

## International Tax Poland Highlights 2018



### Investment basics:

**Currency** – Polish Zloty (PLN)

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

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

**Principal business entities** – These are the limited liability company, joint stock company, limited joint stock partnership, limited partnership, sole proprietorship and branch of a foreign corporation.

### Corporate taxation:

**Residence** – A corporation or a limited joint stock partnership is tax resident in Poland if its registered seat or management is in Poland.

**Basis** – Residents are taxed on worldwide income; nonresidents are taxed only on Polish-source income. Foreign-source income derived by residents generally is 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 generally are taxed the same as subsidiaries.

**Taxable income** – Corporation tax is imposed on a company's profits, which consist of two sources (i.e. "baskets") of income: capital gains and other income (which includes business/trading income). Normal business expenses (with some limitations including interest and other financing costs and payments for

intangible services purchased from related parties) may be deducted in computing taxable income.

**Taxation of dividends** – 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 Swiss company are exempt from taxation if certain holding and participation requirements are met and the dividends are not related to a transaction (or a set of transactions) that is undertaken to benefit from a tax exemption and that does not reflect economic reality. If the exemption does not apply, dividends received are subject to taxation, but a credit for foreign withholding tax and, in some cases, underlying foreign corporate tax paid is available.

**Capital gains** – Capital gains are taxed as a separate source of income at the standard corporation tax rate of 19% (see "Taxable income"). An exemption may be available for venture capital companies (limited liability companies and limited partnerships resident in Poland) on gains from the transfer of shares acquired during 2016-2023 in companies performing R&D activities, provided certain requirements are met.

**Losses** – Losses from a given source of income may be carried forward for five years and decrease taxable income from the same source, but the deduction in a given year may not exceed 50% of the loss incurred. The carryback of losses is not permitted.

**Rate** – The standard corporation income tax rate is 19%. A lower tax rate of 15% may be available to small taxpayers and taxpayers commencing business activity (with certain exceptions). Tax capital groups (groups of two or more companies having a fiscal unity for \

corporation tax purposes) may not benefit from the lower rate.

**Surtax** – No

**Alternative minimum tax** – Minimum tax applies on income from the ownership of certain “high-value fixed assets” (e.g. shopping centers and other commercial buildings) in Poland. The tax is imposed at a rate of 0.035% per month on the initial tax value of the asset that exceeds PLN 10 million. The tax is deductible in calculating the corporation income tax.

**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.

**Participation exemption** – See “Taxation of dividends,” above.

**Holding company regime** – No

**Incentives** – An additional deduction ranging from 100% to 150% of qualifying expenses incurred for R&D activities may be available. A one-time depreciation write-off up to EUR 50,000 also may be available for small and start-up taxpayers.

#### Withholding tax:

**Dividends** – Dividends paid by a Polish resident company to a nonresident company are subject to a 19% withholding tax, unless the rate is reduced under a tax treaty or the dividends qualify for an exemption under the EU parent-subsidiary directive, provided the dividend is not related to a transaction (or a set of transactions) that is undertaken to benefit from a tax exemption and that does not reflect economic reality.

**Interest** – Interest paid to a nonresident is subject to a 20% withholding tax, unless the rate is reduced under a tax treaty or the EU interest and royalties directive (the exemption based on the directive may be available only if the recipient is the beneficial owner of the interest).

**Royalties** – Royalties paid to a nonresident are subject to a 20% withholding tax, unless the rate is reduced under a tax treaty or the EU interest and royalties directive (the exemption based on the directive may be available only if the recipient is the beneficial owner of the royalties).

**Technical service fees** – See “Other” below.

**Branch remittance tax** – No

**Other** – Fees for specified intangible services (e.g. advisory, accounting, legal, technical, advertising, data processing, market research, recruiting, management, control services, guarantees, etc.) are subject to a 20%

withholding tax (subject to the provisions of an applicable tax treaty).

#### Other taxes on corporations:

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

**Payroll tax** – No, but an employer is responsible for remitting social security contributions and advance payments of income tax on an employee’s salary.

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

**Social security** – Employers and employees must make social security contributions in an amount equal to approximately 35% of an employee’s remuneration (with certain caps).

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

**Transfer tax** – Tax is imposed at a rate of 1%-2% on certain types of transactions (e.g. sales, exchanges of rights, loans) that generally are not covered by VAT. As a rule, transactions exempt from VAT are not subject to transfer tax (except for real estate and shares).

**Other** – Excise tax is charged on the 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, copper, crude oil and natural gas.

