Taxation and investment in Poland 2011
Reach, relevance and reliability

Poland Tax and Investment
Guide 2011

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1.1 Business environment

Poland is a parliamentary democracy with a bicameral legislature. Legislative power is vested in a bicameral Parliament, composed of the Sejm (lower house) and the Senate (upper house); executive power is vested in the President and the Council of Ministers, while judicial power is vested in the courts and tribunals.

Poland is a member of the European Union (EU), the European Economic Area (EEA), the World Trade Organization and the OECD. As an EU member state, Poland is required to comply with all EU directives and regulations.

Poland's main imports are machinery and transport equipment, manufactured goods (particularly consumer electronics), chemicals and mineral fuels. The major trading partners include EU countries, Russia and the Ukraine.

Poland has pursued a policy of economic liberalization. The privatization of small- and medium-sized state-owned companies and a liberal law on establishing new firms have encouraged the development of the private business sector.

Quick facts	
Capital	Warsaw
Population	37 748 288
Language	Polish
Currency	Polish Zloty (PLN)
Time	GMT +1
Membership	EU, EEA, OECD, WTO

1.2 Currency

The national currency is the Polish Zloty (PLN). Poland expects to become a member of the European Monetary Union no earlier that 2015 and possibly will adopt the Euro as its currency on that date. Date of accession to the Monetary Union remains yet to be decided due to uncertain economic conditions in the EU.

1.3 Banking and financing

The banking system in Poland comprises the central bank National Bank of Poland (the central bank or NBP), as well as commercial, retail, foreign and investment banks.

Banking activities are supervised by the Polish Financial Supervision Authority.

The NBP is the exclusive issuing institution of the Polish zloty and it has the exclusive right to set and implement monetary policy.

Commercial banks dominate the industry, holding around 95% of total banking sector assets (with co-operative banks holding the rest). In addition to banks, other important financial institutions are insurance companies, pension funds, mutual funds, venture capital funds and leasing companies. Foreign financial companies, primarily insurers, play an important role in these sectors.

1.4 Foreign investment

Poland's market size and membership in the OECD and the EU have made it attractive to foreign investors.

Business operations are regulated by the Code of Commercial Companies and the Law on Economic Activity. The law covers most forms of economic activity and has enhanced the attractiveness of the Polish market by streamlining some of the legal obstacles facing foreign investors. Foreign investors are defined as corporations with registered head offices abroad, business associations established by foreign individuals or companies operating under the laws of a foreign country and individuals domiciled abroad.

Except for a few minor restrictions, foreign investors enjoy the same treatment as domestic entities and may apply for permits to engage in restricted activities if they are permanent residents originating from countries applying the reciprocity rule to Polish companies. Foreign investors are generally entitled to transfer all of their profits abroad. All legal entities must maintain their own bank account(s).

Permits are required for mining operations, defence-related industries, fuel or energy operations, security services involving individual property, aviation services and telecommunications.

1.5 Tax incentives

Various activities can be supported by structural funds, ranging from environmental protection projects to human resource developments. Consequently, it is possible for business operations in various sectors of the economy to receive EU financing, even from several different programmes or funds. The level of co-financing varies, depending on the type of business activity and the level of permitted public aid.

Special economic zones (SEZs) are designated areas in Poland in which business activities (manufacturing and services) can be carried out on preferential terms. Fourteen special economic zones have been established to revitalise regions hit by high unemployment. The zones offer a variety of benefits, including tax exemptions, employment incentives, low rent, etc. Grants are also available for companies creating new jobs, particularly for the unemployed or disabled.

Customs bonded warehoulses are storage facilities for goods that are not subject to either customs duty or the rules that apply to imported/exported products during the storage period. A bonded warehouse can be open to the general public or private entities provided certain requirements are met.

Duty free zones are separte parts of the EU Customs Zones in which goods are treated by the customs authorities as if they remained outside the zone. Both Community and non-Community goods may enter the zones. Several duty-free zones have been established in Poland and are situated primarily on the main communications routes (e.g. airports and border crossings). Duty-free goods are only available to travelers departing to non-EU countries.

1.6 Exchange controls

Polish foreign exchange rules are harmonised with EU legal standards, and there are no limits on capital flows between Poland, the EEA and OECD member countries.

There are no exchange controls on inward or outward investment. The Polish zloty (PLN) is fully convertible and may be used for settlement of international transactions. Nevertheless, entities transferring zloty and foreign currency to and from Poland must submit detailed quarterly reports of their transactions for statistical purposes. The NBP monitors flows, but the Council of Ministers sets thresholds and reporting procedures.

The Ministry of Finance supervises all foreign exchange activities, and banks must submit information about customer accounts at the Ministry's request.

2. Setting up a business

2.1 Principal forms of business entity

The main legal forms of companies are the following: joint stock company (spolka akcyjna—SA), limited liability company (spolka z ograniczona odpowiedzialnoscia—Sp z o.o.), limited joint stock partnership, registered partnership, limited partnership, professional partnership, sole proprietorship or civil law partnership. Poland also allows for the creation of the European Company (SE).

Forms of entity

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

The Sp z o.o. is the basic type of company in Poland. It has a separate legal personality from its shareholders, which means that when acting through its governing bodies, it can acquire rights and incur liabilities on its own behalf.

An Sp z o.o. has capital which is created from shareholders' contributions, but shareholders of an Sp z o.o. are not responsible for the liabilities of the company. The management of an Sp z o.o. is less formal than that of an SA, so is a somewhat more popular form in which to conduct business.

Formation

Founders: There are no restrictions on the number, nationality or residence of shareholders; however, a limited liability company may not be formed solely by another single shareholder limited liability company.

Capital: The minimum capital required to establish a limited liability company is PLN 5,000. Contributions to a limited liability company may be made in cash or in kind.

Legal reserve: There are no legal reserve requirements for a limited liability company.

Shares: Shares are registered and may be common or preferred. The minimum share value is PLN 50.

Management: There are no residence requirements for the board of directors of an Sp z o. o.. The term of office for the board of directors is not defined. If share capital exceeds PLN 500,000 and there are more than 25 shareholders, the company must have a supervisory board with at least three persons.

Employees have no influence over the management of private sector firms unless they are shareholders.

Meetings and votes: A simple majority of 50% is sufficient to approve most actions; a 75% majority is required for major changes.

Costs of incorporation: Legal costs for establishing a company (including notary charges, stamp duty and court costs) depend, inter alia, on the level of capital.

Registration: A limited liability company acquires legal personality from its registration in the National Court Register. However, it comes into existence at the time its articles of association are signed.

