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Tax Pocket Book

Poland 2011



Overview

Poland

Poland is situated in Central Europe. It borders Germany, Ukraine, Russia, Belarus, the Czech Republic, Slovakia and Lithuania. Through the Baltic Sea, it has easy access to Scandinavia. Poland is a member of many international organizations, including the European Union (EU), North Atlantic Treaty Organization (NATO), World Trade Organization (WTO) and Organisation for Economic Co-operation and Development (OECD).

Poland is a republic. The government of the Republic of Poland is based on the separation of and balance between legislative, executive and judicial powers. The legislative power is vested in the Sejm and the Senate, executive power is vested in the President of the Republic of Poland and the Council of Ministers and judicial power is vested in the courts and tribunals. Poland's capital is Warsaw and the official currency is the Zloty (PLN). The Polish public administrative system is divided into central and regional (self-government) administration. According to a cardinal principle in the Constitution, citizens elect local authorities. The sources of universal binding law in the Republic of Poland are the Constitution, statutes, ratified international agreements and regulations.

The courts and tribunals constitute a separate power and are independent of the other branches of power. Judges are appointed for an indefinite period by the President of the Republic and are not removable. Court proceedings have at least two stages. Tax cases are considered by the Voivodeship Administrative Court and the Supreme Administrative Court, as a court of second resort.

PwC in Poland has over 40 partners and 1,500 staff located in Warsaw, Gdańsk, Poznań, Kraków, Wrocław and Katowice. It provides audit, financial reporting and accounting advisory, consulting, forensic services, valuation and strategy services, HR consulting, legal services, mergers and acquisitions services, regulatory services, tax management and accounting services, indirect taxes, tax litigation, transfer pricing services and international tax services.

Corporate taxes

Companies in Poland are subject to the following two main taxes: Corporate income tax (CIT) and Value added tax (VAT).

CIT

Significant developments

Important amendments to the CIT regulations, which came into force as at 1 January 2011, include taxation of the following:

- Transactions with limited partnerships; in particular, the new legislation introduced the following:
 - a. New rules on calculation of the value of the contributed assets (depending on whether the assets subject to contribution were previously depreciated);
 - b. New rules on calculation of costs incurred with respect to sales of the contribution (depending on whether the assets subject to contribution were entered into the register);
 - c. New rules on the calculation of partner's income in case of liquidation of and resignation from the limited partnership (i.e. received assets and financial means do not constitute taxable revenues; however, in case of resignation, financial means do not constitute taxable revenues only in the respective part);
 - d. New rules on the calculation of tax deductible costs of assets contributed and subsequently sold.
- Redemption of shares, i.e. under the amended regulation, sale of shares (stocks) for the purpose of redemption are no longer subject to taxation as a dividend income but general taxation rules apply;
- Interest, royalties and dividend payments by introducing additional requirements to benefit from withholding tax (WHT) exemption;
- Share for share transactions; according to the new regulation, share for share exchange will be tax neutral provided that all companies involved in the transactions meet EU/European Economic Area (EEA)

residence tests (before 1 January, the test concerned only acquiring and transferring company);

- Valuation of assets for tax purposes, in case of in-kind contribution by an enterprise/organised part of business, as well as costs calculation, in case of sale of share acquired in the process mentioned above; namely, valuation of assets should be based on the contributor's tax book value;
- EU/EEA seated investment and pension funds by ending the tax discriminatory treatment, i.e. since 1 January 2011, investment and pension funds seated in EU/EEA may benefit from exemption on income derived from Poland if certain conditions are met.

General rules

CIT is the only tax levied on corporate income. The CIT rate is 19%. CIT applies to all legal entities (including, but not limited to corporations), which are companies under organisation and „organisational entities without corporate status” (with the exception of partnerships) that run business activities. Partnerships are regarded as „transparent entities”, which mean that partnerships are not taxpayers. Instead, the income generated by partnerships is allocated to and taxed in the hands of the partners (starting from 1 January 2011, taxation of such entities will be less favourable as new regulations on contributions in-kind have been introduced).

