Deloitte.

Taxation and investment in Poland

Reach, relevance and reliability

2021

Contents

1. Investment climate **4**
1.1 Business environment 4
1.2 Currency 5
1.3 Banking and financing 5
1.4 Foreign investment 5
1.5 Tax incentives 5
1.6 Exchange controls 5

2. Setting up a business **6**
2.1 Principal forms of business entities 6
2.2 Regulation of business 8
2.3 Accounting, filing and auditing requirements 9
2.4 Practices limiting competition 9
2.5 Practices unfairly using a contractual advantage 11

3. Tax system **12**
3.1 Principal taxes 12
3.2 Basic legislation 12
3.3 Administration 12
3.4 Double taxation relief 14
3.5 Mandatory reporting of tax-planning schemes (Mandatory Disclosure Rules – MDR) 15
3.6 Hybrid structures 15

4. Taxation of companies **16**
4.1 Overview 16
4.2 Taxation of non-residents 16
4.3 Taxable income 17
4.4 Deductions 17
4.5 Exchange differences 18
4.6 Tax incentives 18
4.7 Controlled Foreign Corporation (CFC) 18
4.8 Rate 19
4.9 Corporate reorganizations 19
4.10 General Anti-avoidance Rules (GAAR) 19
4.11 Special anti-avoidance rule (SAAR) 19
4.12 Dedicated anti-optimization regulations 19
4.13 The white list & split payment – CIT consequences 20
4.14 Counteraction of payment backlogs 20
4.15 Taxation of limited partnerships 20

5. Related party transactions **21**
5.1 Transfer pricing 21

6. Taxation of individuals **24**
6.1 Residence 25
6.2 Taxable income 25
6.3 Deductions and reliefs 25
6.4 Personal income tax rates 25
6.5 Statutory costs 26
6.6 Social insurance contributions 26
6.7 Inheritance and gift tax 27
6.8 Net worth/wealth tax 27

7. Personal income tax charged on foreign individuals **28**

7.1 General tax rules 28

7.2 Tax residency 29

7.3 Legal basis for the right to work in Poland 29

8. Withholding taxes **31**

8.1 New rules regarding mechanism of collecting WHT 31

8.2 Beneficial owner clause 31

8.3 Dividends 32

8.4 Interest 32

8.5 Royalties and service fees 32

8.6 Certificates of residence 32

9. Assessment, payment and appeals **33**

9.1 Tax year 33

9.2 Returns 33

9.3 Payment of tax 34

9.4 Tax strategy 34

9.5 Appeals 34

9.6 Tax audits 34

9.7 Penalties and interest 35

10. Value added tax **36**

10.1 General 36

10.2 Taxable supply 36

10.3 Rate 36

10.4 Registration 36

10.5 VAT grouping 37

10.6 Compliance 37

10.7 Obligatory split payment mechanism 39

10.8 Application to non-residents 40

10.9 VAT treatment of vouchers 40

10.10 White list of taxpayers 40

10.11 Online cash registers 41

10.12 Quick fixes (changes regarding settlement of cross-border transactions of goods) 41

10.13 SLIM VAT – package of changes to the Polish VAT Act 42

10.14 E-commerce package 42

11. RET **44**

12. Other Taxes **46**

12.1 Capital tax 46

12.2 Transfer tax 46

12.3 Tax on buildings subject to rent / lease 46

12.4 Exit tax 46

12.5 Stamp duty 47

12.6 Miscellaneous taxes 47

12.7. Jednolity Plik Kontrolny (Single Control File) 48

13. Office locations **50**

14. Contacts **51**

1. Investment climate

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 courts and tribunals. Poland is a member of the European Union (EU), the European Economic Area (EEA), the World Trade Organization and the Organization for Economic Co-operation and Development (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, China, Turkey as well as Russia and Ukraine. Poland has pursued a policy of economic liberalization. The privatization of small- and medium-sized state-owned enterprises and a liberal law on establishing new firms have encouraged development of the private business sector.

Quick facts	
Capital	Warsaw
Population	38 434 000
Language	Polish
Currency	Polish zloty (PLN)
Time	GMT +1
Membership	EU, EEA, OECD, WTO

The privatization of small- and medium-sized state-owned enterprises and a liberal law on establishing new firms have encouraged development of the private business sector.

1.2 Currency

The national currency is the Polish zloty (PLN). Poland expects to become a member of the European Monetary Union in or after 2020 and possibly will adopt the euro as its currency on that date. The date of accession to the Monetary Union is yet to be decided due to economic uncertainty.

1.3 Banking and financing

The banking system in Poland comprises the central bank called the 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 the monetary policy. Commercial banks dominate the industry, holding around 95% of all the 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 in particular by the Code of Commercial Companies, the Entrepreneurs' Law and the Act on the Rules of Participation of Foreign Entrepreneurs and Other Foreign Entities in the Business Transactions on the Territory of the Republic of Poland. These laws cover most forms of economic activity and have enhanced the attractiveness of the Polish market by reducing some of the legal obstacles facing foreign investors. Foreign investors may be defined as corporations with head offices registered 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. All legal entities have to maintain their own bank account(s). Permits are required for certain types of business activities such as for example: mining operations, defense related industries, fuel or energy operations, security services involving individual property, casino business, airing radio and television channels and aviation services.

1.5 Tax incentives

Various activities, ranging from environmental protection projects to development of human resources, can be supported by EU and national funds. Consequently, it is possible for business operations in various sectors of the economy to receive EU and / or national financing even from several different programs or funds. The level of co-financing varies, depending on the type of business activity, the level of permitted public aid and size of entity applying for support.

Starting from September 2018 new programme supporting entrepreneurs that carry out new investment projects (covering both the manufacturing business as well as modern services for the business) was implemented replacing Special Economic Zones programme. All entrepreneurs (domestic and foreign) can receive decision on support in a form of exemption from income tax - similarly as in case of Special Economic Zones - but regardless of the location of the investment project within the territory of Poland.

As of October 2019, under updated "Supporting investment of significant importance for the Polish economy in 2011 – 2030" (Polish Government Grant) cash support will granted for investment in production sector and creating new jobs in service sector. The grant amount may be increased if training is offered to employees. Grants are also available for companies investing in R&D infrastructure and / or carrying out R&D project or implementing the results of R&D activities. R&D related operational costs can be also eligible for R&D tax deduction allowing to deduct additional 100% of costs from tax base.

Also, investors that create or develop acquired IPs under performed R&D actives and commercialize them, as of January 1st, 2019 may benefit from the reduced CIT rate of 5% applied for the income generated from such IPs (so called IP Box).

Customs bonded warehouses 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 that certain requirements are met. Duty-free zones are separate 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 communication 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 harmonized 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 the zloty and foreign currencies 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 entities

The following types of companies operate in Poland: a joint-stock company (spółka akcyjna – SA), a limited liability company (spółka z ograniczoną odpowiedzialnością – sp. z o.o.), a limited joint-stock partnership, a registered partnership, a limited partnership and a professional partnership. In addition, new company type - a simple joint-stock company (prosta spółka akcyjna – PSA) will be incorporated to the Polish law on 1 March 2021. Creation of a European company (SE) is allowed in Poland. An individual can also carry on business as a sole proprietor. Limited liability companies, registered partnerships and limited partnerships (in the future also simple joint-stock company) may be formed and registered online by using templates of partnership/ company agreements or traditionally.

Forms of entities

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

The sp. z o.o. is the basic legal form of a company in Poland. Limited liability companies may be used for any purpose allowed by the law, but they are primarily used as special purpose vehicles, holding companies and as national operating companies controlled by international corporations. 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.

The sp. z o.o. has a capital, which is created from shareholders' contributions, but shareholders of the sp. z o.o. are generally not responsible for the liabilities of the company. The management of the sp z o.o. is less formal than that of the SA, so it is a somewhat more popular form of conducting 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 of a limited liability company (or its foreign equivalent).

Capital: The minimum capital required to establish a limited liability company is PLN 5,000 to be paid up before the registration. 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. The shares do not constitute securities.

Management: The main corporate bodies of the sp. z o.o. are the shareholders' meeting and the management board. There are no residence requirements for the management board members of the sp. z o. o., however a work permit may be required from a foreigner. The term of office for management board members is generally defined as one year, but can be easily modified or revoked altogether in the company's articles of association.

Supervision: The rights of control are vested in each shareholder of the sp. z o.o. and may be limited only when a supervisory board or an audit committee is established. If the share capital exceeds PLN 500,000 and there are more than 25 shareholders, the company has to have a supervisory board composed of at least three persons.

Meetings and votes: An absolute majority is generally sufficient to pass most resolutions, but articles of association can regulate this issue otherwise; a 2/3 or 3/4 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 as a result of its registration in the National Court Register. However, it comes into existence as a company in organization (and is able of contracting) at the time its articles of association are signed.

Online registration: A limited liability company may be formed and registered online by using a template of the articles of association. The main advantage of this solution is that the registration takes significantly less time (usually a few days). On the other hand, the founders have less flexibility with regard to shaping the articles of association and all of the contributions have to be made in cash.

Online activities: If the limited liability company has been registered online, certain activities of a limited liability company (like for instance amending the company's articles of association) may be carried out online, which saves time and costs.

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.

The SA has a capital created by shareholder contributions. As in the case of a limited liability company, the shareholders of the SA are generally not responsible for the company's liabilities. Management is more formal than in the case of the 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 floatation on capital markets.

Formation

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

Capital: The minimum initial capital for a joint-stock company is PLN 100,000. The shares subscribed for in-kind contributions have to be paid in full not later than before the end of one year of registration of the company. The shares subscribed for cash contributions shall be paid prior to registration of the company to the extent of at least one fourth of their nominal value.

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

Shares: Shares may be registered or beared, common or preferred. Nondividend shares are not permitted. The minimum share value is PLN 0.01. Shares constitute securities and may be issued to the public. From 1 March 2021, all shares in SA must be registered digitally and cannot be issued in the form of a paper document.

Management: The corporate bodies of a joint-stock company are the shareholders' meeting, the management board and the supervisory board. Management of the SA is vested in a management board. There are no residence requirements for the management board members of the SA, however, in case of foreigners a work permit may be required. However, in the financial sector, in particular in case of Polish registered banks, at least two members of the management board, including the chairman, must have working knowledge of the Polish language. Members of the management board may be appointed for a term of office of up to five years.

Supervisory: The SA has to have a supervisory board consisting of at least three members (five in listed companies), each appointed for a term of up to five years. The supervisory board exercises permanent supervision over all areas of the activities of the SA.

Meetings and votes: An absolute majority is generally sufficient to approve most actions, but articles of association can regulate this issue otherwise; a 75% majority or other 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: The SA comes into existence as a company in organization when all of its shares are subscribed for. As in case of sp. z o.o., 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 the EU, member states of EFTA parties to EEA agreement as well as other foreign companies from outside the EEA which may enjoy freedom of economic activity on the basis of agreements concluded with the EU or EU member states are authorized to conduct business activities under the same rules that 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 within the scope of business activities of the foreign investor. A branch is allowed to generate income. It has to be registered in the National Court Register under the name of the investor and the name has to include the phrase "branch in Poland".

Foreign investors also may establish a representative office in Poland. A representative office may only carry out promotional and advertising activities. Representative offices may not generate income on their own behalf. A representative office is registered in the Register of the Representative Offices of Foreign Entrepreneurs kept by the Ministry of Economy.

2.2 Regulation of business

Mergers and acquisitions

The Act on Competition and Consumer Protection empowers the Office for the Protection of Competition and Consumers (UOKiK) to block a merger that would lead to creation or strengthening of a dominant position on the market. The UOKiK also imposes reporting requirements for acquisitions of existing entities. Parties to a proposed merger have to notify the UOKiK whether their combined turnover for the previous year exceeded either EUR 1 billion worldwide or EUR 50 million in Poland. There are exceptions, such as for example when the transaction is within the same capital or financial group and when the concentration results from bankruptcy proceedings or taking over local business with an annual turnover not exceeding EUR 10 million. All international companies have to 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 at the level of the European Community are subject to 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 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 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 business days after a merger is reported to approve the transaction or open a procedure. If it decides to open a procedure, it has to issue a ruling within ninety business 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 business days.

2.3 Accounting, filing and auditing requirements

The Polish accounting standards generally do not differ significantly from the international standards in respect of assets and liabilities presentation and methods of valuation. All companies listed on the regulated markets of any European Economic Area country must prepare their consolidated financial statements in accordance with IFRS. All accounting documentation, records and reports must be prepared in Polish language and Polish currency. Companies must apply the accounting principles specified in the Accounting Act to ensure the 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 records and disclosed in the financial statements according to the nature of the business.

The annual financial statements should be prepared no later than within 3 months from the balance sheet date and approved by the shareholders at the Annual General Meeting within 6 months.

The scope of information disclosed in the financial statements is determined in the annexes of the Accounting Act (depending on the type and size of the entity). In general, accurate annual financial statements should be prepared in electronic form and consist of a balance sheet, a profit and loss account, as well as supplementary information including introduction and explanations. Companies audited in a given year must also present a cash flow statement as well as a statement of changes in the company's equity. However, it is worth mentioning that both micro and small entities have the right to use some simplifications for preparation of the financial statements, therefore, they may opt limit the scope of presented information.

Financial statements of certain entities, including joint-stock companies, IFRS financial statements, banks, insurers, investments and pension funds, must be audited. Other companies must be audited if at least two of the following three conditions were met in the preceding financial year:

- Average annual employment (calculated as a full-time equivalent) of at least 50 persons;
- Total net annual turnover and financial income from the sale of goods and services and financial transactions of at least PLN equivalent of EUR 5 million;
- Total balance sheet assets as at the end of the accounting year of at least PLN equivalent of EUR 2.5 million.

Together with the annual financial statements, the management must prepare a report on the company's activities, which contains in particular of 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.

All companies must prepare annual financial statements in XML file, sign it electronically and submit below documents to the National Court Register within 15 days from the approval:

- annual financial statement,
- report on the company's activities,
- resolution of financial statement approval and profit distribution/loss coverage,
- auditor's report (if applicable)

2.4 Practices limiting competition

Any cooperation with other entrepreneurs, both competitors (including e.g. within industry associations, created purchasing groups, cooperation in tenders), as well as suppliers (including those undertaken as part of ongoing cooperation) and recipients of products or services (e.g. the distribution network created by the entrepreneur) is subject to evaluation in the context of the provisions of the Act on competition and consumer protection. For this evaluation, it is irrelevant whether this cooperation is undertaken within existing formal structures or informally.

Evaluation in the context of the abovementioned provisions also covers behavior undertaken unilaterally by significant market participants, which may potentially affect other participants (for example forcing sales at understated prices or refusal to cooperate).

The abovementioned behaviors, if they violate the Act on competition and consumer protection, expose not only the entrepreneur himself, but also persons managing the company at the maximum penalty risk (in the case of an entrepreneur) of 10% of turnover generated in the year preceding the penalty imposition. In addition, cooperation in tenders, if it exceeds the scope allowed by the Act, may result in (obligatory) exclusion from subsequent public procurement procedures.

From the point of view of compliance of the entrepreneur's activities with the law, as well as to protect his financial interests, it is important to assess his business in the context of the provisions of the Act.

In addition, having regard to the authority frequently used by the President of the Office of Competition and Consumer Protection to conduct searches of entrepreneurs, the level of intervention of this tool in business activity and high financial penalties for failure to cooperate with representatives of the Office of Competition and Consumer Protection within their framework, both entrepreneurs and its representatives and employees, appropriate preparation of the organization and its members in this respect may lead to the reduction of risks resulting from both the wrong action of the entrepreneur in the search and the possible allegation of applying competition-restricting practices.

Agreements restricting competition

The Act on competition and consumer protection authorizes the President of the Office of Competition and Consumer Protection to evaluate cooperation undertaken by entrepreneurs. It is prohibited in the light of this law to cooperate with the purpose or effect of elimination, restriction or distortion in other way of the competition on a relevant market, if the effects occur or may occur on the territory of the Republic of Poland.

Potentially, the President of the Office of Competition and Consumer Protection is entitled to evaluate not only the cooperation undertaken by entrepreneurs operating in Poland, but also the one that is implemented outside its borders, causing (potentially) effects in Poland.
The subject of interest of the President of the Office of Competition and Consumer Protection covers all forms of cooperation of entrepreneurs – undertaken both in the vertical relationship, e.g. when cooperating entrepreneurs are in the supplier-customer relationship, horizontal, in the case of which market competitors cooperate with each other, as well as mixed cooperation.

As far as vertical and mixed cooperation of entrepreneurs is concerned, especially the President of the Office of Competition and Consumer Protection undertakes activities whose subject is the assessment of operating distribution systems, including those based on franchise agreements. These systems are often based in particular on agreements made within their framework in the range of applied prices (resale prices) and areas of operation (division of the market or customers) of involved entrepreneurs.

In the case of horizontal cooperation, in addition to the above-mentioned issues related to prices used in the market or area of activity, attention should also be paid to possible cooperation of competitors (also potential) within the so-called tender proceedings. The practice of the Office of Competition and Consumer Protection indicates that a situation where an entrepreneur deciding to participate in the tender decides to prepare a subcontract (partial) for another bidder or in agreement with a competitor decides not to participate in the tender can potentially be considered prohibited cooperation in the context of the above-mentioned act.