Joint stock company (SA)

The SA also has a personality separate from its shareholders, which means that when acting through its governing bodies, it can acquire rights and incur liabilities on its own behalf. An SA has capital created by shareholder contributions. Like in the case of a limited liability company, the shareholders of an SA are not responsible for the company's liabilities. Management is more formal than in the case of an Sp. z o.o. This type of company is frequently used where this form is required by law (e.g. banks, insurance companies) or where the company is planning a floatation on capital markets.

Formation

Founders: A joint stock company must be founded by at least one individual or legal person who must sign an articles of association agreement. An SA may not be formed solely by a single shareholder constituting a limited liability company. There are no residence or nationality requirements.

Capital: The minimum initial capital for a joint stock company is PLN 100,000, of which 25% must be paid up before registration.

Legal reserve: An SA is required to set up a legal reserve equal to 8% of annual net profits, until the reserve reaches one-third of share capital.

Shares: Shares may be registered, bearer, common or preferred. Non-dividend shares are not permitted. The minimum share value is PLN 0.01. Shares may be issued to the public.

Management: The corporate bodies of a joint stock company are the shareholders' meeting, the management board and the supervisory board. Management of an SA is vested in a board of directors. There are no residence requirements for the board of directors of an SA. However, at least two mebers of the board of Polish-registered banks, including the charman, must have working knowledge of the Polish language. The management board may be appointed for an initial term of up to five years, with subsequent terms of up to five years. A supervisory board with at least three members (five in listed companies), each appointed for a term of up to five years, is required.

Employees have no influence over the management of private sector firms unless they are shareholders.

Meetings and votes: A simple majority of 50% is sufficient to approve most actions; a 75% majority is required for major changes.

Costs of incorporation: Legal costs for establishing a company (including notary charges, stamp duty and court costs) depend, inter alia, on the level of capital.

Registration: An SA comes into existence on the implementation of the company deed, but it obtains legal personality when it is entered into the National Court Register.

Branch of a foreign company

A foreign company may opt to set up a branch in Poland. Foreign investors from EU, memeber states of EFTA parties to EEA agreement as well as other foreign companies from outside EEA which on the basis of the agreements concluded with EU or EU member states may enjoy freedom of economic activity, are authorized to conduct business activities under the same rules as apply to Polish enterprises.

A branch is a part of a foreign company that does not have its own legal personality, but conducts business in Poland. A branch may only conduct activities that are related to the business of the foreign investor, which may include sales, invoicing and marketing. A branch is allowed to generate income. It must be registered in the National Court Register under the name of the investor and must include the term, "branch in Poland".

Foreign investors also may establish a representative office in Poland. A representative office may only carry out the following activities: promotion and advertising activities; acting as a sales agent; and preparing, signing and supervising contracts on behalf of the head office. Representative offices may not generate income on their own behalf. A representative office must be registered separately with the Ministry of Economy. The registration procedures are similar to those which apply to branches.

2.2 Regulation of business

Registration and filing requirements

All companies intending to conduct business activities are given a tax identification number (NIP) after registration with the appropriate local Tax Office. Taxpayers are obliged by law to keep their accounts and calculate tax independently.

Mergers and acquisitions

The Act on Competition and Consumer Protection empowers the Office for the Protection of Competition and Consumers (UOKiK) to block any merger that would lead to the capture of 40% or more of market share. The UOKiK also imposes reporting requirements for acquisitions of existing firms.

Parties to a proposed merger must notify the UOKiK if their combined sales exceeded for the previous year either EUR 1 billion worldwide or EUR 50 million in Poland. There are exceptions, such as when the transaction is within the same capital or financial group and when the concentration results from bankruptcy proceedings.

All international companies must notify the UOKiK of a proposed merger if any party to the merger has subsidiaries, distribution networks or permanent sales practices in Poland.

Certain mergers and acquisitions having a Community dimensions fall within EU merger control. As a rule, the European Commission has exclusive powers to review such transactions. Under its Merger Control Regulation, the EU has jurisdiction over mergers (1) where the combined aggregate worldwide turnover of all the undertakings concerned exceeds EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings exceeds EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in a single member state; and (2) where the aggregate global turnover of the companies concerned exceeds EUR 2.5 billion for all businesses involved, aggregate global turnover in each of at least three member states exceeds EUR 100 million, aggregate turnover in each of these three member states of at least two undertakings exceeds EUR 25 million and aggregate EU-wide turnover of each of at least two of the undertakings exceeds EUR 100 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one member state.

The European Commission has twenty five days after a merger is reported to approve the transaction or open a procedure. If it decides to open a procedure, it must issue a ruling within ninety days. However, the Commission can decide to refer the merger to the competition authority of the respective member state to determine whether the effect of the merger will primarily be in such member state. That decision counts as official notification of the government of the member state.

Companies whose merger would not normally fall within the jurisdiction of the European Commission can request a Commission review if they are otherwise obliged to notify three or more member states. The Commission proceeds as a "one-stop shop" only if none of the relevant member states objects within 15 days.

2.3 Accounting, filing and auditing requirements

Polish accounting standards do not differ significantly from international standards. As from 1 January 2005, all companies listed on the Warsaw stock exchange must prepare their consolidated financial statements in accordance with IFRS.

All accounting documentation, records and reports must be prepared in the Polish language and Polish currency. Companies must apply the accounting principles specified in the Accounting Act to ensure a true and fair presentation of their economic and financial position, as well as their financial results. Activities (including business transactions) must be entered into the accounting ledgers and disclosed in the financial statements according to the nature of the business. accurate

Annual financial statements consist of a balance sheet, profit and loss account, additional information, as well as supplementary information and explanations. Companies audited in a given year must also present a cash flow statement and a statement of changes in the company's share capital. Together with the annual financial statements, the management must prepare a report on the company's activities, which in particular contain information on major events that are material to the company's activities, the company's expected development and major achievements in the area of R&D, as well as the company's present financial condition and projections.

Financial statements of joint stock companies, banks, insurers and investment and pension funds must be audited. Other companies must be audited if two of the following three conditions were met in the preceding financial year:

- Average annual employment of at least 50 persons
- Total net annual turnover and financial income of at least EUR 5 million;
- Total balance sheet assets as at the end of the accounting year of at least EUR 2.5 million.

All companies that have a duty to prepare annual audits must publish their balance sheet, profit and loss account, statement of changes in the share capital and cash flow statement, as well as an introduction to the financial statement, the auditor's opinion, the statement of discharge granted by the annual general shareholders' meeting and the decision on the profit distribution.

3. Tax system

3.1 Principal taxes

The main taxes in Poland are:

- Corporate income tax
- Personal income tax
- Tax on civil law transactions
- VAT
- Stamp duty
- Real estate tax
- Excise duties.

There is no excess profits tax or alternative minimum tax.

In general, foreign companies and individuals pay the same taxes as Polish legal entities and individuals (except where a tax treaty provides otherwise).

