of agreements on the avoidance of double taxation.

PRIVATE INCOME TAX (PIT) CONTINUATION

Board members

a) Polish tax non-residents

Income obtained by foreigners from, for example, Germany as natural persons being Polish non-resident taxpayers who were appointed as members of a management board of a Polish entity on the basis of a relevant shareholder's resolution, may be subject to **20%** flat-rate taxation in Poland. All obligations related to PIT relating to this system are performed by a Polish entity in which such a person is a member of a management board.

b) Polish tax residents

If a foreigner, as an individual who is a member of the management board of a Polish entity, becomes a Polish tax resident, the tax obtained on the basis of membership in the management board pursuant to a relevant shareholders' resolution will be subject to progressive PIT taxation in Poland. In such a case, the Polish entity would be obliged to pay monthly PIT advances. Foreigners as natural persons are also obliged to submit their annual PIT return to the Polish Tax Office by **30th April** of the following year.

Tax deductible expenses:

(in the case of income from the employment relationship)

From the employment contract <i>(the place of permanent or temporary residence is the same town or city as the workplace)</i>	monthly	111.25 PLN
	yearly	1,335.00 PLN
From several employment contracts <i>(the place of permanent or temporary residence is the same town or city as the workplace)</i>	monthly	111.25 PLN
	max. yearly	2,002.05 PLN
From the employment contract <i>(the place of permanent or temporary residence is a different town or city than the workplace)</i>	monthly	139.06 PLN
	yearly	1,668.72 PLN
From several employment contracts <i>(the place of permanent or temporary residence is a different town or city than the workplace)</i>	monthly	139.06 PLN
	max. yearly	2,502.56 PLN

PRIVATE INCOME TAX (PIT) CONTINUATION

The revenues of authors

- **50%** of the taxpayer's expenses for income generation may not exceed **85,528.00 PLN**.
- Creative costs applicable to business revenues pursuant to Article 22(9b) of the PIT Act, from the following activities:
 - » creative in the field of architecture, interior architecture, landscape architecture, construction engineering, urban planning, literature, visual arts, industrial design, music, photography, audio-visual creation, computer programs, computer games, theatre, costume design, set design, resignation, choreography, artistic violin-making, folk art and journalism
 - » artistic in the field of acting, stage, dance and circular art and in the field of conducting, vocalism and instrumentalism
 - » audio and audio video production,
 - » journalism,
 - » museum in the fields of exhibition, science, popularisation, education and publishing,
 - » conservation,
 - » a related right described in Art. 2 (2) of the Copyrights Act of 4 February 1994 to an adaptation of a third party's work in translation,
 - » development and research, educational and scientific and teaching at universities.

Amortisation of intangible assets and tax costs

The following are not considered as tax deductible expenses: amortisation write-offs from the initial value of intangible assets, referred to in Article 22b(1) (4-7), if these rights or assets were previously acquired or created and then sold by a taxpayer or a company that is not a legal entity of which the taxpayer is a partner - in the part exceeding the revenue obtained by the taxpayer from their previous sale.

Loss in receivables and tax costs

The expense is determined only up to the amount of the previously obtained due revenue.

In the PIT Act, the legislator clearly indicated that the revenue from the sale of receivables, also in the form of a contribution, corresponds to its sales value.

PRIVATE INCOME TAX (PIT) CONTINUATION

Income from economic activity

In particular income from trade or business which include the income of self-employed among others:

- Manufacturing, construction economics, trading/providing services employment
- Work related to mining
- Employment in connection with the use of intangible assets

This type of income also covers acquisition revenue from the sale of operating assets, unless it is property for residential purpose.

Option opportunity for income from economic activity:

Since **January 2004** those revenues can be taxed with a linear tax rate of **19%** deviating from the regular taxation (on application of the taxpayer until the **20th January** each year)

But: by choosing so, deductions from the taxable base and joint assessment with the spouse can not be drawn on.

As of **2018**, the provisions regarding the taxation of leased items of joint assets of spouses have been modified.

According to the paragraph 7 added to Article 8 of the PIT Act, in the case of spouses earning lease revenue, a declaration on the taxation of all revenues by one of them, and a notification of the resignation from this method of settling lease revenues may be submitted using the model declaration/notification specified by the minister responsible for public finances.

Taxation of so-called 'cashbacks' received from banks, co-operatives or other financial institutions will receive a flat-rate of an income tax rate of 19%

Cashbacks received from banks, cooperatives or other financial institutions and finance institutions within the meaning of separate provisions, in connection with promotions offered by these entities, are subject to **19%** flat rate income tax. This tax is collected by banks, cooperatives (e.g. SKOK) and financial institutions as taxpayers.

PRIVATE INCOME TAX (PIT) *CONTINUATION*

Private use of company cars

The value of private use of a company car with an engine of up to **1600 cm³** has been a benefit of **250.00 PLN**, from which social security insurance and tax are deducted.

In the case of company cars with an engine over **1600cm³**, the value of their private use has been at **400.00 PLN**, from which social security insurance and tax are deducted.

In the case of using a company car for private purposes for a part of the month, the value of the benefit is determined for each day of using the car in the amount of **1/30** of the above-mentioned amounts.

For a group transported to their place of work, which is organised by the employer, the clear regulation that this transport service does not constitute a claim for financial benefits and is not subject to taxation will apply in the future. The prerequisite, however, is that a motor vehicle with a passenger transport license of more than 9 persons (including vehicle drivers) is used for the transport of passengers.



PRIVATE INCOME TAX (PIT) CONTINUATION

Income of non-residents

The Income Tax Act specifies the mandatory list of sources of income of non-residents, which are considered to be in the territory of Poland. The amendment also introduces new types of income

Income is considered to be achieved in the territory of Poland if:

- from securities, including from financial derivatives admitted to trading on the Exchange, as well as from their sale or execution,
- the transfer of ownership of company shares, inter alia. From companies and investment funds in which real estate in Poland represents a direct or indirect asset of at least **50%**,
- from claims which are subject to a flat-rate tax which is regulated by Article 29 and which are carried out by Polish taxpayers, irrespective of the place of conclusion of the contract and the provision of services, come.

Exclusions from tax deductible expenses

The following are not considered as tax deductible expenses:

- all kinds of fees and charges for the use or right to use the rights and assets referred to in Article 22b(1)(4-7), acquired or created and then sold by a taxpayer or a company that is not a legal entity of which the taxpayer is a partner - in the part exceeding the revenue obtained by the taxpayer from their previous sale
- the tax referred to in Article 30g (tax on the ownership of commercial properties)

Income from a contribution in kind to the company

The method of calculating the income from the acquisition of shares in a company / co-operative contributions taken up in exchange for an contribution in kind is as follows: in the event that the value determined in the articles of association or the memorandum of association is not determined, or is determined in a manner which does not correspond to the market value, the revenue will be determined at the market value subject to general principles. With regard to the Polish Limited Partnership on shares (as well as to their foreign counterparts treated as income taxpayers), these principles are applied exclusively with regard to non-monetary deposits whose property or rights are the basis.

PRIVATE INCOME TAX (PIT) CONTINUATION

The catalogue of revenues (income) classified as the “income (revenue) from the share in profits of legal entities” has been expanded

Such revenues, in addition to those previously allocated to them, include:

- revenues from the decrease in the value of shares - this is a supplement to the item where income (currently revenue) from redemption of shares has been indicated for a long time;
- revenues from a participatory loan, i.e. the one where the payment of interest depends on whether the company made a profit or whether it made a profit in the assumed amount;
- revenues from payment in cash, in the case of exchange of shares.