Non-formal cooperation may also be considered illegal by the President of the Office of Competition and Consumer Protection, including information exchange, including one-sided information sharing – where confidential (sensitive) information is disclosed by only one entrepreneur.

Due to the violation of the statutory prohibition, anti-competitive cooperation of the entrepreneur may result in a penalty of up to 10% of the turnover realized in the year preceding the year in which the decision was issued. The Act on competition and consumer protection also provides for liability for violation of its provisions of the persons managing the entrepreneur. The President of the Office of Competition and Consumer Protection may impose penalties of up to PLN 2 million on these persons.

In addition, it should be noted in the context of possible cooperation in tenders that recognition of this type of cooperation as violating statutory prohibitions might result in exclusion of the entrepreneur from subsequent procurement procedures within three years of its adoption.

Abuse of dominant position

In the light of the provisions of the abovementioned Act, it is also forbidden to abuse the dominant market position of the entrepreneur. The President of the Office of Competition and Consumer Protection also performs an assessment in this regard.

Domination position is understood by the Act as the position of an undertaking that enables it to prevent effective competition being maintained in a relevant market by giving it the power to act to an appreciable extent independently of its competitors, customers and consumers; it is assumed that an undertaking has dominant position where its market share in a relevant market exceeds 40 per cent.

The dominant entity is, for example, an entrepreneur who is the only one possessing the right or resource necessary to conduct a specific activity on the market (e.g. has a telecommunications network, a patent or proprietary property right). Those interested in gaining access to this kind of resource or right are on the one hand forced to cooperate with such an entrepreneur (they are not able to buy from another supplier) on the conditions imposed by him.

At the same time, it is not forbidden to have a dominant position, but to abuse it, which should be identified as an action that would not be possible under market competition. An abuse of a dominant position can be, for example, a refusal to sell or a sale/purchase at excessively high or excessively low prices. Both the dominant position and its abuse may refer to entrepreneurs operating on supply (where the dominant sells), and demand (where it purchases) the market side.

Entrepreneur’s behavior classified as an abuse of a dominant position is punishable by a penalty of up to 10% of turnover realized in the year preceding the year of the decision.

The Act on competition and consumer protection authorizes the President of the Office of Competition and Consumer Protection to evaluate cooperation undertaken by entrepreneurs.

Search by the President of the Office of Competition and Consumer Protection
In the context of the aforementioned powers of the President of the Office of Competition and Consumer Protection to assess the activities and behavior of entrepreneurs, one should pay attention to the authority of the Office to undertake a search of entrepreneurs. As part of the search, the employees of the Office of Competition and Consumer Protection not only look for material evidence, but also receive explanations from both the entrepreneur and its employees, and search the IT systems and obtain evidence in electronic form.

Improper cooperation of the entrepreneur in the course of the search by the President of the Office of Competition and Consumer Protection is punishable with a fine of up to EUR 50 million. Persons representing the company and its employees are also threatened with the penalty. In this case, the maximum penalty is equivalent to 50 times the average remuneration, i.e. at the level of over PLN 250,000. It should be emphasized that for the abovementioned penalties, it is irrelevant whether any irregularities ultimately influenced the course and "success" of the search.

2.5 Practices unfairly using a contractual advantage

If an entrepreneur, including a processing plant or a retailer purchases agricultural or food products or disposes them by contracting with a smaller (economically weaker) entrepreneur, potentially exposes himself to a charge of using the contractual advantage and, as a consequence, a financial penalty of up to 3% of turnover achieved in the year preceding the year of imposition.

From the perspective of an entrepreneur operating in the agriculture & food sector, and taking into account the severity of penalties sanctioned by entrepreneurs, it is extremely important to assess, in the context of the Act on Counteracting Unfair Use of Contractual Advantage in Agricultural or Food Product Trade, the conditions according to which that entrepreneur cooperates with its smaller suppliers or customers.

The President of the Office of Competition and Consumer Protection acting in public interest is entitled to intervene in cases of practices unfairly using a contractual advantage taken by buyers of agricultural or food products or suppliers of these products, if this use causes or may cause effects on the territory of the Republic of Poland. Therefore, potentially, in the case of purchase / sale of agricultural or food products from a weaker (economically) / smaller market participant, the entrepreneur is exposed to the accusation of using prohibited practices.

The Act does not provide the definition of a practice unfairly using a contractual advantage, nor a closed catalog of such. As a result, the risk of a potential intervention by the President of the Office of Competition and Consumer Protection in a situation where the contractor of a stronger supplier/ recipient requests to exercise his rights, citing the dishonesty of the contractor's actions, should be classified as high.

Due to the use of practices unfairly using contractual advantage, entrepreneurs face a fine of up to 3% of turnover achieved by the entrepreneur in the year preceding the imposition of the penalty.

Improper cooperation of the entrepreneur in the course of the search by the President of the Office of Competition and Consumer Protection is punishable with a fine of up to EUR 50 million.

3. Tax system

3.1 Principal taxes

The main taxes in Poland are:

- Corporate Income Tax;
- Personal Income Tax;
- Tax on civil law transactions (transfer tax);
- Value Added Tax;
- Stamp duty;
- Real Estate Tax;
- Excise duty.

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 Transactions Tax Act (for capital duties and transfer tax), Local Taxes Act (i.a. real estate tax).

The parliament passes tax legislation with a simple majority of votes.

3.3 Administration

Tax authorities

As of 1 March 2017, the National Fiscal Administration (Krajowa Administracja Skarbowa or KAS) was introduced. The KAS is a specialized government administration engaged primarily with tasks related to obtaining revenues from taxes, duties, fees, and non-tax budget receivables.
As a result, the existing structures of the tax administration, customs service and fiscal audit have been reformed by the establishment of a completely new structure – the National Fiscal Administration (KAS), headed by the Head of the KAS supervised by Minster of Finance. The bodies of the KAS include also: the Director of the National Tax Information, directors of tax administration chambers, heads of customs and fiscal offices, and heads of tax offices.

As of 1 March 2017 taxes in Poland are administered by:

- Heads of tax offices: Supervise the collection of taxes and enforce debts in their territories; conduct tax control; issue individual administrative decisions in tax cases.

- Heads of customs and fiscal offices: Carry out customs-fiscal control of tax settlements; establish and determine levies and place goods under customs procedures.
- Directors of tax administration chambers: Supervise heads of tax offices and heads of customs and fiscal offices; as a rule, are empowered to review administrative decisions of tax offices and specific decisions of heads of customs and fiscal offices.
- Director of the National Tax Information: Issues individual interpretations; harmonizes tax and customs information.
- Head of the National Fiscal Administration: Responsible for the supervision of the fiscal administration; carries out specific tax procedures, i.a. related to general anti-avoidance rule.
- Minister of Finance: Responsible for the Polish budget policy; issues general tax rulings (i.e. rulings issued to all taxpayers).

Taxpayers may appeal to the directors of tax administration chambers against decisions of the heads of tax offices or specific decisions of heads of customs and fiscal offices. Please note, that an appeal against the specific decisions of a head of customs and fiscal office (i.e. concluding the tax proceedings conducted by this authority) are generally considered by the authority issuing a decision and not a director of tax administration chamber. An appeal against a final decision of the second instance 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.

In certain situations, the newly created National Fiscal Administration is also responsible for investigating, preventing, detecting and prosecuting given crimes, i.e. document fraud, intellectual fraud, using document with false information and intellectual fraud, deceit, organized crime and participation in an organized criminal group.

Rulings

Two types of tax rulings are available in Poland: general and individual. General rulings aim to ensure that application of the tax law by tax authorities is uniform; general rulings may be applied by all taxpayers and are issued by the Minister of Finance. Individual rulings are issued upon a written request by the Director of the National Tax Information. Application of an individual ruling may not be detrimental to the applicant. To obtain a ruling, the taxpayer has to submit a written request presenting the actual facts or planned events, the question and its own opinion on the issue. The ruling remains valid until changed by tax authorities (possible only in specific situations; the change comes into effect starting from the specified settlement period, e.g. next year for CIT) or when the underlying provision of law is changed rendering the ruling irrelevant. Tax ruling, however, does not protect from GAAR clause.

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 ascertains 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 the Ministry of Finance to advise whether an APA would be useful, determine the scope of information to be submitted, the procedure and probable date of conclusion of an APA, its expected conditions and duration.

The application has to be submitted by a Polish entity and the application fee (which depends on the value of the transaction) has to be paid within 7 days of the date when the application is submitted. An APA is valid up to 5 years, after which time can be renewed (in a simplified procedure).

The value of the fee due to the Chief of Competent Authority amounts to 1% of the transaction value (in a period to be covered by APA) and ranges between:

- in the case unilateral agreements:
  - related to domestic entities, the payment amounts to not less than PLN 5,000 and not more than PLN 50,000,
  - related to foreign entities, the payment amounts to not less than PLN 20,000 and not more than PLN 100,000.
- in the case of bilateral and multilateral agreements, the payments amounts to not less than PLN 50,000 and not more than PLN 200,000.

A taxpayer applying for 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, indicate the related parties included in a given transaction and propose the period for which the APA should be binding.

Moreover, the limitation of tax deductibility of intercompany intangible charges, presented in details in section 4.4. Limitation of expenses related to intangible services, does not apply to the costs of intangible services during the period covered by APA decision (which can start when APA application is filed), as well as the tax year in which the APA application is submitted.

3.4 Double taxation relief

Unilateral relief

Different methods of double taxation avoidance are potentially available, depending on the particular tax treaty concluded with Poland (generally based on exemption / credit methods principles).

Tax treaties

Poland has entered into number of double taxation treaties (90). Many of those treaties reduce the withholding tax rates applied to dividend, interest and royalties paid by Polish companies to non-residents. If the EU Parent-Subsidiary Directive / EU Interest and Royalties Directive applies, as a rule no tax is withheld on dividends, interest and royalties, respectively.

Ratification of the MLI Convention

On January 23, 2018 Poland submitted to the OECD a document confirming the ratification of the Multilateral Instrument to Modify Tax Treaties (MLI Convention) to implement BEPS (Base Erosion and Profit Shifting) provisions aimed at counteracting aggressive tax planning on international scale. This started the process of amendments to regulations of double tax treaties signed between Poland and certain countries. The MLI came fully into force on January 1, 2019 affecting DTT from different jurisdictions gradually.

Treaty Network of Poland

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

3.5 Mandatory reporting of tax-planning schemes (Mandatory Disclosure Rules – MDR)

As of January 2019, Poland introduced extensive Mandatory Reporting regulations (MDR) assuming the obligation to report to the Head of the National Treasury Administration (KAS) the so-called "Tax schemes". The assumption is that the regulations constitute an implementation of the Council Directive (EU) 2018/822 - nevertheless, in practice, the obligations imposed are much more far reaching than those resulting from EU regulations. The Directive applies only to cross-border schemes, while Polish obligation regards also reporting of national schemes. Disclosure obligations work retroactively to some extent. MDR covers activities (including the ones that are only planned), in which at least one participant is a taxpayer, which have or may have an impact on tax liability, and which at the same time meet additional criteria – in practice rules of identification of activities covered by MDR are not fully clear yet. Mandatory disclosure obligation basically burdens the intermediary (understood as each person which develops, offers, makes available, implements or manages the implementation of the arrangement), and in specific situations the auxiliary (understood as person who supports the implementation of the arrangement) and the beneficiary (the person to whom the arrangement is made available). Reporting is performed electronically. Failure to comply with reporting obligations entails substantial fines (liability under the provisions of the Fiscal Penal Code).

3.6 Hybrid structures

In May 2020 Poland has adopted regulations implementing EU ATAD 2 directive as regards discrepancies in qualifications of hybrid structures. In this respect, new provisions introduced into the Polish CIT Act aimed at counteracting hybrid mismatches. The most important change for the taxpayer is need to change the approach towards the charges from the related parties. Unlike before, the possibility to treat such charges as tax-deductible costs will also be affected by the manner in which the entities recognize charges. Polish taxpayers have to verify how the related parties / contracting parties treat such charges. If no verification is performed, in practice the taxpayer may lose the right to recognize the charge as the tax-deductible cost.

The key assumption of anti-hybrid measures is to counteract situations exploiting different tax treatment of the entity or transaction occurring under various tax regimes. Based on the regulations, taxpayers as a rule will not be entitled to deduct a payment, expense or loss from the tax base, if a payment results in:

(i) **double deduction** – double deduction is perceived as a recognition of the same payment as tax deductible in more than one jurisdiction without corresponding dual inclusion of that payment in respective income (revenues) in those jurisdictions,

(ii) **deduction without inclusion** – deduction without inclusion is considered e.g. as recognizing a given payment as deductible without the corresponding inclusion of that payment in income (revenues) of the payment recipient.

4. Taxation of companies

Main taxes applicable to companies operating in Poland	
Corporate income tax	19% (standard rate) and 9% (preferential rate)
Withholding tax	
Dividends Interest Royalties	19% 20% 20%
Branch profits tax	-
Net worth tax	-
Value added tax	23% (standard rate)
Transfer tax	0.5-2% (standard rates)

4.1 Overview

Pursuant to the Polish tax law, companies having their registered seat or place of management in Poland are subject to corporate income tax ("**CIT**") on their worldwide income (tax residents). Income derived by residents from sources abroad is generally subject to CIT under the same rules as income earned from Polish sources, unless a tax treaty provides otherwise.

The amount of income (loss) is determined on the basis of accounting books, with adjustments made according to tax law.

In general, a calendar year is deemed to be a tax year. However, a taxpayer may change its tax year by notifying the appropriate tax office and indicating a different period as a tax year.

As a result of its accession to the EU, Poland has implemented the Parent Subsidiary Directive (PSD), merger directive and the Interest Royalty Directive (IRD).

Provided that certain requirements are met, a group of companies may establish a "tax capital group" which is treated as a single CIT taxpayer.

4.2 Taxation of non-residents

Non-residents are in principle subject to CIT in Poland only with respect to its taxable income earned within the territory of Poland, in particular within the following sources of revenues:, i.a.:

- any business activity, including via a Permanent Establishment, carried on the territory of Poland. The profit/ income (taking into account related costs) attributable to the PE would be subject to 19% of the CIT in Poland with the application of the general taxation rules, as in the case of Polish-based taxpayers;

- real estate located in Poland or income gained on the sale of this real estate;
- income earned on the sale of shares in the Polish company holding mainly real estate assets (which should be regarded as a sale of real estate and is taxed in Poland – the so called **real estate clause**);
- income earned on securities;
- payments from Polish tax residents;
- income earned on unrealized gains.

4.3 Taxable income

Taxable income comprises all revenue earned in a tax year (with some exceptions) decreased by tax-deductible expenses. As from 2018, for the purpose of taxation, company's revenues are divided into two sources of income, so called "baskets":

- capital gains (please see the details below) and
- other incomes (which includes business/ trading incomes).

Therefore, an appropriate allocation of costs to baskets is required.

The crucial consequence of such division is that losses generated within one source of income cannot be compensated with profits from another source. For example, the tax loss generated on operational activity cannot be compensated by profits from capital gains like dividends or revenues derived from IP rights and *vice versa*.

Capital gains

Capital gains, taxed as a separate source of income, include in particular:

- typical capital gains like: dividends, income created as a result of mergers, de-mergers, etc.
- in-kind contributions to companies;
- sale of receivables previously purchased by the taxpayer;
- sale of shares in companies;
- sale of share in partnerships to various property rights and securities,
- incomes derived from intellectual property rights, etc,
- incomes on securities,
- from the exchange of a virtual currency for legal tender, goods, services or property rights other than a virtual currency or from the settlement of other liabilities with a virtual currency.

Business gains

All other revenues that are not included in the catalog of capital gains should be categorized as other operating revenues (business gains) and taxed separately.

Dividends

Dividends received by a company being a Polish resident from another Polish company or an EU/EEA company may be exempted from taxation if certain holding and participation requirements are satisfied (e.g. the recipient has held at least 10% of the shares in the payer company for at least two years). The above rule may also apply to dividends from a Swiss company provided that the requirement of holding 25% of shares is met.

Dividends received from a non-EU/EEA/ Swiss company are aggregated with other taxable income and are subject to the corporate income tax rate of 19%. Double taxation treaties provide possible methods of avoiding double taxation.

Potential 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 under certain conditions, in particular provided that the Polish company has held at least a 75% stake in the payer company for at least two years before/after the distribution.

4.4 Deductions

In general, expenses incurred by a taxpayer for the purpose of generating, preserving and protecting taxable revenues are deductible, e.g. employee remuneration, cost of goods/ services, net operating losses, paid interest (subject to limitation on deductibility of debt finance costs), depreciation. Specified categories of expenses are not tax deductible (e.g. penalties, accrued interest, so called representation costs, dividends paid, etc.) or are tax deductible only to some extent (e.g. costs concerning usage of passenger cars and related expenses).

Salaries and wages

In general, expenses incurred by the company for employee salaries and wages are tax-deductible, provided the general conditions for tax deductions are met.