3.2 Basic legislation

All taxes in Poland are imposed by the government in Taxation Acts, which set the rules for imposing taxes, their rates and duties, as well as taxpayer responsibilities. The Minister of Finance may be authorized by an Act to decree regulations. All legislation is published in official publications (i.e. the Journal of Laws and the Official Journal of the Republic of Poland).

The Tax Ordinance is the most general tax legislation which defines:

- General taxation rules;
- Tax liabilities of third parties;
- Tax information;
- Tax proceedings;
- Structure of the tax administration; and
- Fiscal confidentiality.

Other relevant legislation includes the Corporate Income Tax Act, Personal Income Tax Act, Value Added Tax Act, Civil Law Activities Tax Act (for capital duties and transfer tax), Local Taxes Act (i.a. real estate tax).

Parliament passes tax legislation with a simple majority of votes.

3.3 Administration

Tax authorities

Taxes in Poland are administered by:

- *Tax office*: Units supervising the collection of taxes in their territories. They also issue individual administrative decisions in tax cases.
- *Fiscal audit offices*: Offices that carry out tax and procedural audits of fiscal accounting;
- *Tax chamber*: Supervise the tax offices and are empowered to review administrative decisions of tax offices and fiscal audit offices;
- *Minister of Finance:* Responsible for Polish budgetary policy and supervision of the entire taxation system.

Taxpayers may appeal to the Tax Chamber against the decisions of the local Tax Office or Fiscal Audit Office. An appeal against a decision of the Tax Chamber may be directed to the Regional Administrative Court. Taxpayers are also entitled to resort to the Supreme Administrative Court to review decisions of the Regional Administrative Courts.

Rulings

Two types of tax rulings are available in Poland: general rulings and individual rulings. A general ruling aims to make the application of the tax law by the tax authorities uniform; general rulings may be applied by all taxpayers. Individual rulings, which may only be relied on by the taxpayer obtaining the ruling, are issued upon written application. To obtain a ruling, the taxpayer must submit a written request that sets out the actual facts or planned events, the question and give its own opinion on the issue. An ruling request may be denied where it relates to a purely hypothetical situation, it falls outside the area of tax law, the party lacks standing or a tax proceeding or examination of the issue has already commenced. The Tax ruling is binding for the tax authorities but not the taxpayer. In other words, tax authorities can not challenge tax settlements of a taxpayer following the letter of the ruling, however, if the taxpayer disagrees with a ruling the tax settlements may still be done in a different manner than prescribed with the ruling and are subject to standard control/verification by tax authorities as if the ruling never was issued. The ruling remains valid until changed by tax authorities (possible only in specific situation; change comes into effect starting from the next settlement period, e.g. next year for CIT) or when the underlying provision of law is a changed in a manner making the ruling irrelevant.

Advance pricing agreements

Poland has had an advance pricing agreement (APAs) regime in place since 2006, which allows taxpayers to verify the correctness of the pricing methodology applied in domestic and foreign related party transactions and ascertain the up front acceptance of the transfer pricing methodology by the tax administration. Unilateral, bilateral and multilateral agreements are possible.

Before submitting an application for an APA, the taxpayer may request Ministry of Finance to address whether an APA would be useful, the scope of information to be submitted, the procedure and probable date of conclusion of an APA. The application must be submitted by the Polish entity and the application fee (which depends on the value of the transaction) paid within seven days of the date the application is submitted. An APA is valide for three years and may be extended for an additional three years.

A taxpayer requesting an APA is required to justify the selected transfer pricing method, prepare a description and explain the application of the selected method, indicate the circumstances that could affect the correctness of the pricing methodology, prepare documentation used as a basis for setting the level of transactional prices, and propose tax years to be covered by the APA.

3.4 Double taxation relief

Unilateral relief

Foreign tax paid on foreign-source income 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.

Credit for underlying tax related to dividends received by a Polish resident from an entity resident in a non-EU member state and with which Poland has concluded a tax treaty may be granted, provided the Polish company holds at least 75% of the payer for at least two years before the distribution of the dividends.

Tax treaties

Poland has a broad tax treaty network, with many treaties reducing the withholding tax rates that apply to dividend, interest and royalty payments by Polish companies to nonresidents. If the EC Parent-Subsidiary Directive applies, no tax is withheld on dividends payments. Under transition rules in the EC Interest and Royalties Directive, Poland is permitted to impose a 5% rate on interest and royalties until 1 July 2013. The full exemption will apply after that date.

Poland's Tax Treaty Network		
Armenia	India	Pakistan
Algeria	Indonesia	Philippines
Albania	Iran	Portugal
Australia	Ireland	Qatar
Austria	Israel	Romania
Azerbaijan	Italy	Russia
Bangledesh	Japan	Serbia
Belarus	Jordan	Singapore
Belgium	Kazakhstan	Slovakia
Bosnia-Herzogovina	Korea	Slovenia
Bulgaria	Kuwait	South Africa
Canada	Kyrgyzstan	Spain
Chile	Latvia	Sri Lanka
China	Lebanon	Sweden
Croatia	Lithuania	Switzerland
Cyprus	Luxembourg	Syria
Czech Republic	Macedonia	Tajikistan
Denmark	Malaysia	Thailand
Egypt	Malta	Turkey
Estonia	Mexico	Tunisia
Finland	Moldova	Ukraine
France	Mongolia	United Arab Emirates
Georgia	Montenegro	United Kingdom
Germany	Morocco	United States
Greece	Netherlands	Uruguay
Hungary	New Zealand	Uzbekistan
Iceland	Nigeria	Vietnam
	Norway	Zambia
		Zimbabwe

4. Taxes on companies

Main taxes applicable to companies operating in Poland	
Corporate income tax	19%
Withholding tax	
Dividends	19%
Interest	20%
Royalties	20%
Branch profits tax	-
Net worth tax	-
Value added tax	23%
Capital duty	0.5%
Tax on civil law transactions	0,5-2%[1]

4.1 Overview

Companies and organisational units (with the exception of partnerships) are subject to corporate income tax. Taxpayers that have their registered office or their management board in Poland are liable for corporate income tax on their worldwide income.

If a corporate taxpayer does not have its registered office or management board in Poland, tax is levied only on income derived in Poland, unless otherwise provided in a tax treaty.

As a result of EU accession, Poland has implemented the PSD and merger directive and has a transitional period through 2013 within which to implement the IRD. Poland has been a party to the EU Arbitration Convention since 2007.

Provided certain requirements are met, a company may establish a "fiscal unity," which is a group of companies treated as a single corporate income taxpayer.

4.2 Residence

Resident companies are taxed on their worldwide income. Companies having neither a seat nor a board of directors in Poland are taxed only on income sourced in Poland.

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 granted, unless a tax treaty provides otherwise.

A branch of a foreign company is generally taxed the same as a subsidiary.