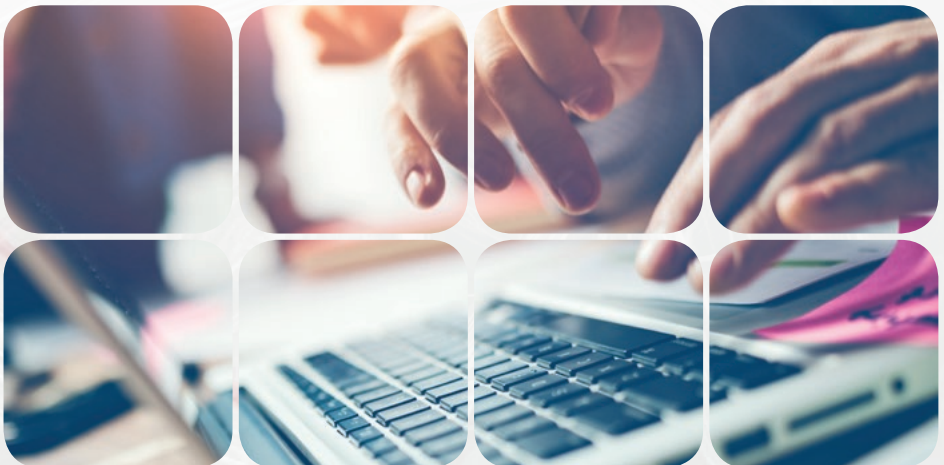
Incentive schemes

Taxation of income earned on the disposal of shares acquired under incentive schemes.

Taxable income arises when the shares are disposed of. The concept of the incentive scheme and the parent company was also defined.

The provisions of paragraphs 11-11b apply to income earned by persons entitled by means of acquisition or purchase of shares in joint-stock companies whose registered seat or management board is in the territory of a state with which the Republic of Poland has concluded an agreement to avoid double taxation.

Revenue from incentive schemes is allocated to the source to which the scheme is linked. Therefore, if the incentive scheme is related to work, it will be taxed as income from the employment relationship and subject to **18%** and **32%** tax.



PRIVATE INCOME TAX (PIT) CONTINUATION

Changes related to bonus depreciation

The taxpayer may make a one-off depreciation and amortisation write-off up to **100,000.00 PLN** and include it in costs in the year in which he adopted the brand new fixed asset for use.

- This regulation applies only to acquired fixed assets (it does not apply to manufactured fixed assets).
- Depreciation can only be applied to brand new fixed assets in groups CFA 3-6 and 8. This means that all means of transport have been excluded (group 7), not just passenger cars.
- The minimum value of a fixed asset which could be depreciated or subject to amortisation in this manner must be at least **10,000.00 PLN**
- The regulations allow to include as tax costs also advance payments for the acquisition of new fixed assets, which are included in CFA 3-6 and 8, whose delivery will take place in the next reporting periods.
- The limit of **100,000.00 PLN** per year will cover jointly the depreciation write-off and the amount of payment made for the delivery of a fixed asset.
- The limit of **100,000.00 PLN** is available to every entrepreneur, and in the case of partnerships, this limit applies to all partners of the company.

Taxpayers may choose the moment of making a one-off depreciation write-off from the following variants, already in force:

- a write-off may be made at the earliest in the month in which the fixed assets were entered in the register of fixed assets and intangible assets,
- a write-off may be made in one of the ways specified in Article 16h(4) of the CIT Act or Article 22h(4) of the PIT Act, i.e. in equal instalments every month, in equal instalments every quarter or once at the end of the tax year.

One-off amortisation

10,000,00 PLN is the limit of fixed assets or intangible assets allowing for a one-off crediting of expenditure for the acquisition of these assets as tax deductible costs.

Withholding tax - flight tickets

Flight tickets

The obligation to collect withholding tax on the purchase of flight tickets (in the amount of **10%**) was abolished, if the purchase of such flight ticket concerns a scheduled passenger flight.

Research and development relief (Innovation Box)

Discussed in detail in **“Research and development relief“ on page 26.**

Deduction of donation for blood donation purposes

The legislator refrained from differentiating the amount of deduction with what was given as blood or its elements. Thanks to this, the same deduction can be made when donating blood and plasma (**130.00 PLN** for 1 litre).

PRIVATE INCOME TAX (PIT) CONTINUATION

Deduction of expenses for the travel of the disabled	<p>Deduction of expenses for the travel of the disabled to necessary medical and rehabilitation treatment applies to all disabled people, notwithstanding their disability class.</p> <p>Nonetheless, the deduction is still limited by an annual amount of 2,280.00 PLN. 10,080.00 PLN is a limit on the income of a disabled person who is the taxpayer's dependant, while the taxpayer settles the rehabilitation allowance for the disabled person supported by this taxpayer. In addition, it is stipulated that child support is not be taken into account when calculating this income.</p>
Deduction of Expenses for Maintaining a Service Dog	<p>The limit of expenses deducted for maintaining a service dog is 2,280.00 PLN.</p>
Write-offs for the use of passanger cars	<p>Write-offs for the use of a passenger car are not considered as deductible costs, as discussed in detail in the section “Non-tax-deductible expenses“ on page 20.</p>
Deductible expenses	<p>Decuctible expenses - the paid disposal of virtual currency</p> <p>Pursuant to Article 22(14) of the PIT Act, tax deductible expenses of paid disposal of virtual currency are documented expenses directly incurred for the acquisition of virtual currency and costs related to the disposal of virtual currency, including documented expenses incurred for the benefit of the entities referred to in Article 2 paragraph 1 (12) of the Act on Counteracting Money Laundering and Terrorist Financing.</p>
Deduction of a donation	<p>Donations made for the purposes of vocational training to the public schools providing such training, referred to in Article 4 point 28a of the Educational Law 14 December 2016, as well as donations to the public facilities and centres described in Article 2 item 4 of this act.</p>
Thermal modernisation relief	<p>A taxable person who owns or is a co-owner of a single family residential building is entitled to deduct from tax basis, calculated under Article 26 paragraph 1 or Article 30c paragraph 2, the expenditures incurred in the tax year on construction materials, equipment and services related to the execution of thermal modernisation in this building, as described in the regulations issued on the basis of paragraph 10, which will be completed in the period of 3 consecutive years, counting from the end of the tax year in which the first expense was incurred.</p> <p>The deduction amount cannot exceed 53,000.00 PLN with regard to all executed thermal modernisation activities in certain buildings, owned or co-owned by the taxable person.</p>

VALUE ADDED TAX (VAT)

Legal basis	Act of 11 March, 2004 , on the taxation of goods and services with all amendments
Tax rates	<ul style="list-style-type: none"> • Standard Tax Rate 23% • Reduced Tax Rate 8%: (e.g. some foods, plants, associated with health goods, catering and hotel services, transportation services, public housing) • Reduced tax rate 5%: (Especially food, specialist books and journals) • Reduced tax rate 0%: (Export of goods, Intra-Community supplies of goods)
General	<ul style="list-style-type: none"> • Values Added Tax on goods and services is a broad-based tax levied on the supply of goods and services in Poland. • Polish regulations are based on EU directives.
Registration	<p>A Polish legal entity is subject to the VAT registration obligation if the value of the sales in the previous tax year does not exceed 200,000.00 PLN.</p> <p>Foreign entrepreneurs must register for VAT in Poland before they start any VAT-able activity in Poland (except for limited and expressly listed cases). Based on the Polish Fiscal Penal Code if an entity obliged to register for VAT purposes fails to fulfil this obligation, it will be liable to pecuniary penalty for fiscal offence in an amount determined individually in each case (multiples of the lowest monthly salary).</p>
Refusal to register a taxpayer	<p>The premises for the refusal to register an entity as a VAT payer and to delete the taxpayer from the register of VAT payers:</p> <ul style="list-style-type: none"> • refusal of registration is possible where verification shows that the data given in the registration application is false, the entity does not exist or, despite attempts to do so, it cannot be contacted, or it does not appear and its representative does not appear on the summons of the head of the tax office.