Limited deductibility of debt finance costs

The CIT Act provides limited possibility to include debt finance costs, from related and non-related entities, in tax expenses; the limit has been set at the 30% of an indicator close to EBITDA. The limit concerns any kind of debt finance costs (e.g. interest, commission, fees, bonuses, interest part of the lease instalment).

The above limit does not apply to the debt finance costs in a part not exceeding the amount of PLN 3m in a fiscal year. It is generally possible to deduct debt finance costs that have not been deducted in the given fiscal year, in the fiscal years to follow (as part of the defined limit).

Notional Interest Deduction

As of 2019 Poland introduced an incentive to leave capital for development in companies by increasing the tax attractiveness of own financing. To some extent there is a possibility to increase the costs of obtaining revenues by the hypothetical equivalent of debt financing costs - despite the fact that these costs were not actually incurred by the taxpayer (so-called notional interest deduction).

Limitation of expenses related to intangible services.

The possibility to include in tax costs the expenditures on services purchased from related entities (directly or indirectly) is restricted for the following types:

- consulting services, market research, marketing services, management and controlling, data processing, insurances, guarantees and sureties etc.,
- any royalty fees or payments for using or being entitled to use intangible assets, like licences, know-how, trademarks,

- costs of transfer of the debtor's default risk for loans (other than those provided by banks and cooperative savings and credit unions).

The indicated expenses may constitute tax deductible costs up to the amount equal to 5% of „tax" EBITDA. The above described limit shall only be applied to the amount of expenses over PLN 3.000.000 incurred during one tax year.

Limitation of cost deduction does not apply at all in case the purchased intangible assets (licences) are linked directly with purchase / production of goods or providing of services by the taxpayer. It also does not apply to the extent that the advance pricing arrangements (APA) includes the correctness of the price calculation of a given intangible service.

Losses

Losses incurred by a taxpayer may be carried forward and set off against income over the following 5 tax years from the year the loss is incurred, but only up to 50% of the loss suffered in a given tax year may be deducted at a time. Losses cannot be carried back.

Besides that, the taxpayer has possibility to reduce the income obtained from this source at once in one of the next five consecutive tax years by an amount not exceeding PLN 5.000.000. The unsettled amount is settled in the remaining years of this five-year period based on the basic rules (up to 50% of loss).

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.

As of January 1, 2021, Poland has introduced a new provisions limiting the possibility of utilizing tax losses by taxpayers who have taken over the assets of other entities constituting an enterprise or an organized part thereof as a result of a merger, in-kind contribution or purchase financed by a cash contribution. Therefore the possibility for a given enterprise to use the tax losses of another enterprise that is unable to settle them, is limited.

Depreciation/ Amortization

Fixed assets and intangible assets are subject to tax depreciation/amortization if the estimated useful life of the asset is longer than one year and they are related to the taxpayer's taxable income. Fixed assets and intangible assets with a value up to PLN 10.000 may be directly expensed.

As a rule, tax depreciation/amortization is calculated on a straight-line basis. However, the reducing balance basis may be used for certain categories of assets.

Basic (standard) depreciation rates (per annum) for commonly leased assets are as follows:

Asset	Straight-line rate per annum
Land	N/A
Buildings	2.5%
Technical equipment and machinery	4.5-25%
Vehicles (cars/buses/ trucks)	20%
Computers (including related equipment)	30%

Besides the above, there are some specific options concerning standard tax amortization rules, such as application of increased or individual depreciation rates that can be used in some particular cases and under certain conditions. Taxpayers are also allowed to decrease the basic depreciation rates for all fixed assets (but not intangible assets) and increase them up to standard rates provided by the Polish CIT Act under certain conditions.

Furthermore, in the first year of business activity, taxpayers may also make a complete depreciation deduction of defined fixed assets (excluding passenger cars) in the year when such assets were entered into the register of fixed and intangible assets. The total value of the depreciation deductions should not exceed EUR 50.000 in the tax year.

There are limitations concerning tax deductibility of amortization applicable in some cases (passenger cars).

4.5 Exchange differences

A taxpayer is entitled to choose the method of calculation of exchange rate differences for CIT purposes. The available methods are the accounting method or the tax method. In general, exchange differences are treated as taxable revenues / tax deductible expenses.

4.6 Tax incentives

Polish provisions provide comprehensive tax incentives. For more details, please, see 1.5 Tax incentives.

4.7 Controlled Foreign Corporation (CFC)

Under the Controlled Foreign Company (CFC) rules, Polish taxpayers are taxed currently at a rate of 19% on the income of their CFCs. An entity is characterized as a CFC if any of the following requirements is met:

- a foreign entity has its seat / management in a so-called tax haven, or
- a foreign entity has its seat / management in a state with which Poland did not conclude a double tax treaty / tax information exchange agreement, or
- a foreign entity fulfills jointly the following criteria: a) at least 50% of its shares is controlled by a Polish taxpayer/company (either on its own or joint; b) at least 33% of its revenues constitute passive income and c) the income tax actually paid by this entity is lower than the difference between corporate income tax in Poland and the income tax actually paid in the country of its registered office.

The base of taxation is the amount of the income of the foreign controlled entity that needs to be calculated based on Polish tax rules.

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 base.

The income obtained by the CFC is added to the Polish taxpayer's income and taxed in Poland. The amount of tax may be decreased by income tax paid by CFC for the same period in such proportion as the income of CFC attributable to the taxpayer to the total income of CFC (if Poland concluded a treaty with the state of the CFC's tax residence). The CFC rules are not applicable provided the CFC carries out 'relevant real economic activity'. There are some general guidelines that should be taken into account in terms of assessment whether this entities' activity is real and relevant.

4.8 Rate

The standard corporate tax rate is 19%. Small taxpayers and taxpayers in the first year of business activity may apply the 9% tax rate under certain conditions.

4.9 Corporate reorganizations

In general, the Polish regulations follow EU law. As regards restructuring projects, provided certain conditions are met, particularly in terms of business justification of the transaction, then it may be potentially treated as tax neutral in some cases. However, bearing in mind that recently regulations regarding taxation of restructurings have been tightened up and such transactions are currently subject of special attention of the Polish tax authorities, the ultimate consequences of transactions aimed at reorganization should be subject to case-by-case analysis. Furthermore, according to the newly passed regulations, taxation of the operation of handing over the assets of the liquidated company equates the sale transaction.

4.10 General Anti-avoidance Rules (GAAR)

GAAR was introduced to the Polish tax regime as of July 15, 2016 and is applicable to all tax benefits received after that date. The aim of the regulation is to counteract aggressive tax planning which does not have business rationale.

Generally, GAAR shall apply to transaction(s)/ action(s) if they meet all the following three conditions:

- obtaining a tax benefit is a major or one of the main purposes of this action;
- they are contrary to the subject matter and objective of the provision of the tax act; and
- they are performed in an artificial way.

If these conditions are met, the given transaction(s)/action(s) do not result in obtaining the said tax benefit.

GAAR restrictions should not be applicable if the interested entity obtains the so-called "protective ruling". Such ruling may be issued in an individual case by the Minister of Finance in response to the application submitted by an entity or group of entities in relation to transaction(s)/ actions(s) planned, implemented or during the phase of implementation.

4.11 Special anti-avoidance rule (SAAR)

The CIT Act also introduced several special anti-abusive clauses (SAAR) preventing avoidance of taxation. There is a SAAR applicable for dividends, royalties and interest payments. There is also SAAR applicable in case of restructuring transactions (mergers/ demergers, etc). Generally SAARs apply in case certain conditions are met, inter alia, if activities in question are in contrary to the object or purpose of Polish tax provisions and the main or one of the main goals of making a transaction, as well as the manner of this activity, was artificial.

4.12 Dedicated anti-optimization regulations

Debt-push-down limitation

This kind of transaction usually allows for the transfer of acquisition debt to the level of the acquired company. However, Polish CIT provisions provide for a full exclusion from the tax-deductible costs, all costs of debt financing obtained to acquire shares in the company - proportionately to the potential reduction of the combined tax base which encompasses the profits generated by continuation of the acquired company's economic activities. In consequence, the potential income from operational activity of the acquired entity would not be decreased by the cost (interest) related to the financing obtained for the acquisition of shares in this entity.

Costs of using of intangible assets (eg. trademark)

The Polish CIT Act also provides for a limitation on deductibility of amortization write-offs on intangible assets, in case when a given entity was an owner of the intangible asset, then disposed it and finally acquired it (or became its owner) again. In such a cases tax deductibility of amortization write-offs is limited to the threshold of the amount of revenues due on the previous transfer of such intangible assets. Similarly, in case where the entity disposed of an intangible asset, but as a result of the agreements concluded, it uses that said asset (e.g. under license agreement), fees and charges of any kind for such use shall not be tax deductible - in a part exceeding the revenue obtained from the prior disposal of such intangible asset.

4.13 The white list & split payment – CIT consequences

"The white list" and split payment are regulations designed primarily for VAT reasons. However, both tools are essential from an income tax perspective.

According to the Polish CIT Act, payments for active VAT taxpayers in the case of provision of goods or services, confirmed by an invoice for the amount over PLN 15.000, wired to account other than included on "the white list" shall not be considered as tax deductible costs.

Similarly, in the situation when the payment for the invoice marked as "split payment mechanism" is made without the mentioned mechanism shall not be included in tax deductible expenses.

4.14 Counteraction of payment backlogs

As of January 1, 2020, special regulations on reducing the occurrence of payment backlogs were introduced into the Polish legal system. According to these provisions, statutory deadlines for payments for goods or services between entrepreneurs have been established. Deadline rigidity depends on the status of both contracting parties; however, as a rule, the maximum payment date should not exceed 60 days.

4.15 Taxation of limited partnerships

As of January 1, 2021, limited partnerships (and certain general partnerships) are subject to CIT. Consequently, in principle, the former taxation model applicable to these entities is changed from one-stage taxation of income from the activity of a limited partnership at the level of its partners into two-stage taxation, i.e. once at the level of the limited partnership's income, and secondly – at the level of profit distribution to its partners. The amendment also provides a partial exemption from taxation of revenues from participation in the profits of limited partners of such companies (up to 50% of revenues, not more than PLN 60.000), however, it is conditioned by the lack of an "optimization goal" underlying establishment of such a company. A similar taxation system apply to general partnerships when income tax payers participating in the profits of the general partnership are not disclosed.

"The white list" and split payment are regulations designed primarily for VAT reasons. However, both tools are essential from an income tax perspective.

5. Related party transactions

5.1 Transfer pricing

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

In addition, due to the Covid-19 pandemic, the Anti Covid-19 Shield Acts were implemented and the changes have been made to provide several simplifications and facilitations for carrying out business during the period when an epidemiological or COVID-19 emergency is in force. Thus, the changes were applicable for transfer pricing obligations for FY2019 but also may be valid for FY2020.

Transfer pricing methods

Polish entities have to verify conditions of transactions with their related parties with methods defined in the Polish transfer pricing regulations and are obliged to present such verification in the transfer pricing documentation. Under new TP regulations taxpayers can choose one of the five OECD methods (comparable uncontrolled price method, cost plus method, resale minus method, profit split method or transactional net margin method), but, in addition, the catalogue of transfer pricing methods was extended by other methods (including in particular valuations) that may be used, if any of above mentioned five methods indicated directly in the regulations cannot be used.

Under new regulations, methods for determining the market value of transactions were regulated, stating that the most appropriate method should be used to determine the transfer price, taking into consideration conditions determined or imposed between related entities.

Safe harbors

Under the new regulations, transfer pricing safe harbors were introduced (subject to specific conditions), including:

- mark-up on costs for low-value added services that could be considered arm's length,
- interest rates for some intra-group loans that could be considered arm's length.

Definition of related parties

Under the new regulations binding as of 2019, the redefinition of related parties was introduced and the following parties are considered related:

- entity, which significantly influences at least one other entity,
- entities that are both significantly influenced by the same entity,
- company without legal personality and its partners,
- foreign permanent establishments of the Polish entities and permanent
- establishments of foreign entities in Poland.

Exercising significant influence includes (i) owning at least 25% of shares in capital or profits, (ii) at least 25% of votes, (iii) factual ability to influence significant decisions, or (iv) personal relations.

Exemption from transfer pricing documentation obligations

Under the new regulations, the transfer pricing documentation will not have to cover e.g. the following transactions:

- concluded between Polish entities that are not tax exempt and do not incur tax losses,
- which permanently do not constitute taxable revenues or taxable costs excluding: financial and capital transactions, transactions related with investments, fixed assets or intangibles,
- concluded within tax capital groups,
- concluded between entities that are related only by state or municipalities.

The condition for exemption from the obligation to prepare local documentation for domestic transactions in form of not incurring a tax loss by the parties to the transaction has been relaxed. The condition does not apply in the tax year beginning after 31 December 2019, in which a state of epidemic emergency or a state of epidemic declared in connection with COVID-19 was in force on the entire territory of Poland, if a related entity not meeting this condition obtained in that year total revenues lower by at least 50% than total revenues obtained in the analogous period directly preceding that year.

Transfer pricing documentation thresholds and documentation requirements

Under the new regulations and documentation requirements, transfer pricing documentation will have to cover:

- financial and tangible transactions if they exceed the amount of PLN 10,000,000,
- intangible and other transactions if they exceed the amount of PLN 2,000,000.

The threshold that applies to transactions with subjects that reside, are established (registered address) or have a management board in a tax haven has been set at PLN 100,000. What is more, starting from TP obligations for FY2021, the obligation to prepare local transfer pricing documentation also applies (i) to both cost and revenue transactions with a tax haven, if the value of this transaction for the tax year exceeds PLN 100,000 (ii) if the *beneficial owner* is located in a "tax haven" and the value of the transaction for the tax year exceeds PLN 500,000. The local documentation has to include additional elements, including, inter alia, a description of the expected economic benefits, including tax benefits.

Master file will have to be prepared by / for the entities that operate within the groups of related entities:

- for which consolidated financial statement are prepared,
- whose consolidated revenues for the previous year exceeded the amount of PLN 200,000,000 or its equivalent.

For proving Group transfer pricing documentation, the deadline has been extended to 12 months since the end of the tax year. In addition, the Anti Covid-19 Shield Act (in respect of transfer pricing obligations for FY2019, which simplifications may also be applied to FY2020 respectively) provides a postponement of the deadline for preparing a Master File by 3 additional months from the preliminary date. Master file documentation prepared in line with OECD approach and in English will be accepted.

The benchmarking obligation is applied to all subjects that are obliged to compile a Local file due to exceeding the thresholds, irrespective of their revenue.

Transfer pricing reporting TP-R form

Starting from 2019, certain entities are obliged to electronically submit a TP-R form including data regarding transactions concluded with related parties.

Among the data that taxpayers are required to report, apart from (i) general identification information and (ii) financial information, including the values of financial ratios measuring the financial position of the entity (i.e. Operating margin, Gross profit margin, Return on Assets, Return on Equity), it is necessary to distinguish data on individual transactions concluded with related entities, i.e. the transaction: (iii) party, (iv) its type, (v) value (in the case of financial transactions, both capital and interest will be indicated), (vi) the method of transfer price verification along with an indication of the value of the designated arm's length range, and (vii) other additional information or explanations, including information on adjustments in transfer pricing and selected types of transactions. Following the TP adjustment aspect, according to the Anti Covid-19 Shield Act, taxpayers making transfer pricing adjustments are exempted from the obligation to have a statement from a related party confirming that a transfer pricing adjustment was carried out in the same amount as the taxpayer (the abolition of this obligation is to apply only to adjustments made in the period of an epidemic threat and state of emergency.

TP-R form is provided once a year within the deadline for submission of a statement confirming preparation of complete documentation (i.e. by the end of the ninth month after the end of the financial year). Based on the Anti Covid-19 Shield Act, the deadline for providing transfer pricing information (TPR-C and TPR-P forms) has been extended (i) until 31st December 2020 – in these cases where this deadline was to expire between 31st March 2020 and 30th September 2020, (ii) by 3 months - in these cases, where this deadline was to expire between 1st October 2020 and 31st January 2021. It is pertinent to note that the taxpayer's exemption from the documentary obligation for some domestic transactions does not exempt from the obligation to include such transactions in the TP-R report. The detailed scope of data presented in the TP-R form, combined with the relatively easy to analyse data by electronic form, allows for more precise typing of entities for the purposes of transfer pricing audits - primarily through data on the taxpayer's financial results.

Statement of the Board on transfer pricing

Under the TP regulations in force since 2019, the statutory representatives of the Polish company are obliged to submit to the Polish competent authorities a statement confirming preparation of complete documentation as well as confirming that all taxpayer's transactions are arm's length. The rules forbid signing the statement by proxies. Under the Anti Covid-19 Shield Act (in respect of transfer pricing obligations for FY2019, which simplifications may also be applied to FY2020 respectively):

(a) The statement on preparation of local transfer pricing documentation may be signed by a person authorised to represent the Polish company (in accordance with the representation in the National Court Register) - while it is still not allowed to submit the statement by a proxy.