According to these rules, CIT also applies to companies with foreign participation. Such companies may be set up as either limited liability companies or joint-stock companies. The percentage of foreign

participation has no limits. Both types are subject to the general CIT rules, including the 19% tax rate. The same rate applies to branches of foreign companies (see the „Branch income” section for more information).

Corporate residence

A company is considered to be a resident if its registered office or management is located in Poland. Polish residents are subject to tax on their worldwide income. Non-residents are taxed only on their Polish-sourced income.

The tax authorities' right to tax a non-resident is further limited if the non-resident's home country concludes a double tax treaty with Poland. In this case, the Polish tax authorities are entitled to tax only the portion of the non-resident's income that is derived through a permanent establishment (PE) located in Poland. The exceptions relate to specific types of income such as royalties, interest, dividends and capital gains that are taxed according to special treaty rules.

Certain entities are explicitly excluded from taxation under CIT Law (e.g. Treasury and National Bank of Poland). As at 1 January 2011, EU-based investment funds shall also be exempted on the grounds of such provision (before this date, only Polish investment funds enjoyed the exemption).

Branch income

Foreign businesses are allowed, under certain conditions, to establish their branch offices (exclusively within the scope of their “foreign” business activity) and representative offices (exclusively with regard to promotion and advertising) in Poland.

A branch office almost always has PE status in Poland. Once a branch is established, the foreign company pays CIT at the standard rate of 19%, based on the income attributable to the operations of the Polish branch. For this purpose, as well as for accounting purposes, a branch is obliged to maintain accounting books that include all the data necessary to establish the taxable base. In this respect, general income determination rules relevant to Polish companies apply to branches as well. If a branch can demonstrate, based on a double tax treaty, that its business presence in Poland does not amount to a PE, its profits are not subject to Polish CIT.

Income determination

Tax base

The tax base is the overall income, which is the difference between aggregated taxable revenue and aggregated tax-deductible costs. A tax-deductible cost is defined as a “cost incurred in order to generate revenue” as well as a cost incurred to “protect a source of revenue.”

Subject to numerous exemptions, the tax base includes all sources of income. Consequently, there is no special treatment for income such as capital gains or interest.

In practice, taxable income is calculated by adjusting the profit reported for accounting purposes. The relevant adjustments are necessary due to differences between the tax and accounting treatment of numerous revenue and cost items. As a result, the taxable base is usually higher than the accounting profit.

Inventory

Generally, the value of inventory shortages may be included as a tax-deductible

cost. Other write-offs in the value of inventory are not recognised for tax purposes until the inventory in question is sold. When inventory is lost or sold, a tax deduction is allowed for the costs incurred when the inventory was purchased. The methods acceptable for inventory valuation for tax (and accounting) purposes are standard cost, average (weighted) cost, first-in first-out (FIFO), and last-in first-out (LIFO).

Capital gains

There is no separate capital gains tax. Capital gains or losses are aggregated with an entity's other taxable income or losses. Capital losses are tax-deductible.

Domestic dividends

Dividends received from Polish residents (domestic dividends) are excluded from overall income. Instead, such dividends are subject to a 19% tax, which is withheld and remitted to the tax office by the payer of the dividends.

However, based on the participation exemption, which has been effective from 1 January 2007, domestic dividends are no longer subject to the 19% tax, provided that the Polish beneficiary has held at least a 10% share in the paying company for at least two years.

Starting from 1 January 2011, revenue from the voluntary redemption of shares shall no longer be treated for tax purposes as a dividend, and consequently, it will not enjoy the participation exemption (i.e. the method of redemption, voluntary or automatic, will matter).

Foreign income

Resident corporations are taxed on their worldwide income. However, an applicable double tax treaty between Poland and the relevant foreign state holding, shall exempt the foreign income from taxation in Poland.

In all other cases (in particular, when income is not covered by any treaty), Poland uses the ordinary credit method to avoid double taxation. Therefore, a Polish resident is liable for income tax imposed on his worldwide income, but the tax is proportionately reduced by income tax paid abroad.