A tax on certain financial institutions including domestic banks, branches of foreign banks and credit institutions, insurance and reinsurance companies and loan institutions (excluding state-owned banks) applies. The tax is charged on the total value of assets exceeding (i) PLN 200 million in the case of loan institutions; (ii) PLN 2 billion for insurance and reinsurance companies; and (iii) PLN 4 billion for other financial institutions, at a rate of 0.0366% per month.

A tax on revenues from retail sales was introduced in 2016, however its collection has been suspended until the end of 2018 due to the initiation of proceedings concerning possible incompatibility of this tax with EU law. In its current form, the tax would be applicable to retail sellers generating turnover exceeding PLN 17 million in a given month. The tax rate is 0.8% for turnover between PLN 17 million and PLN 170 million and

1.4% for turnover exceeding PLN 170 million in a given month.

#### Anti-avoidance rules:

**Transfer pricing** – The Polish transfer pricing rules generally follow the OECD guidelines and if prices in related party transactions are not in accordance with the arm's length principle, the tax authorities may make an adjustment. Entities are related parties where one entity owns (directly or indirectly) 25% or more of the capital of another entity.

Transfer pricing documentation must be prepared for related party transactions. (See "Disclosure requirements," below.)

Advance pricing agreements are permitted.

**Thin capitalization** – As from 1 January 2018, deductions of debt financing costs that exceed interest or "interest-type" income are limited to 30% of "tax EBITDA" (as defined for purposes of the thin capitalization rules) and/or PLN 3 million in a fiscal tax year. The limitation applies to all "debt financing costs" (interest, arrangement fees, etc.) on financing granted by both related and nonrelated entities. Disallowed deductions may be carried forward for five years, with some exceptions.

**Controlled foreign companies** – Under the controlled foreign company (CFC) rules, Polish taxpayers are taxed currently at a rate of 19% on the income of their CFCs. A subsidiary is characterized as a CFC if any of the following requirements are met: (1) the company is located in a country that engages in "harmful tax practices"; (2) the country of the company's seat or place of management does not engage in an exchange of information with Poland or the EU; or (3) the Polish company holds (either on its own or jointly with its related entities), for an uninterrupted period of at least 30 days, over 50% of a foreign company that derives at least 33% of its revenue from passive income, and the amount of tax actually paid by the foreign company is lower than the difference between the tax that would have been applied had the company been a Polish resident and the tax the foreign company actually paid.

The rules are not applicable if a CFC carries out relevant genuine economic activities. The tax base (taxable income) under the CFC regime may be reduced by the amount of dividends received by the Polish taxpayer from a CFC and included in the Polish taxpayer's tax base, and by the amount of income from a sale of shares in a CFC by the Polish taxpayer and included in the Polish taxpayer's tax base.

**Disclosure requirements** – Certain transactions must be reported to the tax authorities and/or the National Bank of Poland.

Certain transfer pricing documentation must be prepared for related party transactions exceeding a certain threshold by taxpayers whose revenues or costs exceeded the equivalent of EUR 2 million in the preceding tax year. In addition, (i) taxpayers whose revenues or costs exceeded the equivalent of EUR 10 million in the preceding tax year also must prepare benchmarking studies; (ii) taxpayers whose revenues or costs exceeded the equivalent of EUR 20 million in the preceding tax year also must prepare a "master file," which contains certain additional information about the whole related party group; and (iii) taxpayers whose consolidated revenues exceeded the equivalent of EUR 750 million in the preceding tax year also must produce a "country-by-country report," which contains additional information about the income and tax paid by group subsidiaries, their places of conducting business as well as their permanent establishments.

All taxpayers obliged to prepare transfer pricing documentation (i.e. those that exceeded the threshold of EUR 2 million of revenues or costs) must submit (with the annual corporation income tax return) a statement confirming that they have the compliant transfer pricing documentation ready. Taxpayers whose revenues or costs exceeded EUR 10 million also must submit a simplified report on related party transactions with the annual corporation income tax return.

Transfer pricing documentation requirements also apply to taxpayers conducting business operations in forms not having legal personality (e.g. partnerships).

**Other** – A general anti-avoidance rule (GAAR) allows the tax authorities to eliminate the effects of tax optimization in cases of "tax avoidance." Tax avoidance is defined as occurring where a transaction/action is performed primarily to obtain a tax benefit, while the commercial or economic aims of the transaction/action, if any, are immaterial.

#### Compliance for corporations:

**Tax year** – Taxpayers may choose a calendar year or another 12-month period.

**Consolidated returns** – Companies may form a tax consolidated group, whereby all companies in the group are treated as a single taxpayer for corporate income tax purposes.

**Filing requirements** – 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 must be made within three months of the end of the tax year.