(b) the deadline for submitting a statement that transfer pricing documentation has been prepared has been extended: (i) until 31st December 2020 – in these cases where this deadline was to expire between 31st March 2020 and 30th September 2020, (ii) by 3 months - in these cases, where this deadline was to expire between 1st October 2020 and 31st January 2021.

Country-by-Country reporting

Taxpayers whose consolidated group revenues exceed the equivalent of EUR 750,000,000 are obliged to provide tax authorities with the Country-by-Country reporting ("CBC Report") covering information on their taxable income, their tax paid, list of related entities and their country of residence, activities, number of employees and assets. Polish taxpayers that are members of MNE with foreign mother company also have to share such information with the Polish tax authorities by submitting CBC – P notification.

Based on the provisions of the tax information exchange with other countries Act in force since April 30, 2019, the deadline for submitting CBC – P notification was extended. Thus, with reference to the reporting financial year starting after December 31, 2018, the CBC – P notification should be submitted within 3 months of the end of the reporting financial year of a given group of entities. The deadline for the parent company to submit the CbC-R report, which is still 12 months from the end of the reporting financial year, has not changed.

Tax penalties

Under the new regulations, new tax penalties were are introduced based on the additional tax liability provisions, including related to transfer pricing tax assessments:

(i) 10% penalty tax on overstated loss or understated income,

(ii) 20% penalty tax on overstated loss or understated income if tax base determined to impose additional tax liability exceeds PLN 15,000,000 – with respect to amount exceeding PLN 15,000,000 threshold only,

(iii) 20% penalty tax on overstated loss or understated income if no transfer pricing documentation is provided,

(iv) 30% penalty tax on overstated loss or understated income if both (ii) and (iii) occur.

Additionally, if the taxpayer does not provide the tax authorities with the CBC Report or notification concerning CBC reporting a penalty of up to PLN 1,000,000 may be applied.

In case of failure to submit by a taxpayer a statement on the preparation of transfer pricing documentation or a TP-R report, delayed submission or submission of untrue information in a statement on the preparation of transfer pricing documentation or in a TP-R report - fine amounting maximum up to 720 daily rates (maximum of PLN 26 880 000 (EUR 5,9m) starting from 2021).

Other changes resulting from the newest regulation

Obligation to draw up a tax strategy as part of increased transparency

The new obligation to prepare and make public a tax strategy report for the tax year applies to:

- taxpayers whose revenues exceeded EUR 50 million in the tax year,
- tax capital groups.

The report on the implementation of the tax strategy includes, among others, information on:

- transactions with related entities whose value exceeds 5% of the balance sheet total of assets;
- restructuring activities planned or undertaken by the taxpayer, which may affect the amount of tax liabilities of the taxpayer or related entities;
- information concerning tax settlements of the taxpayer in countries applying harmful tax competition;
- the number of provided information on tax schemes (MDR) by tax type.

A taxpayer is required to post a report on the implementation of its tax strategy for the tax year, prepared in Polish or its translation into Polish, on its website by the end of the ninth month following the deadline for filing the annual tax return.

Taxpayers whose consolidated group revenues exceed the equivalent of EUR 750 mln are obliged to provide tax authorities with the Country-by-Country reporting covering information on their taxable income, their tax paid, list of related entities and their country of residence, activities, number of employees and assets.

6. Taxation of individuals

Main taxes applicable to individuals in Poland	
Personal income tax - regular progressive rates (applicable e.g. to income from dependent services)	17% and 32% (for income exceeding PLN 85,528)
Personal income tax – flat rate (may be applied to self-employment if certain conditions are met)	19%
Dividends	19%
Interest	19%
Royalties	progressive (17% and 32%)
Capital gains	19%
VAT	23% (standard rate)
Inheritance tax	3%-20%
Special expatriate regime (only selected sources of income)	20%
Exit tax	19% (typically) 3% (only in specific cases e.g. lump sum taxation)
Solidarity charge	4% (for income exceeding PLN 1,000,000)

Social insurance contributions

Insurance type	Cap on salary subject to contribution	Allocation of contribution cost	
		Employer	Employee
Pension	PLN 157,770 (for 2021)	9.76% of the remuneration	9.76% of the remuneration
Disability		6.5% of the remuneration	1.5% of the remuneration
Sickness	No cap applies	-	2.45% of the remuneration
Accident		0.67% – 3.33% of the remuneration (it depends on risk category)	-
Healthcare		-	9% (7.75% tax deductible)

Other employer's charges	
Labour Fund / Solidarity Fund	2.45% of the remuneration
Employees' Guaranteed Payments Fund	0.1% of the remuneration

6.1 Residence

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

Tax treatment of resident individuals

Polish tax residents are individuals having a place of residence in Poland. A person is deemed to have a place of residence in Poland and therefore a Polish tax resident if he/she has centre of economic or personal interests (centre of vital interest) located in Poland or spends more than 183 days in a tax (calendar) year on the territory of Poland. Polish tax residents are subject to personal income tax on their worldwide income, however, worldwide taxation may be limited by the provisions of a tax treaty.

Tax treatment of non-resident individuals

If none of the above conditions are met, in accordance with the Personal Income Tax Law the individual is considered a person who does not have a place of residence in Poland and therefore is a Polish tax nonresident. Individuals considered tax nonresidents in Poland are subject to limited tax liability in Poland, i.e. only income derived from the Polish sources / earned on the territory of Poland is subject to taxation. Individuals considered non-residents may benefit from preferential taxation on certain types of income including board fees, management contracts, other types of civil law contracts and royalties. Such income received by non-residents is subject to a 20% flat rate (in comparison to the progressive taxation of such income derived by tax residents).

Tax treatment of families

Individuals (married couples) satisfying the conditions stipulated in the Personal Income Tax Law, may elect to file joint spousal tax return. Similar preferential taxation regime is available for single parents. The income of a minor child is added to that of a resident parent.

6.2 Taxable income

Taxable income includes most cash and non-cash benefits. 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;
- income from activities carried out by a Controlled Foreign Company;
- unrealized gains (for exit tax purposes);
- other income.

Income from dependent services mainly consists of employment income, including 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 on the basis of a company's resolution is treated as income from independent services.

A capital gain consists of taxable investment income such as dividends, interest and proceeds from sale of securities, income from cryptocurrencies.

Unrealized gains which can fall under exit tax may result from move of a property out of Poland or obtaining Polish tax nonresident status.

In particular, income such as per diems, refund of business travel expenses, cost of professional training if requested by the employer, is exempt from taxation (free of tax) up to the limits set forth in the Personal Income Tax Law.

6.3 Deductions and reliefs

Taxpayers may deduct from taxable income donations to institutions pursuing public welfare goals up to the limit of 6% of taxable income (only in case of donations made to church organizations for charitable purposes, the deduction has no limits). Certain expenses incurred for thermomodernization for own housing purposes may be deducted from taxable income (up to specified limits). Due to COVID-19 pandemic, donations made to counteract COVID-19 may be also subject to deduction from tax base in accordance with the guidelines defined in Personal Income Tax Law. Employee's social security contributions are fully income 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. Child tax deduction – additional relief applicable for parents bringing up the children reducing the amount of tax due in Poland.

6.4 Personal income tax rates

The personal income tax rates are progressive and range from 17% to 32%, although individuals carrying out business activities may opt for special rules under which a 19% tax rate generally applies (with certain limitations).

Investment income, such as dividends and interest is subject to tax at a flat rate of 19%, rather than the progressive rates. Capital gains, including proceeds from the sale of shares (revenue from disposal less cost incurred), are generally subject to a 19% rate. Gains derived from the sale of real estate (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 end of the five-year period, 19% tax is due on gain derived from such a disposal (with the possibility to apply tax exemption if conditions indicated in Personal Income Tax Law are fulfilled).

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

Unrealized gains resulting from a change of tax residency by an individual or a transfer of an asset outside the territory of Poland (if as a result of the change or residency or a transfer Poland would lose the right to levy tax on income potentially derived from the sale of the asset) can be subject to exit tax. The rates amount to 19% (if the tax value of an asset is determined) or 3% (if the tax value of an asset is not determined). The exit tax for individuals is applicable only if the total value of assets (transferred) exceed the PLN 4 million in aggregate.

Individuals whose annual earnings from selected sources of income are in excess of PLN 1 million are subject to solidarity charge of 4% (on the excess income above PLN 1 million). Income derived by individuals under 26 years old from public-service relationship, employment contract, home-based work, co-operative employment and contract of mandate is exempt from taxation up to the limit of PLN 85,528 per year.

Depending on total amount of taxable income derived by the taxpayer in the course of the tax year amount reducing tax liability may vary from PLN 1,360 to PLN 0 (no amount reducing tax liability is applicable if an individual's taxable income exceeds PLN 127,000).

6.5 Statutory costs

In Poland it is possible to lower the taxable base with tax deductible costs which are different depending on the type of the contract. In general in case of employees monthly tax deductible costs amount to PLN 250.00 (PLN 300.00 for employees working outside of their place of residence). If the individual is performing work based on management contract or appointment the monthly tax deductible costs are on the level of PLN 250.00. However, in case of contract of mandate and contract of specific work, the tax deductible costs amount to 20% of the remuneration lowered by the social security contributions in some cases. It is also possible to apply the tax deductible costs on the level of 50% of the remuneration lowered by the social security contributions in case of receiving the remuneration for transfer of copyrights. The annual maximum deduction is capped at PLN 85,528.

6.6 Social insurance contributions

EU social insurance regulations have applied since the accession of Poland to the EU in 2004. Based on the general rule resulting from the EU legislation, contributions are made to the social insurance system of the country where work is actually performed.

The Polish social insurance system encompasses old-age pensions and insurance against disability, illness and accidents. Health insurance contributions are also levied.

Poland has a three-pillar pension system in place, under which both the employee and the employer make contributions to the first and second pillar. For details regarding social insurance rates and brackets, please refer to the attached table.

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 a gross income less the employee's portion of the social insurance contribution.

An important change in pension system in Poland has been implemented, which assumes introduction of Employees Capital Plans (PPKs). Based on PPK regulations, the employee is to pay generally between 2% and 4% of wages, while employers are to pay between 1.5% and 4%. With certain exceptions PPKs have been gradually implemented by all employers starting from 1 July 2019 (the last group of employers was obliged to introduce PPKs starting from 1 January 2021).

The personal tax rates for 2021 are as follows:

Taxable base	Tax	
Up to PLN 85,528	17% of taxable base	minus amount reducing tax liability (depending on income level). It may vary from PLN 1,360 to PLN 0
Over PLN 85,528	PLN 14,539.76 plus 32% of excess over PLN 85,528	

6.7 Inheritance and gift tax

In general, inheritance and gifts are not taxed if the inheritance occurs or gifts are exchanged among the closest family members, i.e. spouses, descendants, ascendants, siblings, step children and step parents, provided that they comply with specific reporting obligations.

Other than that, the tax payers are divided into 3 groups depending on the closeness to the person from whom inheritance or gift is received:

Group 1: spouses, descendants, ascendants, siblings, step-children, stepparents, children-in-law, parents-in-law;

Group 2: descendants of siblings, siblings of parents, descendants and spouses of step-children, spouses of siblings, siblings of spouses, spouses of siblings of spouses, spouses of other descendants;

Group 3: other.

6.8 Net worth/wealth tax

Poland levies a net wealth tax in the form of solidarity tax, to be paid by individuals whose income exceeds PLN 1 000 000. The tax rate equals 4% and relates to the excess of the applicable threshold.

In Poland it is possible to lower the taxable base with tax deductible costs which are different depending on the type of the contract.

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

Surplus (in PLN) over amounts exempted*		Tax liability (in PLN)
over	up to	
group 1 recipients		
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 2 recipients		
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 3 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. Personal income tax charged on foreign individuals

7.1 General tax rules

Main PIT compliance requirements applicable to foreign individuals in Poland	
Registration for tax purposes, if PESEL is not applicable	Needs to be performed in the relevant tax office before the date when first PIT advance is due
Tax free amount	Tax free amount differs depending on total income derived by the taxpayer and is reduced along with the increase of individuals income (no tax free amount applies if the taxpayer derives taxable income in excess of PLN 127,000)
PIT progressive rates (applicable e.g. to employment income or income on dependent services)	17% and 32% for the excess over PLN 85,528
PIT flat rate (applicable to board members, being Polish tax non-residents upon fulfillment certain requirements)	20%
PIT flat rate (applicable e.g. to interest, capital gains)	19%
Exit tax	19% (3% in specific cases)
Solidarity charge	4% of the excess income over PLN 1,000,000
Monthly tax compliance	PIT advances for a given month to be paid by the 20th day of the following month
Annual tax compliance	Annual tax return for a given year to be submitted by 30 April of the year following the given year (with some exceptions)
Relevance of the tax authorities	Both registration form as well as payment of PIT liabilities and submission of annual PIT return should be made to the tax office relevant depending on the residency status of the individual. For individuals considered Polish tax non-residents the tax office should be determined by virtue of their place of stay at the territory of Poland or if they perform work in more than one voivodeship (and accordingly stay in various places) the applicable tax office is the 3rd Tax Office Warszawa Śródmieście. In case of Polish tax residents the relevance of the Tax Office is determined by virtue of place of residence at the territory of Poland.

7.2 Tax residency

Foreign individuals arriving in Poland may become Polish tax residents if their center of economic or personal interest (center of vital interest) moves to Poland or if they spend in Poland more than 183 days in a tax year.

Foreign individuals having the 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 considered non-residents for tax purposes in Poland have a limited tax liability status in Poland, i.e. they are subject to taxation in Poland only with respect to income earned in the territory of Poland (Polish source income).

It should be noted that the above provisions should be applied taking into account provisions of Double Tax Treaties Poland is a party to. These provisions should be applied in particular in order to determine the tax residency status of the individual as well as to avoid double taxation of income derived by the Polish tax resident from sources located outside of Poland.

7.3 Legal basis for the right to work in Poland

Employment contract with a Polish entity

Regardless of the tax residency status of foreign individuals, income received by them under an employment contract concluded with a Polish entity is always subject to PIT in Poland at progressive rates at 17% and 32%. The Polish employer is obliged to pay monthly PIT advances on the aforementioned income calculated at progressive PIT rates. Foreign individuals are obliged to calculate their final annual tax liability for a given year as well as submit their annual PIT returns by 30 April of the following year.

Foreign employment contract and secondment to Poland

Polish tax non-residents

Foreign individuals who work in Poland based on the employment contracts concluded with non-Polish entities are personally responsible for all PIT compliance activities required by the Polish PIT law, i.e. neither the foreign employer nor the host entity have any obligations in respect of taxation of their income (Polish entity may be, however, obliged to file ORD-W1 form notifying the authorities of the individual working for its benefit and deriving income for such work from a foreign company). In addition, the foreign company may be required to comply with the obligations resulting from the Act on posting of the employees to Poland in the framework of performance of the services (such as, e.g. the obligation to notify Polish Labour Inspectorate of the assignment of the employee to Poland).

Please note that the taxable income for purposes of PIT in Poland 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 the host entity along with or in place of salary are taxable as regular employment income. As a rule, income earned by foreign individuals in Poland is subject to PIT starting from the first day of their stay in Poland. Nevertheless, in case all conditions stipulated in the relevant Double Tax Treaty are met simultaneously, income derived by the Polish tax non-resident may not be subject to PIT. The said situation may take place provided that:

- presence in Poland lasts in the aggregate less than 183 days during a particular tax year or 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 (however, it should be noted that an appropriate analysis of the 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.

If one of the above conditions is not met, remuneration paid under a foreign employment contract is subject to progressive PIT taxation in Poland as of the first day of their stay in Poland. PIT advances on income derived under a foreign employment contract should be paid on a monthly basis for the months, in which the aforesaid income was received (except for income derived in December in which case no tax advance is due and income is taxed only in the annual tax return). PIT advance for a given month has to be paid by the 20th day of the following month at 17% PIT rate (32% rate may be also applied) but at the moment of filing of the annual tax returns foreign individuals are obliged to calculate their total annual tax liability using progressive PIT rates. As a rule the annual PIT return should be filed with the authorities by 30 April of the following year (only in the case when the taxation in Poland is dependent on the excess of 183 days of physical stay in Poland in a twelve-month period the filing deadline may be set differently - in case of Polish tax non-residents). Only income related to work performed in Poland is reported for purposes of PIT in Poland.

Polish tax residents

In general, the same rules applicable to Polish tax non-residents as mentioned in point a) above should apply to foreigners who are Polish tax residents (with the reservation that it is not possible to apply Treaty exemption towards income derived for work exercised in Poland). As a consequence, foreign individuals being Polish tax residents are personally responsible for all PIT compliance activities required by the Polish PIT Law, i.e. neither the foreign employer nor the host entity have any tax obligations in this respect. The Polish entity, on the other hand, may be obliged to file ORD-W form and the foreign employer may be required to notify Polish National Labour Inspectorate and comply with the regulations on assignment of foreign individuals to Poland in the framework of performance of services. Please note that taxable income for purposes of PIT in Poland 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 the host entity along with or in place of salary are taxable as regular employment income.