VALUE ADDED TAX (VAT) CONTINUATION

Deletion of a taxpayer **A taxpayer is deleted if:**

- the taxpayer does not exist
- despite documented attempts, it is not possible to contact the taxpayer or its representative
- data provided in VAT-R registration form is false
- the taxpayer or its representative does not on the summons of the head of the tax office, of the director of the tax administration chamber or the head of the national tax administration
- the taxpayer suspended the performance of business activity on the basis of provisions concerning suspension of business activity for a period of at least 6 consecutive months
- a taxpayer who was obliged to submit VAT declarations failed to submit such declarations for 6 consecutive months or 2 consecutive quarters
- the taxpayer submitted VAT declarations for 6 consecutive months or 2 consecutive quarters in which it did not indicate the sale or acquisition of goods or services with the amounts of tax for deduction

Compliance

(a) Invoicing

Transactions between VAT taxpayers must be documented with invoices. The Polish VAT laws strictly regulates the elements that should be included in invoices. In general, an invoice should contain at least the following obligatory data:

- name and surname or business name of the seller and its address
- name and surname or business name of the purchaser and its address*
- Polish tax identification numbers of the purchaser and the seller
- sequential number of the invoice that identifies the invoice
- date of issue
- date of supply - if such date is determined and differs from the invoice issue date (in the case of continuous supplies the taxpayer can indicate the month and year of the supply)
- name (kind) of goods or services
- unit of measure and quantity of the goods sold or scope of the services rendered*
- unit of price of the goods or services without VAT (Net unit price)*
- value of the potential rebates, including these for the earlier payment, if they were not included in the net unit price

Abridged invoices may be used if the total amount of due amounts on the invoice does not exceed **450.00 PLN** or **100.00 EUR** (if the invoice is issued in EUR).

Simplified invoices may not include elements of the invoice that are marked with ^{**} provided that the invoice includes information enabling to determine the value of VAT in relation to particular VAT rates.

VALUE ADDED TAX (VAT) *CONTINUATION*

Compliance *(cont.)*

(b) EU VAT tax

Polish VAT regulations comply with Directive 2006/112/EC

(c) Filing

Registered VAT taxpayers are required to submit monthly or quarterly returns to the competent tax office and keep registers of purchases and sales subject to VAT.

VAT quarterly declarations may be submitted by small taxpayers only if:

- **12 months** from the month in which the VAT registration has been registered as an active taxpayer,
- in the respective quarter or in the previous four quarters, no delivery of goods has been carried out, which is listed in Annex 13 of the Turnover Tax Law (unless the total value of such goods, less the tax, does not exceed the value of **50,000.00 PLN**).

Additionally, registered VAT EU taxpayers performing intra-community and acquisitions of goods into Poland and intra-community supplies of goods and services from Poland are also required to submit EC Listings returns on a monthly bases summary information.

(d) Payment/refunds

The tax due to the tax authorities is calculated as the output VAT minus the input VAT on purchase invoices.

As a rule, the surplus of output VAT over input VAT must be paid within **25 days** following the month in which the VAT obligation arose (for small taxpayers, the VAT due must be paid within **25 days** following the quarter in which the VAT obligation rose). If the input VAT exceeds the output VAT, a VAT refund is generally available.

(e) Penalties

In general, if the obligations binding upon Polish VAT taxpayers are not fulfilled, the tax authorities may impose the penalties provided for in the provisions of the Polish Fiscal Penal Code. Additionally, if any VAT liability arises, taxpayers are obliged to pay the outstanding VAT amount due along with the attendant penalty interest.

VALUE ADDED TAX (VAT) CONTINUATION

Application to non-residents	The entities without the status of Polish residents (i.e. seated outside Poland) performing transactions taxable in Poland according to the Polish VAT provisions (e.g. intra-community acquisitions of goods in the territory of Poland) are obliged to register for VAT purposes in Poland, as a consequence, fulfil the obligations imposed under Polish VAT law on registered VAT taxpayers.
Deliveries	<p>The tax applies to the supply of goods against payment, which also includes the delivery of goods and services free of charge.</p> <p>The taxpayer has the right to deduct input tax paid on goods and services, provided that the input tax is used for taxable activities.</p>
Gratuitous transfers	A gratuitous transfer of gifts of small value and samples are not subject to taxation, as long as it is made for associated with the business purposes. Handovers of publicity and information printing materials are now generally not excluded from taxation. a new definition of the sample has been introduced.
Place of supply of goods (cross-border transactions)	<ul style="list-style-type: none"> • The goods dispatched or transported by the person/supplier them, the consignee or third-party, is the place where the goods are located at the beginning of dispatch or transport to the buyer begins • Goods not dispatched or transported - 'the place of supply', where the goods are located at the time of delivery (e.g. land, buildings)
Services	Principally these are all services that are not goods. Tax base is the amount by which the service has been paid.



VALUE ADDED TAX (VAT) *CONTINUATION*

Place of performance **Rule:**

- Place of service in favour of a taxpayer (businessman) is the location of its registered office (or fixed place of management or permanent residence)
- Place of service in favour of a subject who is not an entrepreneur (consumer), is the country of the seat (or fixed place of management or fixed place of residence) of the power generator

Exeptions:

- Intermediation services in favour of final consumers - place of the primary activity with real estate related services - location of the property
 - Transportation services:
 - » Transport of persons - the place of transport, taking into account the distances covered
 - » Transport of goods in favor of consumers - the place of transport, taking into account the distances covered
 - » Transport of goods in favour of consumers, the beginning and the end of the movement on the territory of two different member states take place - the place of commencement transport
 - Support services to the transport services - place of activity execution
 - Services in the field of arts, culture and nature of the sport, science, education, entertainment:
 - » In favour of contractors - Application is the basic rule (location of the seat of the contractor)
 - » Favor of consumers - the place of activity execution
 - » Admission to an event (business and consumer) - location of event
 - Restaurants and catering services - place of activity execution
 - Short term rental of means of transport - place where the means of transport is actually put at the disposal of the customer
-

VALUE ADDED TAX (VAT) CONTINUATION

Place of performance

(cont.)

- Electronic services:
 - » In favor of contractors - application is the basic rule (location of the seat of the contractor)
 - » In favour of final consumers
- Based / resident outside the EU or based / resident in the EU, where the services are provided from a third country by a resident service suppliers - location of the seat / domicile of the beneficiary
- Based / resident in the EU, where the services are provided from an EU Member State by a resident service suppliers - location of the seat (or fixed place of management or fixed place of residence) of the power generator
- Intangible services (e.g. sale of rights, advertising, legal, banking, financial and insurance services, supply of staff) in principle apply the basic rule exception applies only to consumers, have the office / residence in a third country - location of the seat / residence of the beneficiary
- Telecommunications, radio and television broadcasting services - exemptions, if the services are rendered for the benefit of end users vary by domicile / residence of both the provider and the service recipient
- Services in the tourism sector - location of the seat (or fixed place of management or fixed place of residence) of the power generator

New special procedure for the VAT rules on telecommunications, radio and television, as well as on electronic services

The place of performance will always be the legal domicile, the place of residence or habitual residence of the non-taxable consumer (Article 28k of VAT Act) of telecommunications, radio and television, as well as electronic services. This shall apply regardless of supplier's status and the location of his business activities.