4.3 Taxable income

Taxable income comprises all revenue earned in a tax year, both financial and operational (with some exceptions), net of deductible expenses. A company's profits consist of business/trading income, passive income (e.g. dividends, interest and royalties) and capital gains. Business income derived from abroad is aggregated with other income and is subject to Polish corporate income tax.

Dividends

Dividends received by a Polish resident company from another Polish company or an EU/EEA company are exempt from taxation if certain holding and participation requirements are satisfied (e.g. the recipient has held at least 10% of the shares of the payer company for at least two years).

Dividends received from a non-EU/EEA company are aggregated with other taxable income and are subject to the standard corporate income tax rate of 19%, with a credit granted for underlying corporate and withholding tax for foreign tax paid (although the credit may not exceed the corporate income tax attributable to the dividend-type income).

As noted above, underlying tax related to dividends received by a Polish company from an entity resident in a non-EU member state with which Poland has concluded a tax treaty may be credited against the corporate income tax liability provided the Polish company has held at least a 75% stake in the payer company for at least two years before the distribution.

Underlying tax related to dividends received from an entity resident in an EU member state may be credited against corporate income tax if the Polish company has held at least 10% of the payer for at least two years before the distribution.

Capital gains

Capital gains on the sale of assets are generally treated as regular income and subject to the standard rate of corporate income tax. Chargeable capital gains are calculated by deducting sales-related expenses from sales proceeds. If the sales price differs substantially from the market value, the tax authorities may require an independent expert valuation.

Exchange differences

A taxpayer is entitled to choose the method of settling exchange rate differences. The available methods are the accounting method or the tax method. In general, exchange rate differences are treated as taxable income/ tax deductible costs.

4.4 Deductions

All expenses incurred by a company for the purpose of preserving and protecting taxable revenue generally are deductible. Examples include interest (subject to the thin capitalisation rules), royalties, employee remuneration, net operating losses and depreciation. Specified categories of expenses are nondeductible (e.g. certain advertising and entertainment costs, penalties, etc.).

Dividends paid are not deductible for tax purposes.

Losses

Losses incurred by a company may be carried forward to future years, but it is not possible to carry back losses and offset them against income of prior years. Losses may be offset against income generated in the subsequent five tax years, but only up to 50% of the original loss may be deducted in a single tax year. In the case of a merger, only the tax losses of the surviving company can be utilised; the losses of the acquired company are forfeited. If the merger results in the establishment of a new company, the tax losses of the merging companies cannot be utilised.

Depreciation

The most commonly used depreciation method for fixed and intangible assets is the straight-line method (purchase price * x% / annum).

The annual depreciation rates under the straight-line method are as follows: buildings 2.5%; machinery and equipment 7%-25%; vehicles 20%; and computers 30%. Accelerated depreciation applies in certain situations (used assets or assets used under deteriored conditions). In general, depreciation may not be taken on assets that are no longer in use. Expenditure on the purchase of assets whose initial value was PLN 3,500 or less may be deducted on a current basis rather than depreciated.

4.5 Taxation of nonresident entities

As a rule, a company whose legal seat and place of management is abroad is subject to corporate income tax on income earned in Poland, under the same rules as Polish entities.

A Polish branch of a foreign company is taxed in the same manner as a Polish subisidiary.

4.6 Rate

The corporate tax rate is 19%.

4.7 Corporate reorganizations

In general Polish regulations follow EU law. If a restructing concerns a business or its organised part, a restructuring generally should be tax neutral.

5. Transactions between related parties

5.1 Transfer pricing

Poland's transfer pricing rules generally follow the OECD guidelines. Thus, transactions between related parties need to be concluded at arm's length. If related parties transactions are concluded on terms that differ from the arm's length standard and, as a result, a taxpayer reports a lower taxable income than it would otherwise have disclosed, the tax authorities may adjust the taxable income of the taxpayer.

Transfer pricing rules apply both to domestic and cross-border transactions.

Polish rules allow for transaction-based transfer pricing methods, including the comparable uncontrolled price, the resale price or the cost-plus method. Where these methods cannot be applied, the profit split method or the transactional net margin method may be used.

Documentation must be prepared for domestic and cross-border related party transactions exceeding annual value thresholds (generally EUR 100,000 for tangibles (50,000 in the case of small taxpayers), EUR 30,000 for services and intangible transactions and EUR 20,000 for transactions with entities in tax havens). Documentation requirements also apply to permanent establishments. The documentation must include, inter alia, a description of the functions to be performed by entities involved in the transaction, a definition of all projected costs related to the transaction, the method used for calculating profits and the price of the transaction.

If the taxpayer does not provide the tax authorities with the required documentation on related party transactions within seven days of a request, and the additional income is assessed by the tax authorities based on the transfer pricing rules, the additional income will be subject to a 50% corporate income tax penalty.

Unilateral, bilateral and multilateral APAs may be concluded in the form of decision of the Ministry of Finance.

Since 2007 Poland has been a party to EU Arbitration Convention.

Advance pricing agreements

Poland has had an advance pricing agreement (APAs) regime in place since 2006. The APA proceedings allow taxpayers to verify the correctness of the pricing methodology applied in domestic or foreign related party transactions and obtain the acceptance of the transfer pricing methodology by the tax administration. Unilateral, bilateral and multilateral agreements are possible.

Before submitting an application for an APA, the taxpayer may request Ministry of Finance to address whether an APA would be useful, the scope of information to be submitted, the procedure and probable date of conclusion of an APA. The application must be submitted by the Polish entity and the application fee (which depends on the value of the transaction) paid within seven days of the date the application is submitted.

A taxpayer requesting an APA is required to justify the selected transfer pricing method, prepare a description and explain the application of the selected method, indicate the circumstances that could affect the correctness of the pricing methodology, prepare documentation used as a basis for setting the level of transactional prices, and propose tax years to be covered by the APA.

An APA decision can be valid for the maximum period of five years.. It may be extended for an additional 5-year period.

Request for the APA is associated with a user fee that may reach – depending on the case – up to 50 000 EUR.

5.2 Thin capitalisation

Poland's Corporate Income Tax Act contains provisions on thin capitalization. A debt-to-equity ratio of 3:1 applies and any interest paid on loans granted by a debtor's direct shareholders or sister companies (whether Polish or non-resident) that exceed this ratio may not be deducted for corporate income tax purposes. The thin capitalisation rules are triggered when a loan is granted by:

- A shareholder owning at least 25% of the voting shares of the debtor;
- A group of shareholders holding (in the aggregate) at least 25% of the voting shares; or
- Another company if the same shareholder owns at least 25% of the voting shares in both companies.

The term "loan" includes debt securities, deposits and irregular deposits.

5.3 Controlled foreign companies

Poland does not have CFC legislation.