PIT advances on income received under a foreign employment contract should be paid on a monthly basis for the months in which the income in question was received (except for December). PIT advance for a given month should be paid by the 20th day of the following month. The monthly tax advances are generally payable at a rate of 17% (32% rate may be also applied) of income received in a given month, while the year-end final reconciliation is made at progressive PIT rates. Foreign individuals are also obliged to submit their annual PIT return by 30 April of the following year. The worldwide income received by a foreign individual is reported for purposes of PIT in Poland.

Board members

Polish tax non-residents

Income earned by foreign individuals, being Polish tax non-residents and appointed as members of the management board of a Polish entity based on the relevant shareholders' resolution, may be subject to 20% flat rate taxation in Poland. All PIT compliance obligations related to this scheme are performed by a Polish entity of which the individual is a board member.

Polish tax residents

If a foreign individual being a member of the management board of a Polish entity became a Polish tax resident, income received from the membership in the management board based on the relevant shareholders' resolution would be subject to progressive PIT taxation in Poland. In such a case, the Polish entity would be obliged to pay monthly PIT advances on the aforesaid income calculated at the rate of 17% (upon the taxpayer's choice, 32% PIT rate can also be applied) while the year-end final reconciliation is made at progressive PIT rates of up to 32%. Foreign individuals in this case would be also obliged to submit the annual PIT returns until 30 April of the following year.

PIT advances on income received under a foreign employment contract should be paid on a monthly basis for the months in which the income in question was received (except for December).

8. Withholding taxes

Type of income	Rate
Dividends	19%
Interest	20%
Royalties	20%
Fees	20%
Branch profits tax	-

Above rates may be reduced / eliminated under the PSD/IRD or respective DTT

8.1 New rules regarding mechanism of collecting WHT

As of January 1, 2019, the mechanism of collecting WHT and its return allows - in relation to significant withdrawals (i.e. over 2mPLN per year) – stricter verification of the conditions for the use of preferential taxation rules based on double taxation treaties or exemptions resulting from the EU directives. This includes e.g. i) statement signed by the management board confirming that the Polish Company is in possession of all required documents to apply exemption or reduced WHT rate and the recipient of payment is beneficial owner of the payment is submitted to the tax office or ii) advanced tax opinion issued by the tax authorities confirming that it is allowed to apply exemptions from WHT in certain cases.

In case the Company will not submit such a Statement or obtain the Advanced opinion, the WHT should be withheld and the refund procedure (that may take up to 6 months) has to be taken, which in practice may affect the cash flow of the Group/company significantly (depending on the value of flows).

When determining whether a double tax treaty rate or exemption can apply, the tax remitter is obliged to assure **due care** in terms of fulfilling the requirements, in particular as regards beneficial ownership of the payment. Appropriate due care will be assessed taking into account the nature and scale of the remitter's business activity.

Please note that the new WHT collection rules have been temporarily and partially suspended (till June 30, 2021).

8.2 Beneficial owner clause

In case beneficial owner clause applies Poland introduced additional measures aimed at incorporating a comprehensive 'background check' of entities seeking to benefit from applicable tax exemptions / reduced WHT rates. A key aspect involves adequately demonstrating that the recipient of the payments constitutes a beneficial owner (in the light of very detailed definition of the beneficial owner provided in domestic CIT regulations). Consequently, detailed analysis of the recipient of payment status (including business substance) is required, as it may affect the final possibility to apply for the WHT exemption or the WHT refund.

8.3 Dividends

Dividends paid by Polish companies are subject to 19% withholding tax, unless a tax treaty providing for a lower rate or the PSD applies. The PSD applies in case certain conditions are met, *inter alia*, where the recipient company has held at least 10% of shares in the Polish payer company for at least two years. The same exemption generally applies to dividends and capital gains paid to the other Polish corporates. Dividends paid to a Polish resident individual are subject to 19% withholding tax.

8.4 Interest

The withholding tax on interest paid to nonresident and resident individuals is 20%. The rate on payments to non-residents may be reduced or eliminated under a tax treaty or under IRD. IRD applies provided certain conditions are met, inter alia, where the recipient company holds at least 25% of shares in the Polish payer company and the recipient is a beneficial owner of the payment.

8.5 Royalties and service fees

A 20% withholding tax is imposed on royalties paid to non-residents and resident individuals. Similarly as in case of interest, this standard rate may be reduced or eliminated under a tax treaty or under IRD.

Fees paid to non-residents for certain intangible services (e.g. advisory services, market research, legal services, data processing) are also subject to 20% withholding tax. As a general rule, under most of the tax treaties signed by Poland, such payments are classified as business profits and, therefore, no withholding tax would be due in case certain conditions are met.

8.6 Certificates of residence

Having of certificate confirming tax residence of payment recipient is one of the most basic obligations to apply preferential treatment resulting from treaty / domestic regulations. There are certain formal requirements provided as regards validity of tax certificates obtained by the Polish entities. Starting from 2015, if the location of the taxpayer's seat for taxation purposes has been documented by a certificate of residence which does not specify the period of its validity, the document is valid during the period of 12 months since the date it was issued. If, during the 12-month period, the location of the taxpayer's seat for taxation purposes has changed, the taxpayer is obliged to obtain a new certificate of residence. If the taxpayer fails to fulfil his responsibilities, he / she is responsible for non-collected tax or tax collected in improper amount. According to the interim provisions of the amending act, if the taxpayer's seat was documented by a certificate of residence without a specified validity period, issued before January 2015, the taxpayer has to take into consideration this certificate of residence for the next 12 months as of the certificate issue date.

In general, taxpayer should provide the originals of tax certificates (i.e. hard copy issued by tax authorities of the residence country). The possibility of using copies of tax residence certificates is available only in case of intangible services, not exceeding amount of PLN 10.000 per calendar year (for a single entity), provided the information resulting from the submitted copy of the residency certificate does not raise reasonable doubt as to compliance with the actual state.

A 20% withholding tax is imposed on royalties paid to non-residents and resident individuals. Similarly as in case of interest, this standard rate may be reduced or eliminated under a tax treaty or under IRD.

9. Assessment, payment and appeals

9.1 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 and notify the appropriate tax office accordingly.

Assessment

A tax return for a tax year is subject to adjustment by tax authorities in principle for five years as 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 under certain circumstances. The above rule applies also to collection of tax.

9.2 Returns

Individuals are required to file a tax return disclosing the aggregate annual income as of the end of the tax year (i.e. calendar 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 (if 30 April is a Saturday, Sunday or a public holiday, the deadline is moved to the working day immediately following that day). No extensions are possible.

Married couples may file a joint tax return if they have unlimited tax liability and if they adopted a statutory matrimonial joint-ownership scheme for the entire tax year. Joint tax returns also apply to single parents with dependent child or children. Individuals subject to solidarity charge or exit tax are required to file separate declarations regarding these charges. Exit tax have an early filing requirement (by 7th day of the month following the month when the aggregate value of assets sold or transferred exceeded the amount of PLN 4 million).

Companies are required to file a tax return disclosing the aggregate annual income as of the end of the tax year. The deadline for filing the tax return and paying the tax liability is the end of 3rd month following the end of tax year. In case of entities (which FY equals to a calendar year), the first CIT return filing should be made till March 31, 2021. No extensions are possible.

9.3 Payment of tax

Companies are required to make monthly advance payments of corporate income tax by the 20th day of the following month, and advance payment based on the cumulative taxable income or tax loss for the tax year.

A simplified tax calculation and monthly tax advance payment system is permissible in some cases. The taxpayers are allowed to make advance monthly tax payments amounting to 1/12 of tax due as disclosed in the tax return filed in the year preceding the tax year. Should this tax return disclosed a tax loss, the monthly advance payments may be calculated as 1/12 of the tax due revealed in the tax return filed in the year prior to that year. Therefore, simplified advance payments for the 2021 calendar tax year may be calculated based on the tax due for 2019 or – if there was no tax due in the year 2019 – based on the tax return for the year 2018.

9.4 Tax strategy

Starting from January 1, 2021 a general obligation to prepare and publish a report on the implementation of the tax strategy will cover: (i) taxpayers whose revenues exceeded EUR 50 million in the tax year, as well as (ii) tax capital groups and its member companies.

The scope of the report is comprehensive and covers an open catalog of information. In addition, although it does not result directly from the new regulations, the above obligation may indirectly indicate the necessity to prepare such a corporate tax strategy in advance, as well as to structure and formalize processes and procedures for managing and ensuring the correct performance of obligations under tax regulations. Taxpayers will have 12 months from the date of submitting the annual CIT return to publish the report. Those who fail to fulfil the above obligations shall pay an administrative fine of up to PLN 250.000. In practice, noncompliance may also result in potential Penal Fiscal Code liability.

9.5 Appeals

In general, tax proceedings ends with a decision, which may be challenged by an appeal filed within 14 days of the delivery of the decision to the taxpayer. Following the appeal, the tax case is reconsidered by (i) the second-instance tax authority (higherrank tax authority; in most cases by the Director of Tax Administration Chamber), or (ii) by the same authority in case of a decision issued by a Head of Customs and Fiscal Office concluding the tax proceedings initiated after customs-fiscal control. After the appeal, the tax authority may uphold or repeal the first-instance decision or discontinue the proceedings. In particular, the second-instance tax authority may amend the challenged decision in full or in part, or return the case for reconsideration to the first-instance tax authority.

The second-instance decision is final and may not be challenged by an administrative appeal, although proceedings before an administrative court are possible.

A complaint to a regional administrative court (WSA) may be filed against such a decision within 30 days of its delivery to the taxpayer. If the verdict of the regional administrative court is negative, the taxpayer – within 30 days of the delivery of this verdict with its written justification – may file a complaint against the verdict with the Supreme Administrative Court (NSA).

In certain cases, when provisions of law do not provide for any means of administrative appeal against a decision of tax authorities (e.g. in case of individual tax interpretations), a complaint is submitted directly to the regional administrative court within 30 days of delivery of the decision without previous administrative appeal.

The Polish tax law also provides for extraordinary measures against final tax decisions: declaration of invalidity of the decision, annulment or change of the final tax decision, as well as resumption of the proceedings.

9.6 Tax audits

Tax authorities may verify whether taxes are calculated and paid correctly.

After 1 March 2017 there are two main methods of the above-mentioned verification: (i) tax control (kontrola podatkowa) governed by the Polish Tax Ordinance and (ii) customs-fiscal control (kontrola celno-skarbowa) governed by the National Fiscal Administration Act. If the taxpayer does not correct its tax settlements after the control, the tax authorities initiate the tax proceedings concluded by the tax decision.

Additionally, in practice, tax authorities may also demand explanations without commencing a formal tax control / tax inspection. In general, the frequency and duration of inspections of Polish entities / entrepreneurs (in particular, tax controls) carried out by government agencies are limited. Consequently, Polish enterprises and entrepreneurs cannot be subject to more than one inspection at the same time and such an inspection cannot exceed a limit of 12 to 48 working days (the exact number of days depends on the size of the controlled entity). Nevertheless, there is a number of statutory exceptions in this respect and this limit does not apply to customs-fiscal control.

The tax control should be initiated no earlier than after the lapse of 7 days and no later than before the lapse of 30 days from the service of the notification of the intention to initiate the tax control. If tax control is not initiated within 30 days from the said notification, the effective initiation of inspection requires another notification. However, in some cases tax authorities may initiate a tax control at the taxpayer's premises without any advance notice. On the other hand the customs-fiscal control is initiated without any prior notification.

In principle, tax authorities may control tax settlements of a taxpayer within five years of the end of the calendar year in which the tax payment date expired (e.g. the tax settlements with payment due date in the 2017 calendar tax year may be controlled until 31 December 2022). Please note that in case of the tax settlements that arise due to the serving of the decision fixing such

obligation, the limitation period lapses 3 years from the end of the calendar year in which the tax liability arose.

The tax control ends with a control protocol. If a controlled entity does not agree with the conclusions formulated in the control protocol, it can present its reservations and explanations within 14 days of the receipt of the control protocol. Generally, if the authorities identify an infringement of the tax law, they may no later than within six months of the end of the control initiate formal tax proceedings that are concluded by a decision.

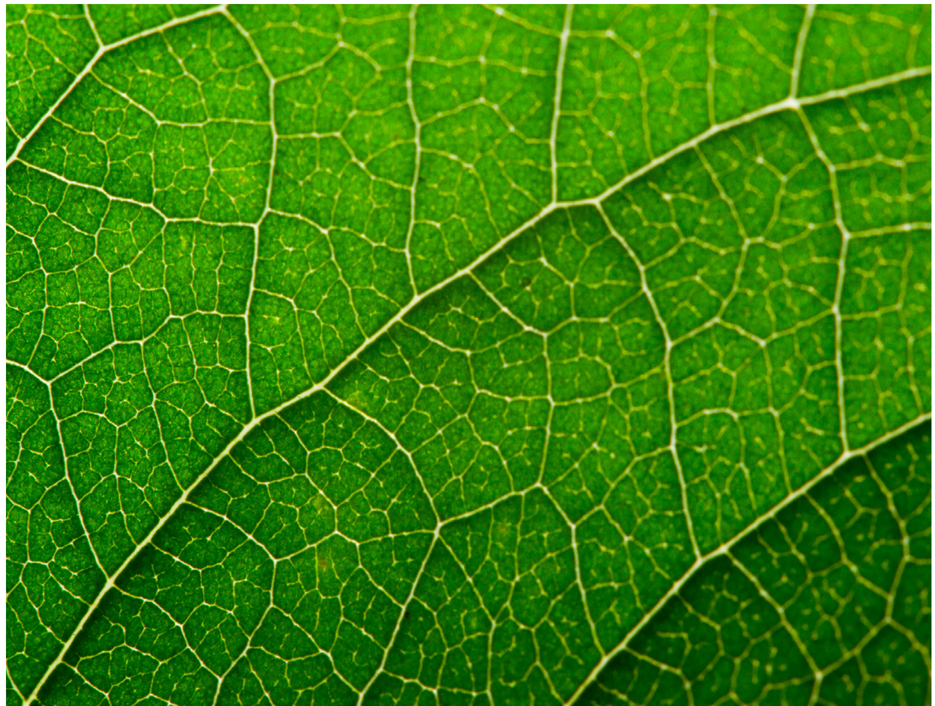
A customs-fiscal control ends with a result of the control. If a controlled taxpayer does not correct its settlements according to the findings of the result of the control, the customs-fiscal control converts into tax proceedings that is concluded by a decision.

If the controlled entity does not agree with the decision, it can file an appeal against it within 14 days of the date of receipt of the decision. Director of tax administration chamber considers appeals against decision issued in tax proceedings subsequent to tax control, while appeal against decision issued after customs-tax control is considered by the same authority that issued a decision.

Please note, that as a rule during the tax control, customs-fiscal control, and tax proceedings the taxpayer's right to correct tax settlements that are being controlled is suspended. The exception in customsfiscal control is 14-days period (i) from the day the control is initiated, and (ii) from the day the result of the control is served. Please note that it is also possible to correct the tax settlement (i) after the notification concerning tax control is served, but before the tax control is formally initiated, and (ii) after the tax control was concluded, but before the tax proceedings were initiated.

According to recent statements from the Ministry of Finance, the focus of the tax authorities is on transactions between related parties (transfer pricing issues), VAT frauds, and tax restructuring. Moreover, traditionally, tax audits usually cover:

- Validity of the VAT refund.



- Possibility to correct excise duty resulting from post-transaction rebate.
- Correctness of settlements concerning the use of a trademark.

9.7 Penalties and interest

Late payments result in interest charges at the annual rate being a sum of 200% of the Lombard rate (stopa lombardowa, announced by the National Bank of Poland) plus 2% (the rate calculated in this way cannot be lower than 8%) on the amount of any tax arrears (in January 2020 annual penalty interest is 8%). A taxpayer may be eligible for a preferential penalty interest rate (50% of the standard penalty interest rate) if it adjust its tax settlements no later than 6 months after the tax return filing deadline and pays the outstanding tax liability in full within seven days of the adjustment date. Please note, that the reduced default interest rate shall not apply to the tax return correction (i) filed after serving a notification of the intention to initiate tax control, and in the cases where the notification shall not apply – after the completion of tax control, (ii) after initiation of customs-fiscal control, and (iii) made as a result of informal inspection acts of tax authorities. Also under certain conditions, with respect to VAT and excise arrears an aggravated interest rate (150% of the usual rate) may be applicable.

Additionally, if the tax authorities identify an infringement of the tax law (which is either an offence or a minor offence under the Polish Penal Fiscal Code), they may try to hold the taxpayer (in the case of individuals) or the company's representatives (in the case of companies) liable for the infringement. The maximum amount of the fine that may by imposed under the Penal Fiscal Code in 2020 is approx. PLN 24 960 000 PLN (can be aggravated up to 37 440 000 PLN) while the imprisonment may be adjudicated up to 5 years (can be aggravated up to 10 years). Additionally, under the rules on 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 imposed on the taxpayer. A penalty may be imposed in the amount of PLN 1 000 PLN to PLN 5 000 000, not exceeding, however, 3% of the revenue earned in the financial year in which the prohibited act forming the grounds for liability of the collective subject was committed.