It also applies to foreign entities (entities not resident or have a permanent place of business within the territory of the EU).

VALUE ADDED TAX (VAT) CONTINUATION

Reverse Charge “Reversal of the tax liability“

It applies generally in the case when the supplier/service provider is a foreign entity (does not have a registered office or a permanent place of business in Poland) and the buyer is a Polish VAT payer.

Invoices without VAT, reference on passage of tax liability, tax identification numbers of the entrepreneurs, both supplier and beneficiary.

A foreign entity is obliged to pay the tax:

- if he provides real estate related services, and is registered for VAT purposes in Poland, in the case of other services, the control of the Polish beneficiaries must be settled
- in the case of goods trade, the foreign supplier is obliged to settle the tax if he/she for VAT purposes in Poland

Reverse charge in case of construction services

The obligation to apply the reverse charge mechanism arises in the case of construction services provided by subcontractors who are active VAT taxpayers. The catalogue of services subject to taxation under special rules is included in Annex 14 to the VAT Act. It covers, in principle, most of the most popular construction works, including plastering, painting or concreting.

Reverse charge in case of turnover in certain categories of goods

Goods to which reverse charge applies are listed in Appendix no. 11, Article 17 paragraph 1 item 7 of the VAT Act. The goods subject to the reverse charge procedure include: metal sheets, gold in the form of raw material or semi-finished product, electronic equipment - telephones, consoles, laptops (in transactions above **20,000.00 PLN**).

Real estate

The buyer pays the VAT, or applies the tax exemption for the delivery of a property after the fulfillment of special conditions.

Rental

Subject to VAT in either case.

Sale

Subject to either the VAT or the tax on civil law transactions. The latter is payable if the VAT exemption or neither side VAT payer is.

VALUE ADDED TAX (VAT) CONTINUATION

0% Tax Rate (ZW)

Inter alia (after the fulfilment of special conditions):

- Intra-Community supplies of goods
- Export of goods
- specific costs directly linked to the export of commodities related services,
- international transport services
- Services in the scope of processing and refinement of goods

VAT exemption inter alia

- Delivery of second-hand goods used solely for the purposes of an activity exempt (net of tax)
- Financial services (provision of loans, management of bank accounts, money exchange) with the exception of leasing, factoring or advice without:
 - » services which establish an integral part of financial services, even if they are appropriate and necessary for the provision of financial services,
 - » services which form part of the provision of financial services.

In other words: the tax exemption of auxiliary services for financial and insurance services.

- Insurance and re-insurance services
- certain medical services
- certain education services
- Services in the area of social welfare
- Services in the area of social insurance
- Certain services in the area of culture or sport



VALUE ADDED TAX (VAT) *CONTINUATION*

VAT deduction on expenses related to the use of passenger cars

VAT amounts subject to deduction depend on the purpose of use of a certain vehicle.

If a passenger car is used for various purposes, including for economic activity, as well as for private purposes, the right to deduction is limited to **50%**. The deductible amount depends on what a taxpayer uses the vehicle for. If a car is used for mixed purposes, that is, for both business and private use, the right to deduct is limited. But if a taxpayer uses a car exclusively for own business purposes, they are entitled to deduct the full VAT amount. A full right to deduct shall also apply when a motor vehicle is structurally designed to transport at least 10 persons including the driver (must follow from vehicle documents).

Limited deductibility - not only VAT on purchase

If a motor vehicle with the permissible maximum weight not exceeding 3.5 tonnes is used for both business and private use, the taxpayer will be entitled to deduct **50%** of VAT. This applies not only to VAT on purchase, ICA or import of vehicles (as it used to be), but also to VAT on repair, operation and purchase of component spare parts.

Unlimited deductibility - recording obligations

The taxpayer will be entitled to deduct **100%** of VAT provided that the vehicle is used exclusively for the taxpayer's business activity purposes. Furthermore, the following conditions must be met:

- The taxpayer must establish the rules of using the vehicle saying that they may be used exclusively for the taxpayer's business purposes
- A vehicle mileage logbook must be kept for the vehicles used exclusively for the taxpayer's business purposes.

The vehicle mileage logbook should include, without limitation: vehicle registration number, logbook's start and end date; odometer count and number of kilometres driven. It should be kept starting from the date when a vehicle is used exclusively for the taxpayer for the taxpayer's business activity.

If the taxpayer fails to file the above-mentioned information on time, his vehicle will be considered to be used exclusively for business purposes only after the day the information is filed.

VALUE ADDED TAX (VAT) CONTINUATION

Input tax reduction (cont.)

Information filing deadlines

Taxpayers who are going to use cars exclusively for business purposes, for which a logbook will be kept, will be obliged to notify the head of competent tax office of the vehicles used exclusively for business purposes (VAT-26 form). The VAT-26 information should be filed within statutory deadlines.

Liability for breach of the information obligation

A taxpayer who fails to file the VAT-26 information on time or who provides false information, and deducts **100%** of VAT at the same time, is subject to penal and fiscal liability (fine of up to 720 so-called daily rates, where such daily rates range from **56.00 PLN** to as much as **22,400.00 PLN**).



VALUE ADDED TAX (VAT) *CONTINUATION*

Accelerated refund of VAT

- Fundamental period - **60 days** from the date of filing the tax return, shortening to **25 days** possible (assuming all reported in the tax return accounts must be settled at the time of filing the tax return)
- **180 days** - if in a given billing period no taxable transactions were made

An accelerated **25-day** refund period for VAT is still possible, although the use of this advantage is subject to a number of requirements which must be met. The VAT refund with this shorter deadline is possible if:

- the input tax (VAT in connection with acquisitions), which is shown in the tax return, with the exception of the pre-tax surplus from acquisitions, which is deducted from the previous tax period, and which:
 - » from invoices which document the sums owed and which are paid in full through a bank account of the taxpayer in a bank which is domiciled in Poland, or through an account of the taxpayer in a co-operative bank of which he is a member; in the identification application.
 - » other invoices documenting receivables, if the total amount of such duties does not exceed **15,000.00 PLN**,
 - » has been settled by the taxpayer from the customs documents, the import declaration and the decisions referred to in Article 33 (2) and (3) and Article 34,
 - » the import of goods which are settled in accordance with Article 33a on the intra-Community acquisition of goods and the provision of services for which the recipient of the service is the taxpayer, shall indicate in the tax declaration the tax liability arising from those transactions;
 - the input tax or the pre-tax surplus has not been settled in the previous tax periods and does not exceed **3,000.00 PLN** in the tax return;
 - the taxpayer presents a document to the tax authority which confirms the settlement of the tax (confirmation of the transfer made by the account indicated to the tax office);
 - the taxpayer for more than 12 consecutive months immediately preceding the tax period in which the latter applies for a refund of **25 days**,
 - » was registered as an active person subject to VAT,
 - » submitted a VAT declaration for each tax period.
-