5.4 Groups of companies

Polish tax law contains provisions governing companies in a group relationship. The Corporate Income Tax Act allows for the creation of a tax consolidated group, whereby all companies in the group are treated as a single taxpayer for corporate income tax purposes.

The basic requirements for obtaining tax consolidated group status are as follows:

- The companies must be limited liability companies or joint stock companies with registered offices in Poland.
- The average share capital of each member company must be at least PLN 1 million.
- The parent company must own at least 95% of the shares in the remaining group companies.
- Subsidiary companies may not be shareholders in the parent company or other companies in the group.
- None of the members of the group may have tax arrears.

A tax group must be established for at least three years, evidenced by a notarized deed and the group must satisfy certain requirements after its creation (i.e. 3% profitability).

When a fiscal unity is formed and registered with the tax authorities, the tax losses of group members may be set off against the taxable income of the other members of the group, donations between companies are deemed to be a tax-deductible expense for the donor, the transfer pricing rules do not apply to transactions between group companies and only one company in the group files a tax return.

6. Taxes on individuals

Main taxes applicable to individuals in Poland	
Personal income tax	19%
Regular progressive rates (applicable e.g. to income from dependent services)	18% and 32%
Dividends	19%
Interest	19%
Royalties (progressive rates)	18% and 32%
Capital gains	19%
VAT (base rate)	23%
Inheritance tax	3%-20%
Net worth tax	-

6.1 Overview

Individuals are subject to personal income tax, social security contributions, real estate tax, inheritance and gift taxes and VAT. There is no net wealth tax.

6.2 Residence

Under the Personal Income Tax Law, individuals may be subject to limited or unlimited tax liability in Poland.

An individual is resident if his/her centre of vital (economic or personal) interests is in Poland or he/she spends more than 183 days in a tax (calendar) year in the country. Poland's ability to tax this income, however, may be limited by the provisions of a tax treaty.

Tax treatment of resident individuals

An individual with a place of residence in Poland is subject to personal income tax on his/her worldwide income.

Tax treatment of nonresident individuals

An individual without a place of residence in Poland is subject to limited tax liability in Poland. Such an individual can benefit from a preferential tax rate of a flat 20% on certain types of income, including board fees, management contracts, other types of civil law contracts and royalties; by contrast, such income received by a resident is generally subject to progressive taxation up to 32%.

Tax treatment of families

A husband and wife are taxed separately unless they elect to be tax jointly (and certain requirements are met). The income of a minor child is added to that of a resident parent. A preferential tax regime is available for single parents.

6.3 Taxable income

Taxable income includes most cash and non-cash benefits earned from employment, self-employment or the use of property for business or income from rent. Income tax is levied on the following types of income of individuals:

- Income from dependent services;
- Income from independent services;
- Income from business activities;
- Rental income;
- Income from capital;
- Income from the sale of movable or immovable property; and
- Other income.

Income from dependent services consists largely of employment income, and includes benefits in kind. Pension income is also included.

Income from entrepreneurial or professional activities is taxable either as business income or income from independent services. Directors' remuneration in the form of board fees granted based on a company's resolution is treated as income from independent services.

Income from capital consists of taxable investment income such as dividends, interest and proceeds from the sale of securities.

Certain income is specifically exempt, e.g. per diems and refunds of costs incurred on business trips and the cost of professional training if required by the employer.

6.4 Deductions and reliefs

A taxpayer may deduct from taxable income donations to institutions performing public welfare goals up to 6% of taxable income (if the donation is made to a church organisation for charitable purposes, there is no limit). Social security contributions are fully deductible. Healthcare contributions (9% of gross income decreased by social security) are deductible from tax up to 7.75% of the assessment base. Expenses for the rehabilitation or support of a disabled person are deductible up to a certain limit. A child-rearing deduction of PLN 1,112.04 per child is available annually. Personal allowances also are available.

6.5 Personal income tax rates

The personal income tax rates are progressive at rates ranging from 18% to 32%, although individuals carrying out business activities may opt for special rules under which a 19% tax rate generally applies (with certain limitations as regards certain allowances).

Investment income, such as dividends, interest and gains from the sale of shares, is usually subject to withholding tax at a flat rate of 19%, rather than the progressive rates. Capital gains are generally subject to the 19% rate. Gains derived from the sale of real property (which is treated as a separate source of income) that has been held for more than five years from the end of the year when it was purchased or built is exempt – if sold before the termination of the five-year period, different taxation regimes apply, depending on when the property was purchased.

Polish-source income derived by nonresidents from independent artistic, literary, scientific, educational and journalistic activities,copyrights and inventions, as well as from personal service contracts, specific task contracts, managerial contracts, or similar contracts and from board member fees are subject to a 20% rate.

The personal tax rates for 2010 are as follows:

Taxable base (PLN)	Tax (PLN)
Up to 85 528.00	18% of taxable base minus 556.02
Over 85 528.00	14 839.02 plus 32% of excess over 85 528.00

6.6 Social security contributions

EU social security regulations have applied since Poland's accession to the EU in 2004. The general rule involves contributing to the social security system of the country where the work is actually performed.

Poland's social security system encompasses old-age pensions and insurance for disability, illness and accidents. Health insurance contributions also are levied.

Poland operates a three-pillar pension system, under which both the employee and the employer contribute to the first and second pillars. (Social security rates and brackets are illustrated in the table below.)

Employees can make voluntary payments to third-pillar funds, usually managed by insurers or banks. Fiscal incentives in the third pillar have been created to encourage employees and employers to set up retirement plans. Contributions are paid on an after-tax basis. The benefits and income from investments are tax exempt.

The mandatory health insurance contribution is paid by the employee at a rate of 9% of gross income less the employee's portion of the social security contribution.

Social security contributions			
Type of insurance	Cap on salary subject to contribution	Allocation of contribution cost	
		Employer	Employee
Pension	94 380 PLN per annum	9.76%*	9.76%*
Disability		4.5%*	1.5%*
Sickness	No cap applies	-	2.45%*
Accident		0.67% - 3.33%**	-
Other employer's charges			
Labour Fund		2.45%*	
Employees' Guaranteed Payments Fund		0.1%*	

* Remuneration basis
** Rennumeration basis (percentage based on risk category)

6.7 Inheritance and gift tax

Inheritance and gift tax is generally not levied if the inheritance or gift occurs in the innermost family circle, i.e. married spouse, descendants, ascendants, siblings, step children and step parents, provided that they comply with specific reporting obligations. These specific reporting obligations reguire the beneficiary of an inheritance or gift to file a declaration in a statutory format confirming receipt of an inheritance or gift within six months of receipt (for an inheritance – from the moment the relevant court ruling comes into force) with the applicable tax office. It the reporting condition is not met within the statutory deadline, the beneficiary falls under Group I of the general rules below.