10. Value added tax

10.1 General

Value Added Tax on goods and services is a broad-based tax levied on the supply of goods and services in Poland.

Polish VAT regulations are based on EU directives.

10.2 Taxable supply

VAT is imposed on the supply of goods and the provision of services in Poland for consideration, the import of goods into Poland, export of goods, Intra-Community acquisition of goods and Intra-Community supply of goods, unless the transaction is exempt.

10.3 Rate

The standard rate of VAT is 23%, and it is charged on most goods and services. A reduced rate of 8% or 5% is used for supplies, such as certain foods, medicines, hotel and catering services, certain transport services, municipal services, etc.

A zero-rate applies to the intra-Community supply of goods, exports of goods, some international transportation and related services. Usually, in order to apply the zero VAT rate, additional conditions need to be fulfilled.

Some financial, medical and cultural services are exempt, which means that the taxpayer is unable to recover the input VAT incurred on purchases connected with such transactions. As of 1st July 2020 a new VAT rates matrix (VAT rates tables) including reduced rates for goods and services came into force in Poland. In case of some products like food, hygiene products it leads to significant change of VAT rates. The changes in VAT rates apply also for the supplies of e-books and e-magazines (the VAT rate for e-books is reduced from 23% to 5% and in case of e-magazines the change is from 23% to 8%)[1].

Additionally, the new rules provide introduction of an entirely new instrument - Binding Rates Information (in Polish "Wiążąca Informacja Stawkowa" – "WIS"), which enables taxpayers to confirm proper VAT rate for goods and services. As of 1st January 2021 issuance of WIS is not be possible in case of pending tax proceedings, control or a decision or ruling in this respect. Moreover, due to the recent legislative amendments, WIS shall be valid only for 5 years from the date of its issuance.

10.4 Registration

A Polish entity is required to register for VAT purposes once its annual turnover on transactions subject to VAT exceeds PLN 200,000. Foreign entrepreneurs have to register for VAT purposes 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 is liable to

1 Provisions regarding reduced VAT rates for e-books and e-magazines applied from 1 November 2019.

pecuniary penalty for a fiscal offence at an amount determined separately in each case (multiples of the lowest monthly salary).

10.5 VAT grouping

No VAT grouping schemes are provided for by the Polish VAT provisions. However, Polish legislator plans to implement new regulations in this respect, which are currently the subject of consultation with European Commission.

10.6 Compliance

Invoicing

Transactions between VAT taxpayers have to be documented with invoices. The Polish VAT law defines precisely the information that should be included in invoices. In general, an invoice should contain at least the following 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*;
- a number based on which a taxpayer is identified for VAT purposes;
- a number based on which the purchaser of goods or services is identified for VAT purposes, under which he received goods or services
- sequential number of the invoice that identifies the invoice;
- date of issue;
- date of supply of goods or services or the date of receipt of the prepayment in case this date is determined and differs from the date of issue;
- name (kind) of goods or services;
- unit of measure and quantity of the goods sold or scope of the services rendered*;
- unit price of the goods or services without VAT (net unit price)*;
- value of the potential rebates, including those related to earlier payment, if they were not included in the net unit price;
- value of the goods or services sold without VAT (net value)*;
- VAT rate*;
- total net value of the goods sold or services rendered, broken down by individual VAT rates and tax exemptions*;
- VAT amount on total net sales value, broken down by individual VAT rates*;
- total amount due with the VAT amount due.

Please note that if the total invoice amount does not exceed PLN 450 or EUR 100 (if the invoice is issued in EUR), so called simplified invoices may be used. Simplified invoices may not include elements of the invoice that are marked with "*" in the above list provided that the invoice includes information necessary to determine the value of VAT in relation to particular VAT rates.

Moreover, in case of specific transactions (e.g. covered by reverse-charge mechanism or split payment mechanism) some additional data is required.

Invoices issued based on fiscal receipts

Starting from 1st January 2020 new regulations regarding invoice issuance (on the basis of receipts) entered into force in Poland. From 1st January 2020, in order to issue an invoice to VAT taxpayers based on cash register receipt it is required to include the purchaser's VAT ID number (i.e. the NIP number in case of Polish purchasers) on the cash register receipt.

The said rule only applies to the B2B transactions (i.e. transactions between VAT taxpayers). In the case of B2C transactions (i.e. between VAT taxpayer and consumer being not VAT taxpayer) the rules concerning the issuance of invoice have been not changed. It means, it is possible to issue an invoice to a consumer based on the cash register receipt according to the existing rules, i.e. without VAT taxpayer identification number on the receipt (invoice for consumer, not for VAT taxpayers).

The new rules introduced also sanction amounting to 100% of VAT indicated on the invoice for violation of the abovementioned rules both for a seller issuing such an invoice, as well as an acquirer which reports such an invoice in its VAT register / deducts input VAT based on it.

EU VAT package

In January 2010, Polish VAT provisions were amended to accommodate the VAT package introduced into EU legislation. In general, the Polish provisions reflect the VAT Directive in this respect and services are subject to VAT in the country where the recipient of the services is established (with certain exceptions, for example concerning the services related to immovable property).

VAT registration/deregistration

In case when the registration documents were submitted by the proxy, the proxy is held jointly responsible for all tax arrears of the represented entity which have occurred within the 6-month period following the registration of that entity as an active VAT-taxpayer. The amount of this joint responsibility cannot exceed PLN 500,000. This responsibility would not be applicable in case the arrears did not result from unreliable tax settlements aimed at achieving tax benefits.

The tax authorities may cross out the taxpayer from the VAT taxpayers register without prior notification if i.a. the taxpayer does not exist or despite documented attempts it is not possible to contact the taxpayer or its proxy.

Moreover, the tax authorities may cross out the taxpayer from the VAT taxpayer register when the taxpayer i.a.:

- did not submit VAT returns for the quarter/3 subsequent months - unless when summoned the taxpayer will prove that it conducts business activity and submits all of the outstanding returns;
- submits NIL VAT returns for the 2 subsequent quarters/6 subsequent months – unless the taxpayer explains to the tax authorities that NIL returns are triggered by the specifics of conducted business activity;
- issued empty invoices - unless this resulted from mistake or was made without the taxpayer's knowledge;
- could have assumed that is involved in unreliable tax settlements aimed at achieving tax benefits.

Filing

Starting from 1 October 2020, the VAT returns and previous SAF-T file (JPK_VAT) has been replaced by new SAF-T file, i.e. JPK_V7, which is an electronic document consisting of VAT register and VAT return. All Polish VAT taxpayers are obliged to submit JPK_V7 on a monthly (JPK_V7M) or quarterly (JPK_V7K) basis. Quarterly JPK_V7K can be filed by so called 'small taxpayers', except i.a. for the period of first 12 months following the registration or in cases when the value of the goods to which joint responsibility applies (e.g. supply of certain types of steel products) exceeds certain thresholds.

Additionally, registered VAT EU taxpayers performing intra-Community 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 basis (quarterly EC Listings reporting is not available). As of 1st January 2018 all taxpayers should submit their EC listings via electronic communication means.

JPK_V7

The new JPK_V7 files comparing to the previous JPK_VAT extend the information provided for tax authorities. New regulations introduced codes for identification of groups of certain goods and services sold by the taxpayer (so called GTU codes). These codes are aimed at identification of those goods / services that are exposed to frauds i.a. alcoholic drinks, engine gasoline, diesel, tobacco products, electronic devices, parts of vehicles or services of non-material nature such as consulting, accounting, legal, management, marketing etc.

There are also specific codes identifying certain transactions. They refer e.g. to chain transactions, triangular transactions or call-off-stocks. Moreover, the codes are applicable i.a. to transfer of single purpose vouchers (SPV's), transactions subject to split payment mechanism, with related parties and some customs procedures. Furthermore, Under the new JPK_V7 structure, taxpayers are obliged to put some additional information on document types in the sale or purchase registers.

The new regulations on JPK_V7 provide for penalties amounting to 500 PLN for incorrectness identified in file submitted. Penalties are to be imposed for each error, which makes it impossible to verify the correctness of transaction (the fine applies, if the error is not corrected within 14 days from the tax authorities notification).

JPK files

According to the VAT regulations, the taxpayers are obliged to provide other JPK files on the tax authorities' request. The specification of JPK files determines the following types of data:

- Accounting books,
- Bank account statements,
- Warehouse records,
- VAT invoices,
- Revenue and expense ledger,
- Record of revenue.

VAT neutrality on intra-Community Acquisition (ICA) and other reverse charge transactions

The right to recover input VAT on ICA arises upon taxpoint occurrence, provided the taxpayer:

- reports output VAT in the correct reporting period not later than within 3 months as of the end of the month in which taxpoint on ICA arose and
- receives the invoice documenting ICA within 3 months as of the end of the month in which taxpoint on ICA arose.

Similar requirement of reporting output VAT in the correct reporting period not later than within 3 months as of the end of the month in which taxpoint arose has been implemented in relation to other self-charge transactions, such as reverse-charge on import of services as well as deemed ICA of goods.

The abovementioned Polish VAT provisions on reporting of self-charge transactions are subject to preliminary ruling before Court of Justice of the European Union (case no. C-895/19). Depending on the outcome of CJEU verdict, way of settling self-charge transaction may change.

Payment/refunds

The tax due to the tax authorities is calculated as output VAT less input VAT on purchase amounts invoiced.

As a rule, the surplus of output VAT over input VAT has to be paid within 25 days of the end of the month in which the VAT obligation arose (for small taxpayers who submit quarterly VAT returns, the VAT due must be paid within 25 days of the end of the quarter in which the VAT obligation arose). If input VAT exceeds output VAT, a VAT refund is generally available.

The standard term of obtaining VAT refund is 60 days from the date of submitting the tax return (or its correction). However, the refund term may be prolonged by the tax authorities if they have any doubts with respect to making refund.

Penalties

In general, if the obligations binding upon Polish VAT taxpayers are not fulfilled, the tax authorities may impose penalties as 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.

VAT sanction

VAT sanction in the amount of 30% of the arrear can be applied in case it is identified in course of the audit or tax proceedings that the taxpayer:

- understated the amount of VAT liability;
- overstated the amount of VAT refund;
- overstated the amount of excess input VAT to be carried forward;
- reported VAT refund whereas the taxpayer was in a payable position.

The above sanction does not apply in case of minor mistakes made by the taxpayer and too late/too early reporting of transactions, as well as in case when prior to opening the VAT audit the taxpayer corrected its VAT returns and settled the arrears along with the penalty interests. Moreover, under certain circumstances the 30% VAT sanction may be reduced to 20% or 15%.

The tax authorities may also impose VAT sanction in the amount of 100% of input VAT resulting from the invoices issued by a non-existing entity or in case of so called 'empty invoices'. It should be noted the VAT sanction is applicable starting from VAT settlements for 2017.

10.7 Obligatory split payment mechanism

Starting from 1 November 2019, the regulations regarding introduction of obligatory split payment mechanism entered into force in Poland.

In general, with use of the split payment mechanism the payment for the acquired goods / services is divided into two portions: net amount and VAT – each part is transferred to separate account of the supplier.

The obligatory split payment mechanism encompasses payments arising from the invoices documenting transactions between taxpayers (B2B):

- one-off value of which, regardless of number of payments arising from them, exceeds 15 000 PLN or its equivalent in foreign currency, and
- which concern goods or services listed in new Appendix no. 15 to the VAT Act. In general, that appendix covers goods and services that are exposed to frauds. In addition the mechanism is relevant for sale of i.a. coal and other coal products, parts and accessories to vehicles as well as machines and electronic devices, together with their parts and accessories to them.

Based on the these regulations, transactions worth less than 15 000 PLN will be settled based on general rules. However, the purchaser is entitled to voluntarily apply split payment mechanism to them.

It also means the liquidation of local reverse charge mechanism that applied for the supplies of chosen goods and services (e.g. some electronic devices, construction services, etc.) as well as liquidation of obligation to file domestic trade summaries (VAT-27).

The duty to apply split payment mechanism also covers foreign seated entities, registered for VAT purposes in Poland. In practice, such change means that foreign entities would have to set-up and keep bank account in domestic financial institution, to which a VAT account will be assigned. Documented costs of setting up and running a bank account shall be reimbursed on request for foreign entities for a quarterly, semi-annual or annual period until the 25th day of the month following the period in which the application is submitted. If a taxpayer had not performed a payment through split payment mechanism when it was mandatory, the new regulations provide for sanction (additional tax obligation) amounting to 30% of tax on the invoice for which the payment is due.

Additionally, an invoice documenting supply of goods or provision of services subject to mandatory split payment mechanism shall include annotation "split payment mechanism" (in Polish "*mechanizm podzielonej płatności*"). Lack of such annotation shall bring about an additional sanction for seller - a tax obligation amounting to 30% of tax on the invoice.

The regulations also introduce definition of new criminal offence into Polish Fiscal Penal Code (KKS), in the form of not fulfilling an obligation to perform a payment under split payment mechanism by a taxpayer. For committing the above offence the legislator envisaged, apart from the consequences on VAT, a fine of up to 720 daily rates (respectively, in the case of minor acts, a fine for fiscal offence).

The VAT Act provides also, as regards split payment mechanism, possibility for the taxpayers of:

- making collective payments for more than one invoice issued by one supplier or service provider within a period not exceeding one month,
- using funds collected in the VAT account for payments regarding other tax liabilities (with certain exemptions for i.a. real estate tax) and social contributions made to the Social Security Office.

The new VAT Act introduced joint and several liability of the buyer for the tax arrears of the supplier in case of transactions involving all goods listed in the Annex No. 15 to the VAT Act, which, at the same time, are not subject to the obligation to settle using the split payment mechanism. Moreover, the regulations provide for the abolition of the guarantee deposit institution.

As of 1 January 2020 changes included the income tax provisions. When the payment for a given transaction is not made using split payment mechanism despite the fact that such transaction falls into obligatory split payment, the buyer is not entitled to treat such purchase as deductible cost for income taxes purposes.

As of 1 January 2021 some changes regarding mandatory split payment mechanism came into force. They include:

- exclusion of the obligation to use the split payment mechanism in case of receivables deduction, e.g. netting;
- possibility of making transfer from VAT account for customs agency in the amount corresponding to the VAT amount due to the import of goods or customs duties;
- possibility for the release of funds from the VAT account also for entities which are not active VAT taxpayers.

10.8 Application to non-residents

Entities without the status of a Polish resident (i.e. seated outside Poland), performing transactions that are taxable in Poland in accordance with the Polish VAT regulations (e.g. intra-Community acquisition of goods in the territory of Poland) are obliged to register for VAT purposes in Poland and, as a consequence, to fulfil the obligations imposed under the Polish VAT law on registered VAT taxpayers.

It should be noted, however, that the obligatory reverse-charge mechanism (settlement of tax by the purchaser) was introduced on 1 April 2011 in respect of supplies of goods and services by foreign taxpayers that do not have their fixed establishments for VAT purposes. Please note that starting from 1 April 2013 the reverse-charge mechanism is not applicable (with certain exceptions) to the supply of goods if a foreign taxpayer without fixed establishment in Poland being a supplier is registered for VAT purposes in Poland. In such a case the foreign supplier (not the purchaser) is obliged to charge VAT on these supplies in Poland.

10.9 VAT treatment of vouchers

As of 1 January 2019 the regulations regarding VAT treatment of vouchers in accordance with Council Directive (EU) 2016/1065 of 27 June 2016 (Vouchers Directive) applied in Poland. The Vouchers Directive aims to unify the VAT treatment of vouchers in all EU Member States. The wording of the Vouchers Directive was transposed into the new VAT Act and introduces a separation of vouchers into single-purpose voucher (SPV) and multiple purpose voucher (MPV) for the determination of the date on which a VAT liability arises. The new regulations cover vouchers issued after 31 December 2018. According to the wording of the changes, SPV are those vouchers for which the place of supply or service performance along with amount of VAT due (on those goods and services to which the voucher related) are known at the moment of issuance. On the contrary, the MPV are those vouchers for which the place of supply or service performance along with the VAT amount are not known at the moment of issuance.

10.10 White list of taxpayers

Starting from 1 September 2019 so called "White List" of taxpayers (i.e. register of taxpayers and their bank accounts available in database posted at publically available website) applied in Poland.

As regards transactions exceeding 15 000 PLN, payments made to the different bank account than those disclosed in the White List trigger a risk of joint and several liability of the purchaser (i.e. by entire assets) for the VAT not paid by the seller resulting from invoice (to which the payment relates). In addition, if an invoice for over 15 000 PLN is paid into the bank account other that stated on the abovementioned list, the relevant expenditures are not be allowed to be regarded as tax deductible costs on the grounds of CIT and PIT regulations.

The above-mentioned sanctions both in the scope of joint and several liability, as well as the recognition of tax costs entered into force starting from 1 January 2020.

However, according to the provisions which came into force as of 1 July 2020, taxpayers are able to avoid the joint and several liability and limiting the deduction of tax costs, if they inform the head of the tax office relevant for the vendor within 7 days[2] from transferring of the funds into the bank account other than stated on the White List.