Dividends from abroad

Generally, dividends collected by a Polish corporate tax resident, if paid by a non-resident, are treated as regular income and taxed at the standard CIT rate. Corporate tax on such dividends paid in other countries may be credited proportionately against Polish CIT. CIT law also provides for an „underlying tax credit”, which is related to CIT paid by a foreign subsidiary under a foreign tax jurisdiction, subject to a number of conditions. Specifically, a double tax treaty between Poland and the subsidiary's country of residence should be in place and the Polish recipient of the dividend should hold at least 75% of the shares in the foreign subsidiary.

More favourable rules apply to dividends received from subsidiaries residing in EU countries, Iceland, Liechtenstein, Norway or Switzerland. Such dividends are CIT-exempt (i.e. participation exemption) provided that the Polish recipient has held at least 10% of the shares in the paying company for at least two years (with respect to Swiss subsidiaries, the minimum shareholding is 25%).

Starting from 1 January 2011, a new reporting obligation will be imposed, i.e. apart from the certificate of residence in order for a payer not to have to collect the WHT, it is necessary to obtain a certificate stating that the payment beneficiary is not exempted from taxation in its country of residence.

Transfer pricing

Transactions between related parties should be conducted in accordance with the arm's length principle. The tax authorities may increase the taxable base if the pricing used between related parties differs from that which would have been used between unrelated parties in a similar business transaction and the difference results in income being shifted from a Polish taxpayer to another entity (whether a Polish resident or not). Similar rules apply to transactions between Polish residents and residents of tax haven countries. These transactions may be subject to transfer pricing principles even if the parties are not related. CIT law also contains detailed requirements for transfer pricing documentation. Taxpayers can apply for an advance pricing arrangement (APA) to reduce their transfer pricing risk. An APA decision is issued by the minister of Finance in response to a taxpayer's application. APA will oblige a taxpayer to follow a specified methodology when calculating the transfer prices applicable to transactions between related entities. In exchange, the tax authorities may not challenge the agreed upon methodology.

Deductions

Tax depreciation

Depreciation is treated as a tax-deductible cost. Generally, depreciation allowances are calculated based on the straight-line method and the maximum rates provided in the CIT law. If this is the case, a taxpayer deducts equal annual write-offs, calculated by multiplying the maximum rate of depreciation by the asset's initial value until the total value of write-offs equals the initial value (typically, the initial value equals the purchase price).

For certain categories of machinery and vehicles (excluding passenger cars), the reducing-balance depreciation method may be applied. Under this method, the tax depreciation may be accelerated during the initial period of the asset's use by multiplying the statutory maximum rate by two. The rate is then applied to the net value of the fixed assets (i.e. initial value reduced by earlier annual write-offs). The reducing-balance method is applied until the annual depreciation write-off equals the hypothetical write-off that would be made under the straight-line method. From this point, the depreciation allowance is taken based on the straight-line method for its remaining useful life.

The main categories of assets and the related statutory annual tax depreciation rate are the following:

Various buildings and constructions	1.5 – 10 %
Machinery and equipment (general)	7 – 20 %
Machinery for road building and construction	18 – 20 %
Machinery for the paper industry	14 %
Office equipment	14 %
Computers	30 %

Apart from the below, Polish CIT law includes provisions for accelerated depreciation (within specified limits) for assets used in deteriorated conditions and for second-hand assets.

Tax losses

A tax loss reported in a tax year may be carried forward over the next five consecutive tax years; however, in any particular tax year, the taxpayer may not deduct more than 50% of the loss incurred in the year in which it was reported. For example, a taxpayer that incurred PLN 100 annual loss in 2010 may carry it forward to 2011-2015. However, the maximum loss deducted in any of these years may not exceed PLN 50, assuming that no other losses are available for deduction).

Payments to foreign affiliates

Deductions may be claimed for royalties, management services and interest charges paid to foreign affiliates.

Note: However, interest expenses are subject to thin capitalisation restrictions (see the following section). Also, transactions with related companies should be made according to market conditions. If a company shifts income to another entity (especially a foreign entity), the tax authorities may adjust the taxable base upward (see *Transfer Pricing section*).

Thin capitalisation

A portion of the interest paid by a Polish company on a loan granted by a qualified lender (a qualified shareholder or a qualified sister company) will not be considered a tax-deductible cost if the value of the Polish company's overall debt to shareholders and other affiliates, mentioned in the tax law, exceeds three times the value of the Polish company's share capital (a 3:1 debt:equity ratio). A qualified shareholder is defined as a holder of 25% or more of the voting power of a Polish company. A qualified sister company is one in which a shareholder holds at least 25% of the value of the shares.