VALUE ADDED TAX (VAT) CONTINUATION

Re-imbusement of input tax for foreign companies	<p>Can be filed for:</p> <ul style="list-style-type: none"> • Application in Polish language for entrepreneurs from the EU - in electronic form • Appropriate Revenue Office: II Warsaw-Srodmiescie • The application can cover a period of minimum 3 months and can not exceed 1 year • Handing over until the 30 September of the following year • Issued by the tax office on the amount of the recognised tax is generally issued within 4 months from the application levy • Reimbursement will be made within 10 working days of the decision
Intra-Community supply (to registered entrepreneurs)	<p>Provided that the following conditions are fulfilled, a tax rate of 0% in Poland will be applied:</p> <ul style="list-style-type: none"> • The supply was carried out towards an entrepreneur registered for VAT-purposes in another membership country of the European Union, and • The goods have left Poland and the supplier has appropriate evidence, and • The supplier has mentioned the correct tax identification number on the invoice
To end users	<p>The taxation on supplies of goods to consumers (private individuals) in another membership country of the European Union takes place in Poland.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> • Means of transport, inter alia passenger cars, are always taxed in that country to which the consumer ships the new means of transport • Mail order business (The goods are handed over in the name of the supplier to the final consumer, provided that the value of the goods sold exceeds a certain turnover limit on the part of the supplier)
Reporting requirements	<ul style="list-style-type: none"> • Summing up reports (UE VAT) are to be delivered in general on a monthly basis • To be captured: <ul style="list-style-type: none"> » Intra-community deliveries of merchandise » Intra-community purchases » Deliveries under the so-called intra-Community supply triangle » Services to foreign companies (from EU Member States), in which the tax liability to beneficiaries passes
When the tax changes become chargeable	<p>The tax obligation arises at the moment of delivery of goods or service.</p>
Definitions of the tax base	<p>As a rule, the modifications of the rules is the direct implementation of the definition contained in the VAT directive. The new tax base includes all payments, which have a direct impact on the price of goods and services rendered by the taxpayer. The new VAT regulation explicitly mentioned what is included in the tax base, like additional costs (commissions, packing and transportation costs, as well as insurance costs). In case of free deliveries or services the values or comparable prices of the goods and services concerned will build the new text base. If there are no comparable prices the tax base includes all costs incurred at the tax point.</p>

VALUE ADDED TAX (VAT) CONTINUATION

Time restrictions on the deduction of input tax

The right of deduction arises in the period in which the seller's tax liability, in relation to the goods or services supplied become chargeable, but should not be earlier than in the tax return for the period in which the buyer received the invoice or customs documentation. Therefore, it is very important, that you are certain when the tax liability has arisen due to the documented through the relevant invoice.

The regulations give you the right to deduct intra-Community acquisitions of goods from the receipt of the seller's invoice.

From 2017 onwards, a new condition was introduced for the billing period for VAT on intra-Community acquisitions, according to which the taxpayer can reduce the tax due by the input VAT resulting from the intra-Community acquisition of goods referred to in Article 9 of the Turnover Tax Law if:

- the latter takes into account the value of the VAT payable on intra-Community goods acquired in the tax return in which you are obliged to settle this tax,
- this is not later than within a period of three months from the month in which a tax liability has been incurred, with regards to the goods purchased.

The correction of the reduced deduction will be possible at the time the invoice was received.

Invoicing requirements

A taxpayer can issue invoices by the **15 day** of the month following the month of delivery of goods/service and it may issue an invoice up to **30 days** before the delivery of goods/service.

Prefactor

Prefactor which applies to VAT deduction of expenses on business activity and activity of other type that cannot be assigned in total exclusively to one of the two categories of activities.

The method of calculating the prefactor was left to the taxpayer, with the VAT Act introducing a catalogue of illustrative data that can be taken into account:

- personnel data
- area data
- financial and trading data
- time-related data.

The choice of the method used to calculate the value of the prefactor is free, but the preindicator must be representative and meet the specifics of the taxpayer's business.

VALUE ADDED TAX (VAT) CONTINUATION

Sanctions

It is clear from Article 110a (1) of the Turnover Tax Law, the taxpayer must evaluate with the possible imposition of sanctions by the Director of the Tax Office (or the Tax Inspectorate), if the taxpayer confirms:

- in a submitted tax return:
 - » a taxable amount lower than the tax liability,
 - » shows a tax differential to be reimbursed or a pre-tax offset which is higher than the tax burden,
 - » a tax difference to be deducted from the tax liability for the next tax periods which is higher than the tax liability,
 - » a tax difference to be reimbursed, a pre-tax adjustment or a tax difference to be deducted from the tax liability for the next tax periods, but a tax liability to be borne by the tax office.
- did not submit any tax returns and did not pay the tax liability.

In this case, the Director shall determine the amount of tax to be paid, as well as the additional tax liability amounting to **30%** of the amount by which the tax credit was submitted, or **30%** of the amount by which the tax difference to be reimbursed, the tax difference to be deducted from the tax liability has been increased for the next tax periods.

Register of active VAT taxpayers introduced

The Head of the National Revenue Administration will maintain an electronic register of active VAT taxpayers.

The register of active VAT taxpayers will be made available in the Public Information Bulletin on the respective website of the office servicing the minister in charge of public finance, in a way that allows checking the data contained in the register.

The register of active VAT taxpayers will be updated on business days, once a day.

Data on taxpayers deleted from the register as active VAT taxpayers are kept for a period of **5 years** counted from the end of the calendar year in which the taxpayer was deleted from the register.

VALUE ADDED TAX (VAT) *CONTINUATION*

Split payment

Taxpayers who have received an invoice with the tax amount indicated, when making a payment of the amount due resulting from this invoice, may use the split payment mechanism.

The application of the split payment mechanism will be based on the following:

- the payment of the amount corresponding to all or part of the tax amount resulting from the invoice received is made to the VAT account;
- the payment of all or part of the amount corresponding to the net sales value resulting from the invoice received is made to a bank account or an account in a co-operative savings and credit union for which a VAT account is kept or is otherwise settled.

According to the current wording of the project, the split payment mechanism will not be mandatory, but the legislator has provided a number of incentives to convince taxpayers to use this form of settlement. These incentives are as follows:

- abandoning the principle of joint and several liability,
- abandoning the imposition of additional tax liability,
- no use of increased interest from the VAT tax debts (up to **150%** of the standard rate),
- accelerated refund of excess input VAT.

Deposits and withdrawals

The VAT account will allow to deposit only cash from:

- the payment corresponding to the amount of VAT paid to the supplier of goods or the service provider using a dedicated transfer message;
 - VAT amount refund:
 - » in the case of issuing a corrective invoice, using a dedicated transfer message,
 - » by the tax office.
-

VALUE ADDED TAX (VAT) CONTINUATION

Vouchers

Regulations provide for two types of vouchers, within the meaning of instruments subject to the obligation of their acceptance as remuneration for delivery of goods or rendered services, namely:

- a single-purpose voucher (SPV) - for which the place of supply of the goods or services to which the voucher relates and the amount of due tax, value added tax or similar tax arising from the supply of such goods or services are known at the time of issue of the voucher,
- a multi-purpose voucher - a voucher other than a single-purpose voucher.

A single-purpose voucher entitles the holder to receive certain goods or services where the level of taxation (in particular the VAT rate), the identity of the supplier and the Member State in which the supply of the goods or services linked to a certain voucher can be determined definitively from the outset. VAT is charged on the sale of the voucher.

With regard to multi-purpose voucher, the tax is charged at the actual supply of goods or services in exchange for the voucher accepted by the supplier. In other words, in this case, VAT should be charged when the goods or services to which it relates are supplied.

Bad debt relief

At the beginning of **2019**, new regulations on the use of bad debts relief began to apply. The legislator shortened the period in which taxpayers settle VAT on unpaid invoices from **150 days** to **90 days**. The new period also applies to invoices with their payment term expired in **2018**.