2 *Until the end of the pandemic caused by COVID-19, the deadline has been extended from 7 to 14 days*

10.11 Online cash registers

Starting from 1 January 2020 some taxpayers are obliged to purchase a new type of cash register "online cash register", which enables for constant and direct transfer of data about registered transactions to the tax authorities.

The online cash register enables on-going and automatic transfer of data registered on the cash registers to new Central Repository of Cash Registers (dedicated IT system, managed by the Head of the National Tax Administration, where the said data is collected). In this way, the tax authorities have access to data included on fiscal documents (e.g. receipts, invoices, daily reports) and non-fiscal printouts (e.g. WZ documents) issued by a given cash register on an ongoing basis.

In general, online cash registers should replace old ones in an "evolutionary" way (in longer time – not from one specific date). However, some entities are obliged to replace currently used cash registers earlier. As regards cash registers with electronic copying it will be possible to purchase them until 31 December 2022 and after that date all confirmations for this type of cash register will expire. The exchange or purchase of a new cash register will require the purchase of an online cash register.

Duty to introduce earlier online cash registers affects entities performing i.a.:

- repairs of motor vehicles, petrol, diesel and gas destined for combustion engines (from 1st January 2020),
- services related to provision of food, performer only by stationary gastronomic facilities, sales of coal, briquettes and similar solid fuels manufactured from coal, lignite, coke and semi-coke of cole, destined for provision of heating (from 1st January 2021),
- following services: hairdressing, cosmetic/ beauty treatments, cosmetology, construction, in the scope of medical care (provided by doctors and dentists), legal, allowing an entry to facilities aiming at improving of physical condition such as gyms/fitness centers (from 1st July 2021),
- sales of goods in the TAX FREE system (from 1st January 2022).

10.12 Quick fixes (changes regarding settlement of cross-border transactions of goods)

As of 2020 new regulations regarding settlement of cross-border transactions of goods (so called "Quick fixes") applied in Poland. The changes result from provisions of Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 and Council Directive (EU) 2018/1910 of 4 December 2018, as well the respective bill implementing the amendments to the Polish VAT Act which came into force as of 1 July 2020.

The said provisions are a consequence of harmonization of selected rules regarding settlement of cross-border transactions of goods within EU.

The changes in that area may be generally divided into three groups.

Call-off stocks

Up till the end of the 2019 in Poland it was allowed to apply simplification for call-off stocks solely for goods designated for the purposes of production activities and performance of services. After the change of regulations accordingly to Quick Fixes provisions, this possibility has been extended also to trade/commercial activity.

At the same time, application of the above-mentioned simplifications in case of transactions performed with selected Member States was not possible also in other situations, due to lack of corresponding regulations in particular Member States.

The new regulations in the abovementioned scope may influence changes in duties related to VAT registration of supplier / acquirer in relation to performed transactions. Applying simplification may imply lack of obligation to register for VAT in the country of call-off stock location for supplier. The lack of necessity to register for VAT purposes might be in situations where the goods are stored by the supplier, for a given period, in another EU country (in the case of shipment from Poland to another EU country), or stored in Poland (in the case of purchasing goods to Poland from another EU country).

In addition, the period for which the goods may be stored in call-off stock are uniform within the EU (now it is 12 months, which in cases of Polish regulations means that this period has been shortened from current 24 months). The regulations introduced also the possibility to change the entity for which call-off stock is held.

Apart from rules resulting from the EU regulations, the Polish legislator introduced additional documenting requirements. The taxpayer or taxpayer operating the warehouse to which the goods are being entered under a call-off stock procedure shall submit by electronic means of communication, within 14 days from the date of first entry of the goods into the warehouse under this procedure, a notification on the operation of the warehouse used in the call-off stock procedure in accordance with the electronic document template.

Chain transactions

The settlement of chain transactions is dependent on the status of the buyer and the country that issued the VAT number used in the transaction. There is an assumption that transport should be assigned to supply made for the benefit of intermediary. As a consequence, the first supplier is entitled to apply 0% VAT rate to his supply. Nevertheless, the abovementioned rule is not applicable if an intermediary provides their supplier with VAT number of the state where transport of goods begins.

Documenting of ICS (confirmation of possibility to apply 0% VAT rate)

The new regulations introduced standardization of the rules of documenting intra-Community supplies of goods (ICS) in order to apply 0% VAT rate. In this regard, the following documentation sets shall be deemed as sufficient to apply the 0% VAT rate:

- two documents related to transport (e.g. signed CMR, bill of loading, invoice for air transport, invoice for transport of goods) issued by two parties independent of each other and independent of the acquirer and of the vendor or;
- one transport document together with another evidence (e.g. insurance policy, prove of payment, warehouse document, official document confirming arrival of the goods issued by public authority, e.g. notary).

In addition – the documentation set should be supplemented with a written statement of an acquirer if the goods are transported by a taxpayer directly or on his behalf.

10.13 SLIM VAT – package of changes to the Polish VAT Act

As of 1 January 2021 amendments to the Polish VAT Act, commonly known as the SLIM VAT (abbreviation for "Simple, Local and Modern VAT") entered into force. The bill in this regard provides for the following changes for taxpayers:

Simplification on VAT corrections

According to the new rules, supplier is entitled to make the correction of output VAT in the settlement period, in which he issued a corrective invoice provided that (i) he possesses documentation confirming that he agreed the conditions for reduction of taxable basis with the purchaser, (ii) the conditions for taxable basis reduction were met and (iii) the correction invoice reflects these accordingly.

On the other hand the purchaser is obliged to report local sale correction invoice in the reporting period in which the conditions for decrease of taxable basis were met.

One common exchange rate

Taxpayers have a choice to calculate the amounts in foreign currency into PLN for the purposes of VAT according to the rules applicable under income tax provisions on condition of applying such a solution at least during following 12 months' period. However, this option is not applicable for transactions where VAT is settled by the purchaser i.a. intra-Community acquisitions.

TAX FREE

The new regulations provide that since 1 January 2022 TAX FREE in Poland will become the refund system settled electronically. Sellers using this system will be able to use customs' electronically services platform for carrying out relevant records and issuing documents. From the above-mentioned date the sellers will also be obliged to use electronic cash registers. Proposed provisions include also slight changes in requirements for entities that refund VAT to the travellers.

Other simplifications

- extension of deadline for input VAT deduction without the need of correction of the VAT return (from 2 to 3 months for taxpayers filling monthly returns),
- statutory regulation of principles that are currently used in practice regarding increasing corrections (generally settlement in the moment when the circumstances causing the correction occurred),
- extension of the deadline for shipment of goods after receiving the advanced payment in export transactions (from 2 to 6 months),
- increasing the threshold allowing to consider donated goods as gifts of low value (from PLN 10 to PLN 20),
- right to deduct VAT on accommodation services for resale (re-invoicing).

10.14 E-commerce package

The EU e-commerce package aims at facilitating cross-border trade, combating fraud related to e-commerce and ensuring fair competition for EU entrepreneurs. Member States, including Poland, are required to implement the provisions of respective directives the package consist of into their legal order by 1 July 2021. Polish government is working on implementation and has already published a draft of the relevant law, however legislation works are not completed yet.

Uniform registration threshold

Currently, taxpayers performing distance sales of goods to non-taxable entities (usually consumers) from other EU Member States have to register for VAT purposes and taxed their sales in the country of consumption after exceeding the threshold specified in a given country. In this regard a single turnover threshold for all Member States will be established for distance sales, up to which it will be possible to settle VAT in the supplier's country and at the rate applicable therein. This threshold will be 10 000 euro. After it is exceeded, the supply of goods will be subject to VAT in the country of consumption.

VAT-OSS

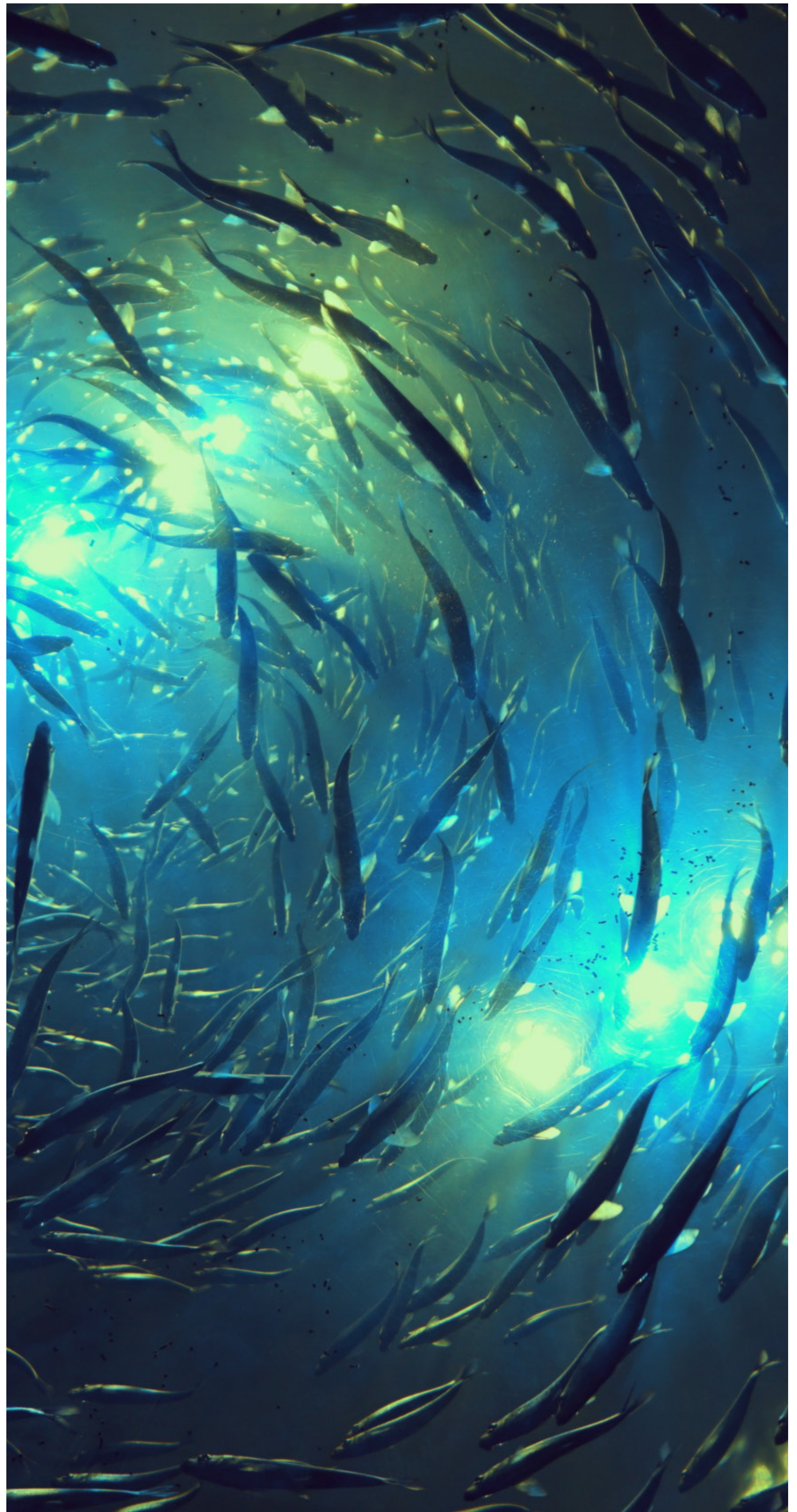
However, it will be possible to avoid registration in many member states because of a special procedure – VAT-OSS. It will offer, similarly as in the case of VAT-MOSS (mini One Stop Shop), the opportunity to submit one VAT return containing data on sales made to consumers from different Member States. The taxpayers will submit such return only to the tax authorities of its country of identification, i.e. the country in which it will be registered for this purpose.

Changes for digital platforms

The planned amendments foresees a legal fiction which in fact leads the transfer of responsibility for the VAT liability for certain B2C supplies to taxpayers facilitating the supply of goods through the use of an electronic interface such as a marketplace, platform, portal or similar means. New regulations provides that such taxpayer shall be deemed to have received and supplied the goods himself (the so-called deemed supplier). This means that the single supply from the supplier (the so-called underlying supplier) selling goods via an electronic interface to the final consumer (B2C supply) is split into two supplies:

- a supply from the underlying supplier to the electronic interface (deemed B2B supply), and
- a supply from the electronic interface to the customer (deemed B2C supply).

The EU e-commerce package aims at facilitating cross-border trade, combating fraud related to e-commerce and ensuring fair competition for EU entrepreneurs.



11. RET

Real Estate Tax in Poland is generally levied by the local tax authorities (Presidents of Cities, Mayors, Commune Heads) on owners of real estate (land, buildings and structures) at rates imposed by the local authorities.

Notably, RET in Poland often constitutes an important part of local commune's budget (total yearly tax revenues associated with RET amount to approx. 5 billion EUR). Thus while in many countries in Central Europe real estate taxes remain of marginal importance, Polish RET may turn out to be a substantial cost of running a business (especially in industries related to manufacturing, mining or owning shopping centres and offices). As such, potential RET liabilities need to be considered prior to planning an investment.

Also importantly, RET is due regardless of entrepreneur's financial condition (it is not an income tax) – the amount of tax due generally depends on:

- for lands – the area and classification indicated in the Register of Lands and Buildings;
- for buildings – the so-called "usable area" which should generally be measured on inner side of walls and on each floor of the building;
- for structures – the initial (gross) tax value of the object, which is not decreased with its depreciation for CIT purposes.

While the taxation of lands typically causes relatively little doubts, the determination of correct tax base for buildings and structures may often prove complicated due to specific way it is determined, as well as rather vague legal regulations and ambiguous or lack of practice of tax authorities with respect to particular tax issues.

In particular, taxpayers' fixed assets are not always subject to RET as a whole and one fixed asset may only partially qualify as a building or a structure. Furthermore, the actual usable area of a building may be different from the area specified in e.g. projects delivered by architects – this results from the fact that not every space within a building should be treated as usable area. Finally, the legal definitions of a building and - particularly - of a structure are very unclear and make it sometimes difficult to qualify particular objects to one of these groups appropriately.

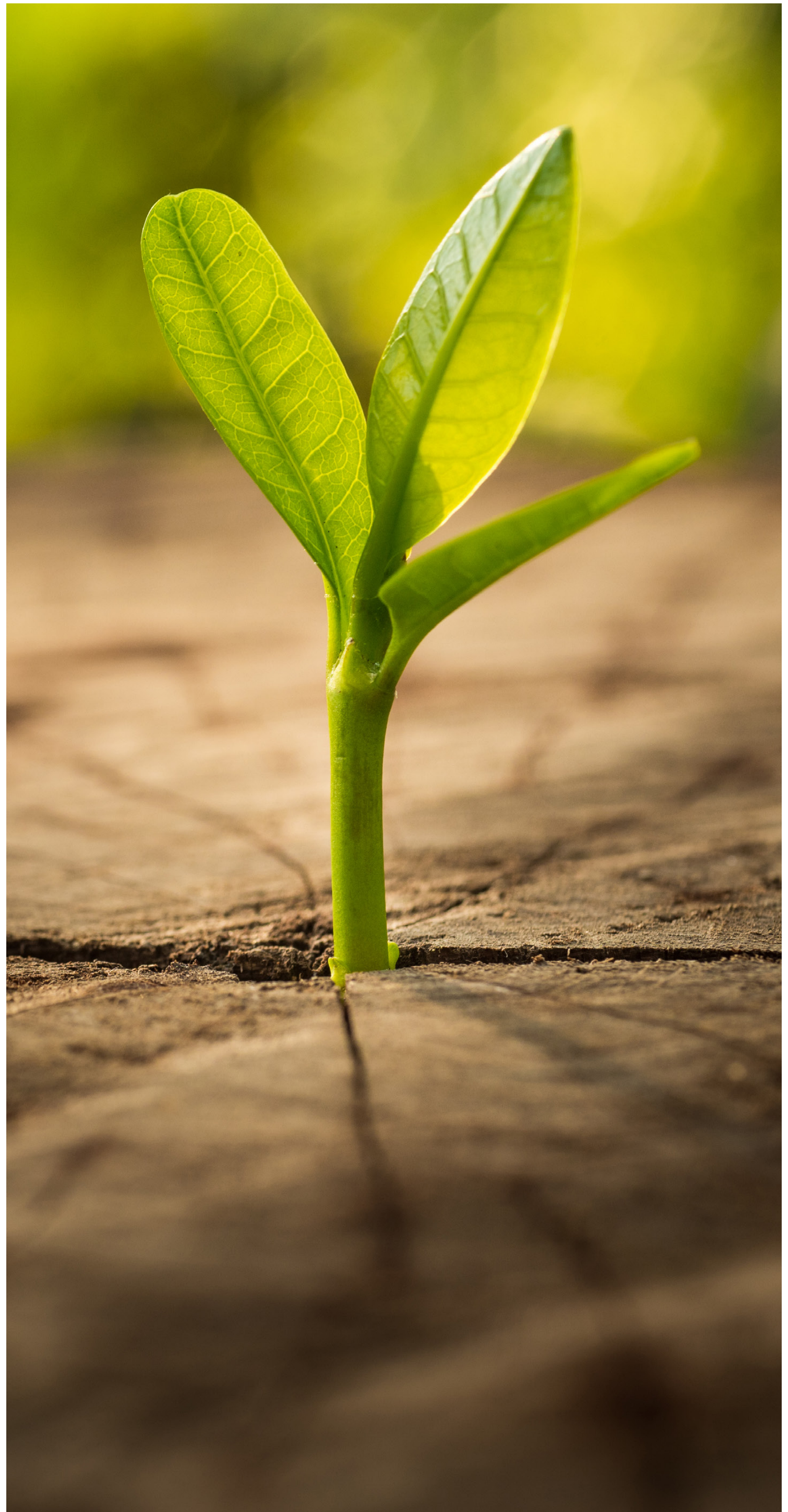
Since RET frequently becomes a vital source of local commune's income, the above issues lead to an immense amount of disputes with tax authorities, resulting in lengthy litigations and considerable number of court cases related to RET. As a consequence however, courts draw conclusions which often seem contradictory and which lead to changes in approach to taxation of certain objects.