Taxes

Income tax and, in most cases, VAT is not deductible. However, VAT is deductible for CIT purposes if it cannot be offset against the company's output VAT. Other taxes, if paid in the course of business activities, are generally deductible in full.

Business expenses

Generally, a tax-deductible cost is defined as a cost incurred to generate taxable revenue or to „protect a source of income”. The last element of the definition of a tax-deductible cost was added a few years ago to reduce uncertainties regarding the deductibility of business expenses that do not directly generate revenue.

CIT law provides a list of items that are not deductible for tax purposes, even if the items meet the general conditions described above. This list contains over 60 items, including the following:

1. Written-off, lapsed accounts receivable;
2. Entertainment costs;
3. Accrued but unpaid interest;
4. Accounting and comparable provisions;
5. Tax penalties and penalty interest;
6. A portion of the insurance premium paid on a passenger car the portion

calculated on the excess of the car value over EUR 20,000 and

7. A portion of the depreciation write-offs made on a passenger car – the portion calculated on the excess of the car value over EUR 20,000. Furthermore, expenses incurred in connection with the acquisition of fixed and intangible assets (e.g. licenses, trademarks and know-how) are not directly deductible. Instead, the acquired assets are subject to depreciation. If such assets are sold, a business is entitled to deduct the net value, that is, the cost of acquisition reduced by the overall value of the tax depreciation allowances made. Similar treatment relates to the acquisition of shares or land, except that these particular assets are not depreciable. Therefore, the full cost of an acquisition of shares or land may be deducted when such assets are sold.

Group taxation

The CIT law includes provisions on group taxation (i.e. in theory, a group of companies) if it meets certain conditions and can be treated as a single taxpayer. However, the conditions are demanding and, as such, only a limited number of taxpayers are of this type.

Tax incentives

Polish legislation provides investment incentives related to business activities carried out in 14 zones defined as Special Economic Zones (SEZs). A business entity can benefit from tax incentives, provided that the entity obtains a permit from the Ministry of Economy to conduct business activities in SEZs and meets other legal requirements.

In general, in many Polish SEZs, the amount of tax incentive (i.e. exemption

from income tax) for large enterprises equals 50% of the qualifying expenditures (investment expenditures or two-year labour costs). In other words, the CIT exemption allows the investor to avoid paying tax up to the limit calculated on the basis of the qualifying expenditures. If the allowable limit of the tax exemption exceeds the annual tax due, the excess may be utilised in the following tax years. Furthermore, the limit of the tax exemption may be increased 20% for small enterprises and 10% for medium-sized enterprises.

Consequently, in the case of making significant investments, it is possible for businesses that run activities in SEZs to enjoy exemption from income tax for a considerable period.

WHT

Domestic provisions: General rules

The general domestic WHT rate for dividends is 19%. Dividends also encompass income from liquidation of a company and from the redemption of shares, with the exception of gain from voluntary redemption, which is treated as a capital gain subject to 19% CIT rate in Poland, if the gain is realized by a taxpayer from a non-treaty country or the treaty includes a so-called real estate clause. The general WHT rate is 20% and 10% on interest and royalties paid to non-residents, respectively, regarding services of sea or air transportation. These WHT rates may be reduced by double tax treaties. Also, a 20% WHT is charged on payments made to non-residents for intangible services, such as consulting. However, if a payment is made to a country that has a double tax treaty with Poland, this tax may be avoided with the completion of certain minimal administrative

formalities. Few treaties treat payments for technical services as royalties (e.g. India).

Special treatment: EU directives

The CIT law provisions and certain EU directives provide special treatment for dividends, royalties and interest paid to numerous European countries.

After joining EU, Poland was granted a transitional period to phase out WHT on interest and royalty payments made by Polish corporate residents to associated EU or EEA companies. Starting from 1 July 2009, the WHT rate on these payments is 5%. Starting from 1 July 2013, a full exemption will apply. In general, the transitional rules, as well as the full exemption after 1 July 2013, only apply to interest and royalty payments between associated companies (parent-subsidiary relationships or sister-sister relationships) in which capital involvements are significant.