Taxpayers are divided into three groups depending on the closeness to the person from whom inheritance or gift is received:

- Group I: spouse, descendants, ascendants, siblings, step-children, step-parents, children-in-law and parents-in-law;
- Group II: sibling's spouse and descendants, parent's siblings, step-children's spouse and descendants, spouse's siblings and their spouses, spouses of other descendants; and
- Group III: all other taxpayers.

The applicable rates and brackets of inheritance and gift tax are as follows:

Surpplus (PLN)		Tax liability (PLN)
Over	Up to	
Group I receipients		
	10 278	3 %
10 278	20 556	308.30 plus 5 % of surplus over 10 278
20 556		822.20 and 7 % of surplus over 20 556
Group II receipients		
	10 278	7 %
10 278	20 556	719.50 and 9 % of surplus over 10 278
20 556		1 644.50 and 12 % of surplus over 20 556
Group III recipients		
	10 278	12 %
10 278	20 556	1 233.40 and 16 % of surplus over 10 278
20 556		2 877.90 and 20 % of surplus over 20 556

7. Withholding taxes

Type of income	Rate
Dividends	19%
Interest	20%
Royalties	20%
Fees	20%
Branch profits tax	-
Rates may be reduced under the PSD/IRD	

7.1 Dividends

Dividends paid by Polish companies to nonresidents are subject to a 19% withholding tax, unless a tax treaty provides for a lower rate or the PSD applies. The PSD applies, inter alia, where the recipient company holds at least 10% of the capital of the Polish payer company (25% where the dividends are paid to a Swiss company) for at least two years.

Dividends paid to a Polish resident individual are subject to a 19% withholding tax.

To benefit from a reduced rate under a tax treaty, the foreign recipient should provide the Polish payer with a certificate of tax residence issued by the tax authorities in the recipient's home country.

7.2 Interest

The withholding tax on interest paid to nonresidents and resident individuals is 20%. The rate on payments to nonresidents may be reduced or eliminated under a tax treaty. To obtain a lower treaty rate, however, the recipient must present a certificate of residence issued by the tax authorities in the nonresident's country of residence.

Poland has been granted a transitional period to implement the IRD, which provides for an exemption from withholding tax for qualifying payments. Under the transition rules, since 1 July 2009 interest paid to qualifying EU companies is taxed at 5% for the subsequent four years. As from 1 July 2013, interest payments will be exempt from taxation in Poland.

To benefit from the reduced rates under the IRD, the following requirements must be met:

- The company making the payment is an associated company of a company located in another member state that is the beneficial owner of the payment. A company is an "associated company" of another company for these purposes if (1) the company holds directly at least 25% of the capital of the other company; or (2) the other company has a direct minimum holding of 25% in the capital of the company; or (3) a third company has a direct minimum holding of 25% both in the capital of the company and the other company, and all are located within the EU; and

- Both companies are tax resident in (and, where applicable, their PEs are located in) an EU member state, are subject to corporate tax in the EU and are in the form of a company listed in the Annex to the IRD.

7.3 Royalties and fees

A 20% withholding tax is imposed on royalties paid to nonresidents and resident individuals. The 20% rate may be reduced or eliminated under a treaty. To obtain a lower treaty rate, the recipient must present a certificate of residence issued by the tax authorities in the recipient's country of residence.

As with the case for interest, Poland will operate a transitional regime for the taxation of royalties qualifying under the IRD. Such royalties are taxed at the following rates: 10% until 1 July 2009 and 5% for the subsequent four years. As from 1 July 2013, no tax will be withheld.

Fees paid to nonresidents for intangible services (e.g. advisory services, market research, legal services, data processing) also are subject to a 20% withholding tax. As a general rule, under most of Poland's tax treaties, such payments are classified as business profits and, therefore, no withholding tax would be due. However, to benefit from a treaty provision, the payer must be able to present (at the request of the Polish tax authorities) a certificate of tax residence (i.e. a document issued by the competent tax authorities) of the recipient of the payment.

7.4 Branch profits

Poland does not levy tax on branch profits.

7.5 Salary and wages

The employer is required to withhold income tax on salaries and other remuneration in connection with employment. This is done on a monthly basis, with the tax remitted to the tax authorities by the 20th day of the following month.

8. Assessment, payment and appeals

8.1 Tax year

The tax year for companies and individuals is the calendar year, although corporate taxpayers may adopt any other 12-month period as their fiscal year.

Assessment

An income return for a tax year remains open to adjustment by the tax authorities for five years from the end of the calendar year in which the payment of the tax liability is due. This general statute of limitations period can be interrupted or suspended in certain circumstances. The above rule also applies for the collection of tax.

8.2 Returns

Companies must file an annual corporate income tax return within three months after the financial year end and any outstanding tax liabilities must be settled at that time.

Individuals are required to file a tax return disclosing the aggregate annual income at the end of the tax year. The deadline for filing the tax return and paying the tax liability is 30 April of the year following the tax year for which the return is filed. No extensions are possible.

Married couples may file a joint return if they have unlimited tax liability and if they are married the entire tax year and have marital co-ownership during the entire tax year. Joint tax returns also apply to single parents with dependent children.

8.3 Payment of tax

Companies are required to make monthly advance payments of corporate income tax by the 20th day of the following month, with the advance payment based on the cumulative tax income or tax loss for the tax year. The payment for the last month of the tax year must be paid by the 20th of that month and must be equal to the advance payment for the preceding month. A simplified tax calculation and monthly tax advance payment also is permissible under the Corporate Income Tax Act, whereby taxpayers may make advance monthly tax payments in an amount equal to 1/12 of the tax due as disclosed in the previous year's tax return.

Individuals are required to pay any tax liability by 30 April after the end of the tax year.

8.4 Appeals

In general, tax proceedings end with a decision, which may be challenged by an appeal filed within 14 days from the delivery of the decision to the taxpayer. Following the appeal, the tax case is reconsidered by the tax authority of second instance (higher-rank tax authority), which may uphold or repeal the decision of the first instance or discontinue the proceedings. In the case of repeal, the tax authority of second instance may discontinue the proceedings concerning the case, or amend in full or in part the challenged decision, or return the case for reconsideration to the tax authority of the first instance. The decision of the second instance is final and may not be challenged by an administrative appeal, although proceedings before an administrative court are possible.

A complaint to a regional (provincial) administrative court may be filed against such a decision within 30 days from its delivery to the taxpayer. In case of a negative verdict of the regional (provincial) court the taxpayer – within 30 days from delivery of this verdict with its justification – may file a complaint against the verdict to the Supreme Administrative Court. The Polish tax law also provides for extraordinary measures against the final tax decisions: declaration of invalidity of the decision, annulment or change of the final tax decision, as well as resumption of the proceedings.