As an example, back in 2017 Poland's Constitutional Tribunal concluded that any building object which meets all legal criteria for a building should not be classified as a structure (which has a different tax base determination method). While some tax authorities and administrative courts have accepted the above approach, others continue to issue verdicts allowing certain objects (which possess the characteristics of a building) to be treated as structures and therefore to levy a (usually) higher tax on these objects.

Real estate tax is also very vulnerable to changes in legislation which – theoretically – are not related to the tax law. This is because the current regulations with respect to RET take other legal acts related to e.g. construction law as references and thus even a minor change in these acts may influence the scope of objects subject to taxation. This was the case with wind power plants, which were taxed (in 2017 only) based on the value of the whole object (instead of the value of foundation and tower only) due to an introduction of a new non-tax law related to wind farms, until the said regulation was changed. Moreover as the major changes to the construction law were made in September 2020, it can be assumed that they will affect the taxation of some objects with RET.

As current vague regulations require constant attention from taxpayers in order to settle RET properly, lawmakers consider introducing reforms with respect to the present taxation system, especially with respect to the legal definitions of a building and of a structure. The details as to whether and when these changes may be introduced are not known at the moment however.

Real estate tax is also very vulnerable to changes in legislation which – theoretically – are not related to the tax law. This is because the current regulations with respect to RET take other legal acts related to e.g. construction law as references and thus even a minor change in these acts may influence the scope of objects subject to taxation.



12. Other Taxes

12.1 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 e.g. sales, loan and donation contracts, mortgages, establishment of usufruct, and partnership or company deeds. The act provides for a number of exemptions and exclusions.

A very common exclusion relates to transactions where at least one of the parties is subject to or exempt from VAT (this rule, however, is not general and there are certain transactions which may be subject to TCLT anyway) with respect to this transaction.

Exemptions include, among others, selected contracts with financial institutions seated abroad or with direct shareholders.

The rate of tax 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 0,5% rate (except for shareholder loans).

12.2 Transfer tax

Sale and exchange of goods, property and property rights may be subject to TCLT (Tax on Civil Law Transaction - as described in point 12.1 above). No other transfer taxes are levied in Poland.

12.3 Tax on buildings subject to rent / lease

The fixed assets (buildings) which are rented or leased are taxed under specific, dedicated tax regime. There are some exceptions, but in general taxation involves buildings which are the property or joint ownership of the taxpayer, has been given in whole or in part for use under a rental, lease or other agreement of a similar nature and are located in the territory of Poland. The base of taxation is the initial value of the taxable fixed assets minus PLN 10.000.000 (around EUR 2.325.000) per taxpayer. The rate is 0,035%. This tax is settled with CIT.

12.4 Exit tax

Exit tax pertains to situations that cause Poland to lose its right to tax the values specified in the Polish CIT Act, generated before the transfer of assets /change of residence. The loss of Poland's right to tax may result, in particular, from the stipulations of agreements to avoid double taxation. Events that give rise to tax obligations in reference to the planned regulations are:

- transfer of an asset outside Polish territory, as a result of which Poland loses (*in whole or in part*) the right to tax income from the sale of that asset, or
- change of tax residence by a taxpayer subject to unlimited tax liability, which means that

Poland loses the right (*in whole or in part*) to tax the income from the possible disposal of the taxpayer's property.

It should be noted that taxation is independent of whether the asset is actually disposed of or not by the taxpayer. This means that the tax may occur even if the taxpayer does not achieve any real benefits from the asset.

Income subject to CIT / PIT taxation in Poland constitutes an excess of the market value of the transferred asset over its "tax value". The deadline for submitting the declaration and payment of tax is the 7th day of the month following the month in which the event causing taxation occurred. In the case of CIT taxpayers, a single rate of 19% will apply, regardless of the value of transferred assets.

12.5 Stamp duty

Stamp duty is imposed on certain activities undertaken by the public administration, such as issuing certificates, permissions, powers of attorney, and other documents issued by the central and local authorities. The amount of stamp duty is prescribed in the regulations for each particular activity of the public administration. The fixed fee varies approximately from EUR 1 to EUR 3.000. The amount can be higher for fees calculated on the basis of the value of certain investments.

12.6 Miscellaneous taxes

Local taxes

A number of taxes are imposed by municipalities, such as road vehicle tax, agricultural tax and forestry tax.

Customs duties

The common EU customs tariff is applied in trade between Poland and non-EU countries while there are no customs duties applicable to the trade within Poland and EU countries. There are several regimes of customs duties, i.e. the conventional duty rates, autonomous rates, preferential rates (established e.g. within the framework of the Generalized System of Preferences) or on the basis of bilateral agreements concluded by the EU with certain countries. As in all other EU countries, import is subject to VAT and excise duties as well. On the other hand, there are no export duties nor VAT applicable to exported goods.

Excise duties

Excise duty is levied on excise goods (i.e. energy products, lubricating oils, lubricating preparations, electricity, alcoholic beverages, tobacco products, dried tobacco, liquid for electronic cigarettes and innovative products specified in Schedule 1 to Excise Duty Act) and passenger cars. Taxation of goods subject to excise duty is mainly based on the legislation of the European Union.

In particular, most of excise goods can be manufactured solely in tax warehouses, and as a rule excise duty is due when the goods are moved outside the warehouse (unless e.g. they are moved under an excise duty suspension procedure). Generally, excise duty is levied on the manufacturer, importer, entity performing intra-Community acquisition of excise goods, as well as any other entities explicitly specified by the law.

There is a wide array of exemptions available for certain uses of excise goods (e.g. use of ethyl alcohol to produce goods not subject to human consumption, exemption of electricity, coal, gas used in mineralogical, metallurgical, chemical reduction and electrolytic processes).

Please note however, that some of the goods subject to excise duty in Poland may be covered by the specific excise regulations (electricity, natural gas, coal, certain lubricant oils and preparations, etc.) that may not be entirely harmonized with EU regulations. For example in case of movement of excise goods subject to exemption from excise duty due to their intended use and some energy products taxed with zero excise rate, there is necessity to monitor movement of goods in EMCS using electronic document of deliver – e-DD (till the end of January 2022 e-DD may be replaced by paper document of delivery).

System for monitoring of road and railway transport of goods and trading in heating fuels.

The system for monitoring of road and railway transport of goods (so called the "SENT") is currently in force in Poland. The catalogue of goods that are subject to the SENT is specified in Art. 3 sec. 2 of the *Act on the monitoring system for road and railway transport and trading in heating fuels* and in the Regulation of the Minister of Finance issued pursuant to Art. 3 sec. 11 of this Act.

The SENT allows for monitoring and control of the road and railway carriage of certain goods and it is aimed at counteracting frauds and irregularities resulting in gaps in Excise Duty and VAT areas. In general, the SENT system is applicable to the transport of so called "sensitive goods" i.e.: motor fuels and their derivatives, fuel additives, lubricating oils, propane, butane, LPG gas, vegetable fats (e.g. peanut oil, cocnut oil, palm oil, soybean oil, sunflower oil, olive oil), methanol of synthetic origin, completely and partly denatured ethyl alcohol, de-icing fluids containing ethyl alcohol, solvents and diluters, dried tobacco but also certain medicinal products, and medical devices.

As a rule, carriage of goods provided in SENT provisions exceeding total gross weight of 500 kilograms or volume of 500 liters needs to be obligatory notified and monitored in the SENT. However, there are also some exceptions from this rule.

All participants of the road and railway carriage of sensitive goods (i.e. subjects dispatching and receiving goods, as well as the carrier and the driver) are obliged to perform certain duties arising from the SENT provisions. In general, each transport of the goods covered by the regulation is monitored and notified in an electronic way. The relevant notifications (containing specific information about particular goods) need to be submitted, supplemented and updated via the Electronic Tax and Customs Services Platform (PUESC). Each entity required to report the transport in the SENT, shall be appropriately registered on PUESC platform.

Apart from domestic transactions, transactions such as intra-Community supply or acquisition of goods, import, export, as well as transit through the territory of Poland are also subject to the SENT. Breach of the SENT obligations may result in imposition of severe sanctions, such as financial penalty in amount up to 46% of the gross value of the goods being transported (no less than 20k PLN or 10k PLN – in some cases).

Since 1st September 2020 the SENT system is also applicable with regard to the trading in heating fuels. As a result of these change entities who want to use or trade in heating fuels should submit special registration form to the tax office and report each purchase/ sale transaction in the SENT.

12.7. Jednolity Plik Kontrolny (Single Control File)

Background

Since July 1st, 2018, all Polish taxpayers are obligated to submit JPK (Single Control File) files to the tax authorities, based on OECD's SAF-T (Standard Audit File- Tax) guidelines, which have been adopted by many other European countries as well. This method obligates taxpayers to file all or part of tax ledgers and accounting information electronically in a standardized XML format using electronic communication.

Structures of Jednolity Plik Kontrolny

As of January 1st, 2021 there are seven JPK structures:

Structure 1 – V7M or V7K

JPK_V7 is a file containing data on sales and purchases, based on VAT evidence for a given period. Data necessary to generate a JPK_V7 file is extracted directly from financial accounting systems. Contrary to other structures submitted on demand, tax authorities require JPK_V7 to be submitted on a monthly basis (by the 25th day of the month after the reported tax period). The VAT register structure reflects the same fields shown in the VAT-7 return, meaning that it contains information regarding transactions included in the VAT register.

Structure 2 - Bank statements

The JPK_WB structure contains information on bank statements balances along with detailed records from taxpayer's bank accounts.

Structure 3 - Warehouses

JPK_MAG is a file concerning the movement of goods in the companies' warehouses. It includes documents concerning admission and release of goods as well as transfer of goods between warehouses. In the event that an enterprise has several or more warehouses, a separate JPK_MAG file is prepared for each warehouse. The obligation to present this data on the tax authorities' demand concerns all enterprises whose inventory data is evidenced electronically, using computer software.

Structure 4 - Accounting books

The JPK_KR structure contains information on:

1. All entries in the general accounting and subledgers.
2. The trial balance, based on the taxpayers' chart of accounts

Structure 5 - VAT invoices

The JPK_FA structure concerns only sales invoices (as defined in the Polish Act on Goods and Services). In this structure, it is necessary to present data on all the documents that formally meet the requirements to consider them as an invoice.

Structure 6 - Tax revenue and expense ledger

The JPK_PKPiR file is an electronic reflection of the tax revenue and expense ledger. However, filing it on the demand of the tax authorities is required only in the event where the taxpayer chooses to keep the ledger in electronic form.

Structure 7 - Record of Revenue

The JPK_EWP file should contain information from the record of revenue. The obligation to submit this file on demand concerns only taxpayers' that pay tax on registered income without deductible costs.

Since July 1st, 2018, all Polish taxpayers are obligated to submit JPK (Single Control File) files to the tax authorities, based on OECD's SAF-T (Standard Audit File- Tax) guidelines, which have been adopted by many other European countries as well. This method obligates taxpayers to file all or part of tax ledgers and accounting information electronically in a standardized XML format using electronic communication.

13. Office locations

Main office

Office in Warsaw
Al. Jana Pawła II 22
00-133 Warszawa
Poland
Tel: +48 22 511 08 11
Fax: +48 22 511 08 13

Regional offices

Office in Gdańsk
al. Grunwaldzka 472E
80-309 Gdańsk
Poland
Tel: +48 58 761 67 86

Office in Katowice
ul. Żelazna 2
40-851 Katowice
Poland
Tel: +48 32 508 03 00
Fax: + 48 32 508 03 01

Office in Kraków
ul. Przybyszewskiego 56
30-128 Kraków
Poland
Tel: +48 12 394 43 00
Fax: +48 12 394 43 01

Office in Łódź
al. Kilińskiego 66
90-118 Łódź
Poland
Tel: +48 42 290 61 00
Fax: +48 22 511 08 13

Office in Poznań
ul. Grunwaldzka 34b
60-786 Poznań
Poland
Tel: +48 61 882 42 00
Fax: +48 61 882 42 01

Office in Rzeszów
Karowa Office
ul. Warszawska 18
35-205 Rzeszów
Tel.: + 48 17 220 96 00
Fax: + 48 17 220 91 01

Office in Szczecin
ul. ks. Kard. Wyszyńskiego 1
70-200 Szczecin
Poland
Tel: +48 91 881 16 50
Fax: +48 91 881 16 51

Office in Wrocław
ul. ks. Piotra Skargi 1
50-082 Wrocław
Poland
Tel: +48 71 335 45 00
Fax: +48 71 335 45 05

14. Contacts

Łukasz Madej
Partner in Charge
Office in Poznań, Łodz, Gdansk and Szczecin
lmadej@deloitteCE.com

Paweł Banasik
Partner
Real Estate Tax
Office in Warsaw
pbanasik@deloitteCE.com

Marek Konieczny
Partner
Office in Wroclaw
mkonieczny@deloitteCE.com

Bartłomiej Suszko
Partner
Office in Wrocław
bsuszko@deloitteCE.com

Seweryn Dąbrowski
Partner
Corporate Income Tax
Office in Poznań
sdabrowski@deloitteCE.com

Agnieszka Mitoraj
Partner
Office in Poznań
amitoraj@deloitteCE.com

Joanna Świerzyńska
Partner
Global Employer Services
Office in Warsaw
jswierzynska@deloitteCE.com

Iva Georgijew
Partner
Transfer Pricing
Office in Warsaw
igeorgijew@deloitteCE.com

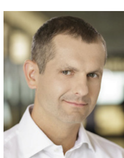
Robert Nowak
Partner
Corporate Income Tax
Office in Warsaw
rnowak@deloitteCE.com

Adam Wacławczyk
Partner
Office in Katowice, Cracow and Rzeszów
awaclawczyk@deloitteCE.com

Krzysztof Gil
Partner
Office in Katowice
kgil@deloitteCE.com

Rafał Sadowski
Partner
Transfer Pricing
Office in Warsaw
rsadowski@deloitteCE.com

Tomasz Walczak
Partner
Business Process Solutions
Office in Poznań
twalczak@deloitteCE.com



Marek Gizicki
Partner
Litigation
Office in Warsaw
mgizicki@deloitteCE.com

Tomasz Siek
Partner
Value Added Tax (Public sector)
Office in Warsaw
tsiek@deloitteCE.com

Jakub Żak
Partner
Fianancial Services Institutions
Office in Warsaw
jazak@deloitteCE.com

Ewa Grzejszczyk
Partner
Mergers & Acquisitions
Office in Warsaw
egrzejszczyk@deloitteCE.com

Michał Siekierzyński
Partner
Real Estate
Office in Warsaw
msiekierzynski@deloitteCE.com

Piotr Żarski
Partner
Real Estate
Mergers & Acquisitions
Office in Warsaw
pzarski@deloitteCE.com

Michał Kłosiński
Partner
Value Added Tax and Excise Team
Office in Warsaw
mklosinski@deloitteCE.com

Joanna Stawowska
Partner
Tax Management Consulting / Value Added Tax and Excise Team
Office in Warsaw
jstawowska@deloitteCE.com

Deloitte.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited („DTTL"), its global network of member firms or their related entities (collectively, the "Deloitte organization") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

In Poland, the services are provided by Deloitte Advisory spółka z ograniczoną odpowiedzialnością sp.k., Deloitte Poland sp. z o.o., Deloitte Audyt spółka z ograniczoną odpowiedzialnością sp.k., Deloitte Doradztwo Podatkowe Dąbrowski i Wspólnicy sp.k., Deloitte PP sp. z o.o., Deloitte Advisory sp. z o.o., Deloitte Consulting S.A., Deloitte Legal, Pasternak, Korba i Wspólnicy Kancelaria Prawnicza sp.k., Deloitte Digital sp. z o.o. (jointly referred to as „Deloitte Poland") which are affiliates of Deloitte Central Europe Holdings Limited. Deloitte Poland is one of the leading professional services organizations in the country providing services in audit, tax advisory, legal, strategic and technology consulting, as well as enterprise risk management and financial advisory through over 2300 national and specialized expatriate professionals. More information about Deloitte Poland: www.deloitte.com/pl/aboutus

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

© 2021 Deloitte Poland