Dividends paid to corporate residents of EU and EEA countries are exempt from WHT, subject to certain conditions specified in the CIT law. The basic requirement is that the foreign beneficiary holds at least 10% of the shares in the Polish company for a minimum of two years. This condition is also fulfilled if the required period passes after the day of payment of the dividend. If the period is interrupted afterwards, the company is obliged to pay the tax at a standard rate with interest.

Note: From 1 January 2011, several additional conditions, which have to be met to apply the reduced rate/exemption from WHT based on the directive, were introduced (e.g. the company receiving the dividend/interest/royalty cannot be exempt

from tax on all its income, regardless of its source; the recipient has to have ownership title to the shares in the Polish company).

Additionally, the amendments state that to enjoy the exemption from WHT on dividends and decreased WHT rate on interest and royalties, based on the directives' provisions, the relevant double tax treaty should allow exchange of tax information between the tax authorities of Poland and the country of the payment recipient. Currently, Poland's binding treaties with Switzerland and Liechtenstein do not encompass such provisions; thus, the domestic application of the directive does not apply to payments made to entities from these countries.

Treaty rates

If EU special rules do not apply, the domestic WHT rates can be decreased by a double tax treaty concluded between Poland and the payment recipient's country of residence, if certain administrative conditions are met (i.e. the payer obtains a valid certificate of fiscal residence of the payment recipient/beneficial owner).

The following table lists the WHT rates as provided in the treaties concluded by Poland.

Note: The following table shows only rates that result from general treaty provisions; the treaties themselves occasionally include special provisions (applicable in special circumstances or to special entities) that provide lower WHT rates than the ones listed.

Furthermore, if a treaty rate is higher than a domestic one, the latter rate should apply.

Recipient	Dividends %	Interest %	Royalties %
Non-treaty	19	20	20
Treaty:			
Albania	10/5	10	5
Armenia	10	5	10
Australia	15	10	10
Azerbaijan	10	10	10
Austria	15/5	5/0	5
Bangladesh	15/10	10	10
Belarus	15/10	10	0
Belgium	15/5	5/0	5
Bosnia and Herzegovina (Yugoslavian Treaty)	15/5	10	10

Recipient	Dividends %	Interest %	Royalties %
Bulgaria	10	10	5
Canada	15	15	10/0
Chile	15/5	15/5	10/5
China, P.R.	10	10	10/7
Croatia	15/5	10	10
Cyprus	10	10	5
Czech Republic	10	10	5
Denmark	15/5/0	5/0	5
Egypt	12	12	12
Estonia	15/5	10	10
Finland	15/5	5/0	5
France	15/5	0	10/0
Georgia	10	8	8
Germany	15/5	5/0	5
Greece	19	10	10
Hungary	10	10	10
Iceland	15/5	10	10
India	15	15	22.5
Indonesia	15/10	10	15
Iran	7	10	10
Ireland, Republic of	15/0	10/0	10/0
Israel	10/5	5	10/5
Italy	10	10	10
Japan	10	10	10/0
Jordan	10	10	10
Kazakhstan	15/10	10	10
Korea, Republic of	10/5	10	10

Recipient	Dividends %	Interest %	Royalties %
Kyrgyzstan	10	10	10
Kuwait	5/0	5/0	15
Latvia	15/5	10	10
Republic Lebanon	5	5	5
Lithuania	15	10	10
Luxembourg	15/5	10/0	10
Macedonia	15/5	10	10
Malaysia	0	15	15
Malta	15	10	10
Mexico	15/5	15/5/0	10
Moldova	15/5	10	10
Morocco	15/7	10	10
Mongolia	10	10	5
Montenegro (Yugoslavian Treaty)	15/5	10	10
Netherlands	15/5	5/0	5
New Zealand	15	10	10
Norway	15/0	5/0	5
Pakistan	19	20/0	20/15
Philippines	15/10	10	15
Portugal	15/10	10	10
Romania	15/5	10	10
Russia	10	10	10
Serbia (Yugoslavian Treaty)	15/5	10	10
Singapore	10/0	10	10
Slovak Republic	10/5	10	5
Slovenia	15/5	10	10