8.5 Tax audits

The tax authorities may verify whether taxes are correctly calculated and paid. There are two main methods of the above-mentioned verification: (i) tax audit (kontrola podatkowa) governed by the Polish Tax Ordinance and (ii) tax inspection (kontrola skarbowa) governed by the Polish Act on Fiscal Control. Additionally, in practice, the tax authorities may also ask for explanations without commencing the formal tax audit/tax inspection.

In general, controls (e.g. tax audits) carried out by the governmental agencies with Polish entities/ entrepreneurs are limited as to the frequency and duration. Consequently, Polish enterprises cannot be subject to more than one control at the same time and such a control cannot exceed the limit of 12 to 48 working days (the exact number of days depends on the size of the controlled entity). Nevertheless, Polish regulations provide for a number of exceptions in this respect.

Generally, the taxpayer shall be notified in writing of the intention to initiate the tax audit/inspection. The audit/inspection shall be initiated no earlier than after the lapse of seven days and no later than before the lapse of 30 days from the service of the notification of the intention to initiate the tax audit/inspection. If the audit/inspection is not initiated within 30 days from the day of service of the notification, the initiation of control shall require another notification. However, in specific cases the tax authorities may initiate a tax audit/inspection at the taxpayer's premises without any advance notice.

In principle, the tax authorities may audit/inspect the tax settlements of the taxpayer within five years from the end of the calendar year in which the tax payment date expired. However, as regards cases settled by a final decision of the tax authorities, a tax audit/inspection may not be initiated again.

The tax audit ends with an audit protocol. Generally, if the tax authorities conclude that an infringement of the tax law has occurred, they may begin formal tax proceedings no later than six months from the end of the audit. If the controlled entity does not agree with the protocol's conclusions, it can present reservations and explanations within 14 days from receipt of the protocol.

The tax inspection ends in most cases with a decision. If the controlled entity does not agree with decision's conclusions, it can appeal to the respective tax chamber within 14 days from receipt of the decision.

8.6 Penalties and interest

Late payments result in interest charges at an annual rate calculated as 200% of the Lombard rate (the stopa lombardowa, announced by the National Bank of Poland) on the amount of any tax arrears (on June 2010 this equaled 10% per annum). A taxpayer may be eligible for a preferential penalty interest rate (75% of the standard penalty interest rate) if the taxpayer corrects its tax settlement, informs the tax authorities about the reasons for correction and pays the outstanding tax liability in full within seven days from the correction date.

Additionally, if the tax authorities conclude that an infringement of the tax law has occurred (which is either an offence or minor offence under the Polish Penal Fiscal Code), the authorities may try to hold the taxpayer (in the case of individuals) or its representatives (in the case of companies) liable for the infringement. The maximum amount of the fine that may by inflicted under the Penal Fiscal Code in 2010 amounts to PLN 12,643,200. Additionally, under the rules on the liability of collective entities for acts prohibited under penalty, penal fiscal proceedings can lead to initiation of judicial proceedings against the collective entity (e.g. company), which may result in a financial penalty for the taxpayer.
T
he maximum amount of the penalty may reach 10% of the revenues generated by the taxpayer during the financial year in which a crime or an offence was committed. However, the penalty cannot be less than PLN 1,000 or more than PLN 20,000,000.

9. Value added tax

9.1 General
VAT is a broad-based tax levied on the supply of goods and services in Poland. Polish regulations are based on EU directives.

9.2 Taxable supply
VAT is imposed on the supply of goods, the provision of services and the import of goods into Poland unless the transaction is exempt.

9.3 Rate
The standard rate of VAT is 23%, which is charged on most goods and services. A reduced rate of 8% or 5% is imposed on certain foods, medicine, hotel and catering services, certain transport services, municipal services, etc. A zero-rate applies on the intra-community supply of goods, the export of goods, some international transportation and related services. Some financial services, medical services and certain cultural services are exempt, which means that the taxpayer is unable to recover input VAT incurred on the transactions.

9.4 Registration
A Polish entity is required to register for VAT once its annual turnover on transactions subject to VAT exceeds PLN 150,000. Foreign entrepreneurs must register for VAT in Poland before they start any VAT-able activity in Poland (except for limited clearly enumerated cases). Penalties apply for failure to register.

9.5 VAT grouping
Poland does not have any provisions for VAT grouping.

9.6 Compliance
Invoicing
Transactions between VAT taxpayers must be documented by a VAT invoice. Polish VAT law contains strict regulations regarding the information that must be presented on an invoice. A VAT invoice should contain at least the following:

- The full name, address and tax identification numbers of the purchaser and the vendor;
- The sequential number of the invoice, marked with "faktura VAT" ("VAT invoice");
- Date of issuance of the invoice;
- Date of supply (if this date differs from the invoice's issuance date – as with continuous supplies – the taxpayer can indicate the month of the supply if the issuance date of the invoice is also indicated);
- The quantity and nature of the goods or services supplied;
- The unit price, exclusive of VAT (net unit price) of the goods or services supplied;
- Value of the goods or services sold exclusive of VAT (net value);
- Applicable VAT rate;
- Total net value of the goods sold or services rendered divided according to particular VAT rates and exemptions;
- VAT amount from total net sales value, divided according to particular VAT rates; and
- Total amount due with the VAT amount due.

Filing and payment

Registered VAT taxpayers are required to submit monthly or quarterly returns to the appropriate tax office and maintain a register of purchases and sales subject to VAT. Additonally, registered VAT EU taxpayers performing intra-community acquisitions of goods into Poland and intra-community supplies of goods and services from Poland also are required to sumbit EC Listings returns on a monthly (or in some cases quarterly) basis.

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, VAT must be paid within 25 days following the quarter in which the VAT obligation arose). If input VAT exceeds output VAT, a VAT refund is generally available. Penalties apply for failure to comply.

9.7 Application to nonresidents

Entities that are not resident in Poland (i.e. those with a registered seat outside Poland) and that carry out taxable transactions in Poland must register for VAT purposes and comply with Polish VAT law on registered VAT taxpayers.

10. Other taxes

10.1 Capital tax

A tax on civil law transactions (TCLT) is levied on certain contracts (and amendments to such contracts if they result in an increase in the base of TCLT), such as sales, loans, donations, mortgages, establishment of usufruct and partnership or company deeds. However, a transaction is not subject to TCLT if at least one of the parties to the transaction is subject to or exempt from VAT, with some exemptions (e.g. the sale of real estate, the sale of shares).

The TCLT rate varies depending on the type of contract. An increase in a company's share capital is subject to a 0.5% rate, the acquisition of shares is subject to a 1% rate and loans are subject to a 2% rate (except for shareholder loans). Exemptions apply in certain case (e.g. loan agreements with financial institutions seated abroad).

10.2 Asset transfer tax

See discussion on TCLT, above.

10.3 Net wealth tax

Poland does not levy a net worth or net wealth tax on companies or individuals.