**Penalties** – Persons responsible for the tax reconciliation, as well as members of the management board in certain cases, are subject to penalties for noncompliance. In certain cases, corporate entities may be subject to penalties.

**Rulings** – Taxpayers may request a ruling on the tax treatment of a specific transaction (two or more interested parties participating in the same transaction may submit one request). If the background presented in the application for a binding tax ruling corresponds to the background covered by a general ruling issued based on the same legislation in force, the Ministry of Finance may issue a decision stating that the general ruling applies.

The legal protection resulting from a tax ruling will not apply to tax rulings issued before the introduction of the GAAR (July 2016), if tax benefits resulting from transactions/actions covered by the tax rulings apply from 1 January 2017. To safeguard tax settlements from application of the GAAR, taxpayers may apply for a protective opinion issued by the Minister of Finance (the deadline for issuing the opinion is six months and the fee for submitting the application for the opinion is PLN 20,000).

#### Personal taxation:

**Basis** – Residents are taxed on their worldwide income. Nonresidents are taxed only on Polish-source income.

**Residence** – An individual is resident if his/her center of personal or economic interest is in Poland or if he/she stays in Poland for more than 183 days in the tax year.

**Filing status** – Married couples and single parents may opt for preferential joint spousal/single parent taxation.

**Taxable income** – Taxable income includes most cash and noncash benefits earned from employment, income from self-employment and rental income. Profits derived from business activities are subject to rules similar to the rules for companies.

**Capital gains** – Capital gains are a separate source of income; capital gains derived from the sale of real estate within five years of the end of the year in which the property was purchased are taxed at 19% (subject to certain exemptions). Gains derived from the sale of shares, and investment income such as dividends or interest, also are taxed at 19% rate.

**Deductions and allowances** – Deductions include items such as donations, Polish and EU national social security contributions, expenses incurred by disabled persons and,

in certain cases, qualifying expenses incurred for R&D activities or contributions to an individual pension insurance account. Personal allowances also are available (e.g. a childcare allowance).

**Rates** – Progressive rates of 18%-32% apply, although individuals carrying out business activities may opt for special rules under which a 19% tax rate generally applies without any allowances.

#### Other taxes on individuals:

**Capital duty** – No

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

**Capital acquisitions tax** – No

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

**Inheritance/estate tax** – Inheritance and gift taxes range from 3% to 20%, subject to certain allowances and exemptions.

**Net wealth/net worth tax** – No

**Social security** – Employees are liable for social security contributions based on their salary, with the employer charged with collecting and remitting the amounts due. Self-employed individuals are subject to specific rules. Employees also are required to make a 9% health care contribution, which is partly tax deductible (and is collected and remitted by the employer).

#### Compliance for individuals:

**Tax year** – Calendar year

**Filing and payment** – Advance payments of income tax on an employee's salary are remitted to the tax authorities by the employer on a monthly basis. Other income generally is self-assessed. Individuals are required to submit an annual tax return determining the final amount of tax due by the following 30 April.

**Penalties** – Penalties apply for noncompliance.

#### Value added tax:

**Taxable transactions** – VAT is imposed on the supply of goods and services; the import and export of goods to/from Poland; and the intra-community acquisition and supply of goods.

**Rates** – The standard VAT rate is 23%. Preferential rates of 5% and 8% apply to certain goods and services; other

goods and services (e.g. intra-community supplies, exports, etc.) may be zero-rated or exempt.

**Registration** – The registration threshold for VAT purposes is turnover of PLN 200,000 per year. Nonresidents that make taxable supplies of goods or services in Poland generally must register.

**Filing and payment** – VAT returns must be submitted and VAT due paid within 25 days following the month in which the VAT obligation arose. Taxpayers who are EU VAT registered and taxpayers who are suppliers or buyers subject to the reverse charge mechanism are required to file VAT returns in electronic form. Other possibilities regarding filing or payment may exist (e.g. a quarterly reconciliation for small taxpayers) in certain cases.

**Source of tax law:** Corporate Income Tax Law, Individual Income Tax Law, Goods and Services Tax Law, Excise Tax Law, Stamp Duty Law, Inheritance and Gifts Tax Law, Transfer Tax Law, Tonnage Tax Law, Tax on

Certain Financial Institutions Law, Mineral Extraction Tax Law, Gambling and Lottery Tax Law, Retail Sales Tax Law and local taxes and fees laws

**Tax treaties:** Poland has concluded approximately 90 tax treaties. Poland signed the OECD multilateral instrument on 7 June 2017.

**Tax authorities:** Minister of Finance, the Head of the National Tax Administration, Director of the National Tax Information, heads of tax offices, heads of customs-tax offices, directors of tax administration chambers and some local authorities.

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