<i>Recipient</i>	<i>Dividends %</i>	<i>Interest %</i>	<i>Royalties %</i>
Republic South Africa	15/5	10	10
Spain	15/5	0	10/0
Sri Lanka	15	0	10/0
Sweden	15/5	0	5
Switzerland	15/5	10	10/0
Syria	10	10/0	18
Tajikistan	15/5	10	10
Thailand	19	20/10/0	15/5
Tunisia	10/5	12	12
Turkey	15/10	10	10
Ukraine	15/5	10	10
United Arab Emirates	5	5	5
United Kingdom	10/0	5/0	5
United States	15/5	0	10
Uzbekistan	15/5	10	10
Vietnam	15/10	10	15/10
Zimbabwe	15/10	10	10

Tax administration

CIT settlements

An annual CIT return should be submitted to the tax office within three months following the end of the tax year. The same deadline applies to the settlement of the annual CIT liability. In financial terms, the final settlement is not significant, since most of the annual liability is paid by CIT advances throughout the tax year.

CIT advances should be paid for each month by the twentieth day of the following month. Starting from 2007, CIT advances do not need to be reported on a monthly basis and, thus, the annual return is the only tax return associated with CIT.

Entities that started business activity (except for companies organised as a result of certain transformations) and those whose gross sales revenue (including VAT) in the prior tax year did not exceed EUR 1,200,000 are entitled to opt to make advance settlements on a quarterly basis (instead of on a monthly basis).

VAT

Significant developments

Important amendments to the VAT regulations, which came into force as at 1 April 2011, include the following:

Mandatory reverse-charge mechanism for non-residents

Supply of goods

The obligatory reverse-charge mechanism applies to a domestic supply of goods performed by a taxpayer who does not have a seat or a fixed place of business in Poland, a purchaser who is a taxpayer with a seat or a fixed place of business in Poland, or is a legal entity (and is not a taxpayer) with a seat in Poland.

Supply of services

Under the new VAT regime, when services are supplied by a taxpayer who does not have a seat or a fixed place of business in Poland and the place of taxation is Poland, the purchaser has to apply the reverse-charge mechanism, even when he does not have a seat or a fixed place of business in Poland.

Free-of-charge disposal/private use of goods

A free-of-charge disposal/private use of goods belonging to the taxpayer's business will, as a rule, constitute a VATable supply in Poland, if input VAT incurred on the acquisition of these goods was wholly or partly deductible. However, the above rule will not be applicable to the disposal of printed advertising materials, samples and gifts of small value. Such a disposal of goods will still not be treated as a taxable supply of goods.

Free-of-charge services

A free-of-charge supply of services is treated as a supply of services for consideration (thus it is taxable) in the following cases:

- When the goods forming part of the assets of a taxpayer's business are used for purposes other than those of the taxpayer's business (including the private use of this taxpayer, his staff and shareholders), if input VAT incurred on such goods was wholly or partly deductible; and

- When a taxpayer renders services free of charge for the private use of e.g. the taxpayer himself, his staff and shareholders, as well as all other free-of-charge supplies of services for purposes other than those of the taxpayer's business.

The new VAT rate for children's clothing and footwear

From 1 January 2012, the standard VAT rate (currently 23%) will apply to supplies of children's clothing and footwear. So far, the reduced VAT rate (currently 8%) is applicable for these goods.

The amended VAT Act came into force from 1 January 2011. The new regulations introduced the following changes:

1. The new VAT rates, which are as follows:
 - 23% - base rate;
 - 8% - on the supply of goods for the Social Housing Programme (no greater than 150m²);
 - 5% - books and journals, unprocessed food, basic food (inter alia: bread, dairy products, cereal products and beverage drinks - from 7% to 5%).

Furthermore, VAT Act provides preferences for some goods and services, which are:

- 0% tax rate and
 - Exemptions.
2. Other changes limiting the deductibility of input VAT on the purchase or lease of company vehicles and increase of some excise duty rates.
 3. The departure of the VAT Act from the statistical classification applied so far in the process of identifying particular services for VAT purposes.