VALUE ADDED TAX (VAT) CONTINUATION

Consequences of delay by failure to meet the deadlines and dates

Delay penalties: currently **8%** per annum

Penalties for late payment: only for VAT - up to **30%** of the tax liability

Since the new year, the Directors of the Tax Office or the Tax Inspectorate have been able to impose on taxpayers additional obligations of **30%** of the amount by which the tax credit has been reduced, or **30%** of the amount by which the tax difference or the tax difference to be deducted from the tax liability for the next tax periods. A correction of the error can reduce the rate from **30%** to **20%**.

An additional obligation arises when the treasury finds that the VAT subject in the submitted shows:

- a taxable amount lower than the tax liability,
- shows a tax differential to be reimbursed or a pre-tax offset which is higher than the tax burden,
- a tax difference to be deducted from the tax liability for the next tax periods which is higher than the tax liability,
- a tax difference to be reimbursed, a pre-tax adjustment or a tax difference to be deducted from the tax liability for the next tax periods, but a tax liability to be borne by the tax office.

Furthermore, **30%** of the penalties also apply to taxpayers who do not submit tax returns and do not settle the tax burden against the tax authorities.

In the current legal situation, increased default interest rates are threatened when uncovering a lack of a VAT declaration or a lack of a settlement of the tax liability.

100% of the VAT on false invoices

The percentage of additional commitments increases to **100%** of the input tax that results from the invoices if it is established that the invoices with increased deductible VAT:

- have been issued by a non-existent legal entity,
- activities which have not been carried out (as regards the part relating to those activities),
- amounts which do not correspond to reality (with regard to the items for which amounts are not true),
- support the activities in which Article 58 of Civil Law applies (as regards the part relating to those activities).

TAXES ON CIVIL AGREEMENTS (PCC)

Purchase of real estate:	2.0%
Memorandum of association:	0.5%
Loans:	2.0%
Proprietor/Shareholder-loans:	0.5%

TAX AUDIT AND LEGAL RECOURSE IN POLAND

Subject	The formal correctness of the tax declaration stands in the focus of the control. A separate tax bill is not created.
Audit of the Tax Office	Determination of the tax liability on the merits and amount. The revenue office issues a protocol thereafter, which can serve as evidence in a tax proceeding.
Control method	It is determined whether the taxes were paid on time. If default interest accrues, the tax authority shall issue a tax assessment in the amount of tax due and default interest are fixed.
Tax audit performed by the finance control group	It is checked whether the taxpayer has declared his tax liabilities on the merits and the amount properly. If a tax liability determined, a separate tax bill enacted. Tax payers can draw on in Poland in fiscal matters on the following rights: <ul style="list-style-type: none"> • Appeal against a decision • Complaint to the Provincial Administrative Court • Nullification suit with the supreme administrative court • Legal action with the European court of justice

TAX ORDINANCE ACT

Verification of the contractor

Taxpayers may obtain from the tax offices a certificate regarding the following information about their contractors conducting business activity:

- confirmation that the contractor has (or has not) submitted a tax return or other document he was obliged to submit pursuant to the provisions of tax acts;
- confirmation that the contractor has (or has not) included in the tax return or other document the events he was required to include pursuant to the provisions of tax acts;
- confirmation that the contractor is (or is not) in arrears with taxes resulting from a tax return or other document submitted pursuant to the provisions of tax acts.

Evidence in tax proceedings

The open catalogue of evidence in tax proceedings may include documents gathered during the analysis performed by the National Tax Administration.



INTEREST

Interest on tax arrears	Interest on tax arrears amount to the double basic NBP Lombard loan interest rate and 2% , however not less than 8% .
Statutory interest	<ul style="list-style-type: none"> • 5% (statutory interest) • 10% (maximum interest)
Statutory interest for delay	<ul style="list-style-type: none"> • 7% (interest for delay) • 14% (maximum interest for delay)
Interest for delay in commercial transactions	The interest rate for delay in commercial transactions will therefore be 9.5% .
Reduced rates	<p>Reduced interest on tax arrears at 50% of the interest rate on tax arrears applies if the following conditions are fulfilled simultaneously:</p> <ul style="list-style-type: none"> • a legally binding correction of tax return is submitted no later than within 6 months from the date of the expiry of the time limit for submitting the tax return; • the tax arrears are paid within 7 days from the date of submitting the correction of tax return.
Leniency	<p>Notifying the authority by the taxpayer on committing a prohibited act by it excludes punishability of the act if:</p> <ul style="list-style-type: none"> • it takes place before the tax authority identifies this fact and • the notified failures are settled at the moment of submitting the notification.
Increased rate	<p>The increased interest rate of 150% of the base rate (currently 12%) will apply to tax refunds on goods and services, as well as to back-up excise duties and customs duties.</p> <p>This rate shall be applied if the tax authority detects in the course of its tax procedures (verification activities, tax audit or tax proceedings) an understatement of tax liabilities (overestimation of overpayment or tax refund) in the amount exceeding 25% of the amount due and higher than the amount of 5 x minimum salary, or the lack of the tax return and tax payment.</p>

TAX LIMITS IN 2019

In 2019, current income limits concerning inter alia status of small-business enterprises

Small-business enterprises (mały podatnik) for VAT and Personal Income Tax: **5,135,000.00 PLN**

Income limit that entitles lump-sum of taxation of recognised income: **1,069,875.00 PLN**

The amount of net income that requires to bring records of accounts by individuals, partnerships of individuals, partnerships of individuals, partnerships and social co-operatives - **8,559,400.00 PLN**

Maximum total amount of depreciation in a year, as part of one-off depreciation - **214,000.00 PLN**



DOUBLE TAXATION AGREEMENT (DTA)

Double Taxation Agreement (DTA):

Poland concluded Double Taxation Agreements (DTA's) with 81 countries, which comply with the OECD Model convention.

Governance of the right for taxation looks differently in the case of share disposals in real estate companies. Following the OECD Model Convention, for those Double Taxation Agreements (DTA's) marked with 'yes', the country of location of the real estate possesses the right for taxation vis-a-vis share deals, and not the country of residence/domicile of the seller.

Tax rates mentioned in the Double Taxation Agreements (DTA's) can be applied only then, when the tax payer possesses and provides a certificate of residence issued by the Inland Revenue office of the applicable country.

COUNTRY	ENTRY INTO FORCE	PROPERTY CLAUSE	DIVIDENDS IN%	INTERESTS IN%	LICENSES IN%
ALBANIA	27.06.94	no	5/10	10	5
ARMENIA	27.02.05	yes	10	5	10
AUSTRALIA	04.03.92	yes	15	10	10
AUSTRIA	01.04.05	yes	5/15	0/5	5
AZERBAIYESN	20.01.05	yes	10	10	10
BELARUS	30.07.93	no	5/15	0/10	0
BELGIUM	29.04.04	yes	5/15	0/5	0/5
BULGARIA	10.05.95	no	10	0/10	5
CANADA	08.12.12	yes	0/5/15	10	5/10
CHINA	07.01.89	no	10	0/10	7/10
CROATIA	11.02.96	yes	5/15	0/10	10
CYPRUS	Protocol - 09.11.12	no	0/5	0/5	5
CZECH REPUBLIC	13.06.12	no	5	0/5	10
DENMARK	31.12.02	yes	0/5/15	0/5	5
ESTONIA	09.12.94	no	5/15	0/10	10
FINLAND	30.03.79	no	0/5/15	0	0/10
FRANCE	12.09.76	yes	5/15	0	0/10
GERMANY	19.12.04	yes	5/15	0/5	5
GREAT BRITAIN	27.12.06	yes	0/10	0/5	5
GREECE	28.09.91	no	19	10	10
HUNGARY	10.09.95	no	10	0/10	10
ICELAND	protocol - 08.12.12	yes	5/15	0/10	10
INDIA	26.10.89	yes	15	0/15	20
INDONESIA	25.08.93	no	5/15	0/10	15
IRELAND	22.12.95	yes	0/15	0/10	0/10
ISRAEL	30.12.91	yes	5/10	5	5/10
ITALY	26.09.89	no	10	0/10	10
KAZAKHSTAN	13.05.95	yes	5/15	0/10	10
KOREA	21.02.92	no	5/10	0/10	10