10.4 Real property tax

Real property tax is levied by the local authorities, with the rate depending on area of the building, land area or the value of a construction.

10.5 Stamp duty

Stamp duty is imposed on certain activities undertaken by public administrations, such as issuing certificates, permissions, powers of attorney and other documents issued by the central and local authorities. Rates vary from PLN 1 to PLN 11,000.

10.6 Miscellaneous taxes

Local taxes

A number of taxes are imposed by the municipalities, such as a real property tax (as noted in 10.4), road vehicle tax, agricultural tax and forestry tax.

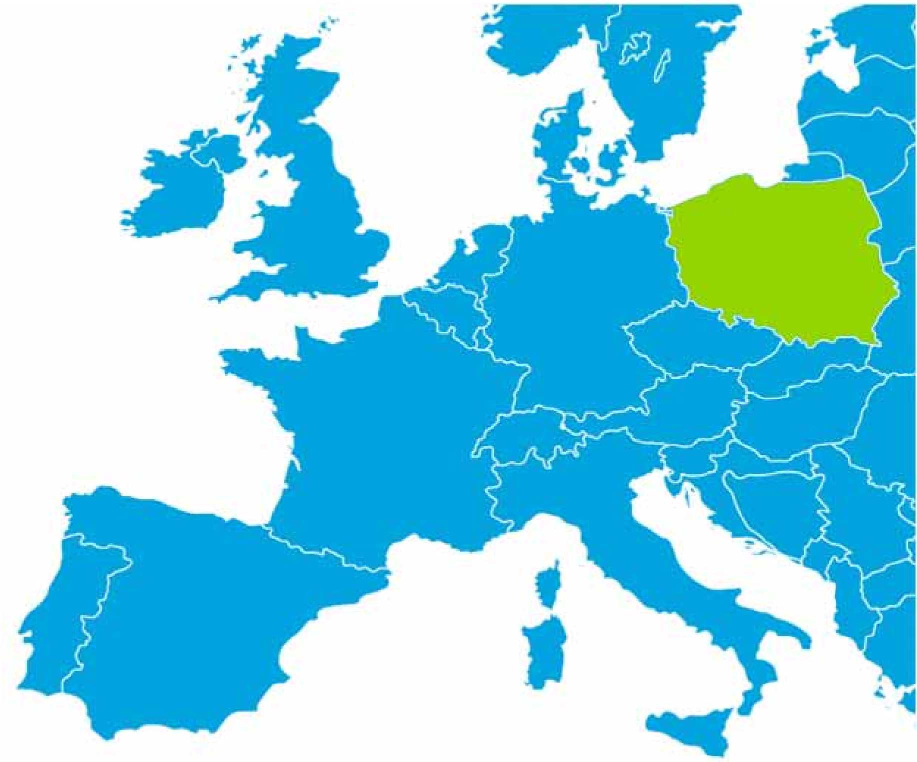
Customs duties

The common customs tariff is applied in trade between Poland and non-EU countries. The basic rates included in the tariff, i.e. the conventional duty rates, apply generally to the import of goods originating in WTO countries or countries benefiting from most favoured nation status granted by the EU. If autonomous customs duty rates established by the EU are lower than conventional rates, the autonomous rates are applied. Preferential rates are applied to countries benefiting from tariff preferences established either unilaterally by the EU (e.g. within the framework of the Generalised System of Preferences) or on the basis of bilateral agreements concluded by the EU with certain countries.

Excise duties

Excise dutiable goods are categorised as harmonised or non-harmonised excise duty goods. Harmonised excise duty goods are subject to special rules in Polish legislation that are based on EC directives. In particular, such goods can be produced only in tax warehouses, and excise duty is due when the goods are moved outside the warehouse (unless they are moved under an excise duty suspension procedure).
Excise tax is levied on the producer, importer and seller of non-taxed excise goods, entities providing manufacturing services for the excised goods and other entities explicitly specified by the law.

11. Office locations



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www.deloitte.com/tax

Deloitte Doradztwo Podatkowe Sp. z o.o.

Main office
Al. Jana Pawła II 19
00-854 Warszawa
Poland
Tel: +48 22 511 08 11
Fax: +48 22 511 08 13

Regional offices

Office in Gdańsk
ul. Arkońska 6
80-387 Gdańsk
Poland
Tel: +48 58 761 67 90
Fax: +48 58 761 67 61

Office in Łódź
al. Józefa Piłsudskiego 76
90-330 Łódź
Poland
Tel: +48 42 290 61 00
Fax:+48 42 290 61 01

Office in Katowice
ul. Uniwersytecka 13
40-007 Katowice
Poland
Tel: +48 32 603 03 51
Fax: + 48 32 603 03 31

Office in Kraków
Al. Armii Krajowej 16
30-150 Kraków
Poland
Tel: +48 12 622 43 80
Fax: +48 12 622 43 83

Office in Poznań
ul. Ułańska 7
60-748 Poznań
Poland
Tel: +48 61 882 42 00
Fax: +48 61 882 42 01

Office in Szczecin
Plac Rodła 8, XII piętro
70-419 Szczecin
Poland
Tel: +48 91 359 40 65
Fax: +48 91 359 40 66

Office in Wrocław
Plac Grunwaldzki 23
Grunwaldzki Center, budynek ,,A"
50-365 Wrocław
Poland
Tel: +48 (71) 335 45 00
Fax: +48 (71) 335 45 05

China Services Group in Poland

Marek Metrycki
Office Managing Partner
Tel.: +48 22 511 07 07
E-mail.: mmetrycki@deloitteCE.com

Tomasz Konik
CSG Poland Leading Partner
Tel.: +48 32 603 03 35
E-mail.: tkonik@deloitteCE.com

Financial Advisory

Gavin Hill
Managing Partner
Tel.: +48 22 511 07 86
E-mail.: gahill@deloitteCE.com

Audit

Radosław Kuboszek
Managing Partner
Tel.: +48 22 511 07 61
E-mail.: rkuboszek@deloitteCE.com

R&D and Government Incentives

Magdalena Burnat-Mikosz
Partner
Tel.: +48 22 511 00 65
E-mail.: mburnatmikosz@deloitteCE.com

Consulting

Dariusz Kraszewski
Managing Partner
Tel.: +48 22 511 06 33
E-mail.: dkraszewski@deloitteCE.com

Tax

Piotr Żarski
Managing Partner
Tel.: +48 (22) 511 08 59
E-mail.: pzarski@deloitteCE.com

Legal

Robert Pasternak
Partner
Tel.: +48 22 511 08 44
E-mail.: rpasternak@deloitteCE.com

Enterprise Risk Services

Zbigniew Szczerbetka
Managing Partner
Tel.: +48 22 511 07 99
E-mail.: zszczerbetka@deloitteCE.com

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