(*) Exemption from withholding tax pursuant to the directive on rulers and controlled companies (Parent-Subsidiary-Directive)

CONTINUATION

COUNTRY	ENTRY INTO FORCE	PROPERTY CLAUSE	DIVIDENDS IN%	INTERESTS IN%	LICENSES IN%
KUWAIT	25.04.00	no	0/5	0/5	15
LATVIA	30.11.94	yes	5/15	0/10	10
LITHUANIA	19.07.94	yes	5/15	0/10	10
LUXEMBOURG	protocol - 11.12.12	yes	0/15	0/5	5
MALAYSIA	05.12.78	no	0	0/15	0/15
MALTA	24.11.94	yes	5/15	0/10	10
NORWAY	29.01.13	yes	0/15	5	5
PORTUGAL	04.02.98	no	5/15	0/10	10
RUMANIA	15.09.95	no	5/15	0/10	10
RUSSIA	22.02.93	no	10	0/10	10
SAUDI ARABIA	01.06.12	yes	5	0/5	10
SINGAPORE	04.11.12	yes	0/5/15	0/5	2/5
SLOVAKIA	21.12.95	no	5/10	0/10	5
SLOVENIA	10.03.98	no	5/15	0/10	10
SOUTH AFRICA	05.12.95	no	5/15	0/10	10
SPAIN	06.05.82	yes	5/15	0	0/10
SWEDEN	15.10.05	yes	5/15	0	5
SWITZERLAND	25.09.92	no	5/15	10	0/10
THAILAND	13.05.83	no	20	0/10	5/15
THE NETHERLANDS	18.03.03	no	5/15	0/5	5
THE PHILIPPINES	07.04.97	yes	5/15	0/10	15
TUNISIA	15.11.93	no	5/10	12	12
TURKEY	01.10.96	no	5/15	0/10	10
UKRAINE	11.03.94	yes	5/15	0/10	10
UNITED ARAB EMIRATES	21.04.94	no	0/5	0/5	5
USA	23.07.96	yes	5/15	0	10
YESPAN	23.12.82	no	10	0/10	0/10

(*) Exemption from withholding tax pursuant to the Directive on rulers and controlled companies (Parent-Subsidiary-Directive)

LEASING

Leasing types

In their everyday work entrepreneurs deal with two kinds of leasing: operational and financial. These two definitions also result from the tax regulations. Choosing the form exclusively depends on the taxpayer using the lease contract which can be subject to the needs of settling the tax costs and the term of predicted usage of the subject of the leasing.

The Operational Leasing

With this form of the contract the subject of the leasing is recognised as assets of the leasing party (for instance, a leasing company). Thus, it is the leasing party who is obliged to make the depreciation and amortisation expenses. However, the leasing instalments constitute the tax deductible expenses of the party using the subject of the contract; VAT and an initial charge are added to these instalments. The sum of the instalments set in the contract reduced by the due VAT has to correspond to at least the initial value of the tangible fixed assets. Shall the term of the contract expire the leaseholder is entitled to redeem the used subject.

The Financial Leasing

Choosing this kind of the lease contract the taxpayer has to know that the subject of the contract is to be recognised as the asset of the Leaseholder; thus, unlike the operational leasing, it is the leaseholder who is obliged to make the depreciation and amortisation expenses. Additionally, the user may only recognise the interest part of the leasing instalment as the tax deductible expenses. VAT shall be paid in full in advance together with the first instalment, immediately after collecting the subject of the contract. It is worth mentioning, that the customer becomes the owner of the subject of leasing automatically after the last instalment is paid.



LEASING CONTINUATION

Key Differences:

	The Operational Leasing	The Financial Leasing
Depreciation and amortisation	Duty of the leasing party	Duty of the leaseholder
Term	Longer than 40% of the depreciation and amortisation time of the subject (real property - at least 10 years)	Over 12 months
Tax deductible expenses	The user recognises the net instalments and the initial charge as the expenses	The user recognises the interest part of the leasing instalments and the depreciation and amortisation as the expenses
VAT	Added to the leasing instalments	Paid in advance together with the first instalment
Redeeming	Depending on the depreciation and amortisation rate and the redemption term	After paying the last instalment the subject becomes the possession of the user

The key factor when choosing the form of leasing are definitely the initial costs which are significantly lower in case of the operational leasing due to the lower involvement of equity. The majority of contracts concluded on the Polish market are the operational lease contracts; one of the reasons of such situation may be the fact that in case of the financial leasing VAT has to be paid in full in advance.

Choosing the operational leasing is also recommended in case the planned term of using the subject is relatively short. For this reason it is possible to increase the current operational costs which means reducing the tax base.

SOCIAL SECURITY CONTRIBUTIONS

Ruling

Polish employers have the obligation to incur the costs of social security insurance to the Social Insurance Institution and are payers of contributions to the Social Insurance Institution and the National Health Fund.

The contributions for retirement and pension insurance for employees and employers are calculated on the basis of the employee's gross income.

The employer is responsible for withholding and remitting the full amount of social security contributions (employee's share and employer's share) to the relevant authorities. The rates of social security contributions are:

Insurance	Employer	Employee
Retirement Pension	9.76%	9.76%
Disability	6.5%	1.5%
Sickness	Not applicable	2.45%
Work Accident	Between 0.65% and 3.33%	Not applicable
Health	Not applicable	9.00%
Labour Fund (LF)	2.45%	Not applicable
Fund of Guaranteed Employee Benefits (FGEB)	0.10%	Not applicable

The contribution calculation basis for the retirement and social security insurance in 2019 cannot exceed **142,950.00 PLN**.

Social security in Poland

The social insurance system in Poland is universal and compulsory. Social insurance covers people who are, among others, employees, persons working on the basis of contracts of mandate or run a business activity.

NOTE:

Social security in Poland covers the EU citizens on the same basis as Polish citizens.

PENSION INSURANCE

Pension insurance

The retirement and social security insurance aims to provide:

- payment of retirement benefits for persons who have reached the retirement age (retirement pension)
- payment of benefits in the event of inability to work due to sickness (disability pension)

The employer is the payer of due contributions to the Social Insurance Institution.

The pension system is based on the tight connection between the amount of the benefit and the amount of the actually paid premium. The basis for calculating the pension is the (total) amount of premiums for pension insurance.

Pension is granted to women who are at least 60, and men who are at least 65. There is no minimum insurance period required for granting the pension.

Decisions about granting pensions are made by the Social Insurance Company's bodies which are of proper jurisdiction due to the place of living of the person who is applying for the benefit. The proceedings for granting pensions start after submitting the application by an applicant.



DISABILITY INSURANCE

Disability insurance

Disability insurance guarantees cash benefits in case of losing income connected with the risk of disability (inability to work) or death of a breadwinner in a family. In such a situation persons who pay disability insurance premiums are granted disability pension for incapacity for work, which is a substitution for remuneration or income, and in the case of death of an insured breadwinner in a family, the members of their family are granted family pension.

The premium for disability insurance is **8%** of the basis of the assessment of the amount of premium, where **6.5%** is from the funds of the employer, and **1.5%** from the funds of the employee.

1. Disability pension for incapacity for work

Disability pension for incapacity for work can be granted to an insured person who fulfils all of the following conditions:

- Is considered a person who is partially or entirely unable to work
- Has proven contributory and non-contributory periods
- Inability to work started in the periods strictly set out in the Act

A person who is entirely unable to work is a person who has lost the ability to perform any job.

A person who is partially unable to work is a person who to a considerable degree lost their ability to perform a job which is consistent with the level of that person's qualifications.

Inability to work and its level is certified by a board certified occupational medicine physician from the Social Insurance Company as the first certifying instance. An applicant has the right to raise an objection to the physician's opinion to the Social Insurance Company Medical Board - as the second certifying instance.

2. Family pension

Family pension is granted to entitled family members (children, widow, widower, parents) of a person who at the moment of death took pension or disability pension for incapacity for work, and a working person who had the required periods for granting pension or disability pension for incapacity for work. When analysing the right to the family pension, it is assumed that a deceased person was entirely unable to work.

SOCIAL SECURITY FOR INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Social security for industrial accidents and occupational diseases

Security for industrial accidents and occupational diseases covers, inter alia, employees, persons who work on the basis of contracts of mandate, and persons carrying out business activity.

Benefits in respect of accidents at work and occupational diseases may be granted to the insured person. They are:

- **Sickness benefit from sickness insurance** - for the insured person, whose inability to work arose as a result of an accident at work or occupational disease
- **Rehabilitation benefit** - is paid after the sickness benefit has finished, if the insured person is still unable to work, and further treatment or rehabilitation give them a chance to regain ability to work
- **Compensating benefit** - is for an insured person who is an employee, whose remuneration was lowered due to permanent or long-term damage to their health
- **One-time compensation** - for an insured person whose health was damaged permanently or for a long period of time, or for the members of the family of a deceased insured person or a person who collected disability pension
- **Disability pension for an industrial accident or occupational disease** - for an insured person who has become unable to work due to an industrial accident or an occupational disease
- **Training allowance** - is granted to a person with reference to whom retraining was stated as appropriate due to the inability to work in a current profession because of an industrial accident or occupational disease
- **Family pension** - for the family members of a deceased insured person or a person entitled to disability pension for an industrial accident or occupational disease and allowance to family pension - for an orphan
- **Attendance allowance** - for a person who is entitled to pension, considered entirely unable to work and existence on their own, or who is over 75
- **Covering the costs of treatment** - in the field of dentistry and preventive vaccination and supply of orthopaedic equipment, within the scope stipulated by the Act

The amount of the accident security premium varies from **0.67%** to **3.33%** of the basis of premium assessment. The accident security premium is entirely covered by the employer.

SOCIAL SECURITY FOR SICKNESS AND MATERNITY

Social security for sickness and maternity

Persons who are obligatorily insured for sickness and maternity are mainly employees. Persons covered by obligatory pension and disability pensions insurance, who, inter alia: work on the basis of an agency agreement or contract of mandate, carry out non-agricultural activity (business activity, authors, artists, freelancers) can also be insured, voluntarily, for sickness and maternity.

The amount of the sickness contribution is **2.45%** of the sum for the basis of contributions. The contribution is covered from the funds of the insured person.

The following benefits are paid due to insurance in case of sickness and maternity:

Sickness benefit

Sickness benefit / sick pay is granted to the insured person who became sick during the period of sickness insurance. Generally, the right to sickness benefit is due after the expiry of the so-called waiting period. A person who is obligatorily covered by sickness insurance is entitled to sickness benefit after **30 days** of continuous sickness insurance. A person who is covered by this insurance voluntarily, acquires the right to sickness benefit after the period of **90 days** of continuous sickness insurance.

The sickness benefit is granted to an insured person in the amount of **80%** of the basis of assessment, and for the period of being hospitalised - in the amount of **70%** of the basis of assessment.

If the inability to work which was caused due to an accident on the way to or from work started during pregnancy or concerns tissue, cell or organ donors, then the sickness benefit is paid in the amount of **100%** of the basis of assessment.

Rehabilitation benefit

The rehabilitation benefit is granted to an insured person who can no longer be given the sickness benefit but still is unable to work, and further treatment or rehabilitation give them a chance to be able to work again. The benefit is granted for the period necessary to give them a chance to regain ability to work but not longer than for the period of **12 months**.

Compensating benefit

The compensating benefit is granted only to insured persons who are employees. That benefit is granted to employees whose remuneration was lowered due to undergoing professional rehabilitation or who was moved to another post due to the state of health.

SOCIAL SECURITY FOR SICKNESS AND MATERNITY *CONTINUATION*

Social security for sickness and maternity *(cont.)*

Maternity allowance

Maternity allowance is granted to an insured woman who at the time of sickness security or at the time of a child care leave:

- gives birth to a child
- takes a child up to 7 years of age for upbringing, and in the case of a child with regard to whom there was a decision about an adjournment of compulsory education - up to 10 years of age, and who started legal proceedings for adoption in the Guardianship Court
- takes for upbringing, as surrogate parents, except for professional surrogate parents not related to the child, a child up to 7 years of age, and in the case of a child with regard to whom there was a decision about an adjournment of compulsory education - up to 10 years of age

Provisions concerning the right to maternity allowance in the case of taking a child for upbringing are also to be followed in the case of an insured man.

Maternity allowance is paid during maternity leave - for **20 weeks** in the case of the birth of one child. In the case of the birth of more than one child between **31-37 weeks**.

Maternity allowance can be also granted to an insured father of a child for the period of 2 weeks as the period of maternity leave which can be granted to an employee-father raising a child.

The amount of maternity allowance is **100%** of the basis of the allowance assessment. The basis of the allowance assessment is an average monthly remuneration paid for the period of **12 months** before the month in which the right to the allowance is created.

Premiums for pension and disability pension insurance are calculated from maternity allowance (Those premiums are financed from the State budget).

Parental leave is granted immediately after maternity leave or maternity allowance is used by an employee for a period equal to the period of maternity leave by the insured person who is not an employee, in no more than 4 parts which are multiples of a week, falling directly one after another or immediately after using maternity allowance for the period corresponding to a part of parental leave.

SOCIAL SECURITY FOR SICKNESS AND MATERNITY *CONTINUATION*

Social security for sickness and maternity *(cont.)*

Maternity allowance for the period specified in the Labour Code provisions as a period of parental leave is granted for up to:

- **32 weeks** - in the case of the birth of one child and for the adoption for upbringing and to apply to the guardianship court for instituting proceedings for adoption or acceptance of upbringing as a foster family with the exception of a professional foster family of one child up to the age of seven, and in the case of a child towards whom it was decided to postpone the compulsory schooling up to the age of ten, hereinafter referred to as “the adoption of a child for upbringing”
- **34 weeks** - in the case of the birth during one delivery of two or more children and in the case of a simultaneous adoption for upbringing of two or more children

The maternity allowance for the period corresponding to the period of parental leave can also be used by both parents at the same time, however, the total period of the leave enjoyed by both parents must not exceed **32 or 34 weeks**.

Attendance allowance

Attendance allowance is granted for the period of a special leave, when it is necessary to take care of a healthy child who is under 8, a sick child who is under 14 or other sick member of the family.

Attendance allowance is granted for not more than **60 days** in a calendar year if a person takes care of a healthy child who is under 8 or a sick child who is under 14. If a person takes care of a sick child who is over 14 or other sick member of a family, the allowance is granted for not more than **14 days**. The allowance is paid in the amount of **80%** of the basis of allowance assessment.



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