General rules

Polish VAT applies to the following activities:

- Supply of goods and services within the Polish territory;
- Export of goods outside the EU territory;
- Import of goods from countries that do not belong to the EU;
- Intra-community acquisition of goods (imports from countries belonging to the EU) and
- Intra-community supply of goods (exports to countries belonging to the EU).

VAT rates

The VAT rates are 23% (standard rate), 8%, 5%, 0% and exemption. The standard 23% VAT rate applies generally to the supply of all goods and services, except for those covered by special VAT provisions that provide other rates or treatments. Supplies covered by a reduced rate of 8% include, among others, the supply of pharmaceutical products and passenger transport services and also the supply of goods for the Social Housing Programme (no greater than 150m²). The 5% rate includes books and journals, unprocessed food and basic food. Zero-rated activities include, among others, the export of goods to countries outside the EU. VAT-exempt supplies include, among others, certain financial, insurance and educational services.

Basic calculation rules

In general, VAT due equals the VAT on outputs less the VAT on inputs (in other words, input VAT is deducted from output VAT). Input VAT may be deducted from output VAT when a business (with VAT-payer status) receives an invoice for goods or services purchased. Input VAT may not be deducted unless a purchased supply is linked to VATable activities. Furthermore, the deductibility of input VAT is restricted by VAT law with respect to the purchase of certain goods and services. In addition, subject to numerous conditions, output VAT may be reduced when receivables, resulting from VATable sales, become uncollectible.

VAT refunds

Polish VAT law allows direct refunds when input VAT (available for deduction) exceeds output VAT. A Polish business may also be entitled to a VAT refund owed by another country under certain circumstances. If such a country belongs to the EU, the procedure is substantially simplified due to EU Directive 2008/9/EC. The same directive provides favourable rules for businesses based in other EU countries that are seeking VAT refunds in Poland. This directive was implemented in Poland as at 1 January 2010.

Reporting rules

Generally, the VAT reporting period is one month. VAT returns should be submitted by the twenty-fifth of the month following the VAT reporting period. From 1 January 2009, all taxpayers may opt for a quarterly, instead of a monthly, reporting period.

Note: Businesses involved in intra-community acquisitions or supply of goods are obliged to submit additional VAT returns with respect to these particular transactions.

International services

The treatment of international services largely depends on the place of supply, since this determines whether those particular services are subject to Polish VAT. Polish VAT applies only to those services that are supplied within Poland. If a Polish entity provides such services, it should invoice the recipient based on general rules (i.e. rules that are equally applicable to purely domestic services). If a Polish business receives services that are supplied in Poland (and such services are rendered by a foreign provider), such Polish business should recognise the “import of services”, and as a result, should report output and input VAT of the same amount (equal to the value of the services multiplied by the applicable VAT rate). Therefore, in most cases, the import of services is VAT neutral. Finally, taxpayers should consider circumstances in which a Polish business renders services outside Poland. In this case, as previously mentioned, the services are not subject to Polish VAT; however, the business in question is entitled to deduct input VAT paid in relation to these activities.

The rules determining the location where international services are provided changed on 1 January 2010, following the implementation of EU Directive 2008/8/EC. Generally, the place of supply depends on the recipient of services. If the recipient is a business entity, the place of supply is determined to be the recipient's country; if the recipient is a private person,

the place of supply is determined to be the service provider's country. However, these general rules are subject to several exceptions.

Tax administration

VAT settlements

Similar to CIT, the VAT-reporting period is a month. VAT returns should be submitted by the twenty-fifth of the following month. However, starting 1 January 2009, all taxpayers are entitled to opt to file VAT returns on a quarterly basis. Taxpayers choosing a quarterly reporting period should submit VAT returns by the twenty-fifth of the month, following the last month of the quarter being reported. The VAT due should be paid by the same deadline as the one provided for filing the monthly (or quarterly) VAT return. Finally, businesses involved in intra-community acquisitions or supplies of goods (cross-border sale transactions within the EU), are obliged to submit additional VAT returns that report these particular transactions.

Other taxes

Excise duties

Significant developments

On 1 September 2010, changes in excise came into force and introduced new rules related to areas including the following:

- Taxation of the illegal consumption of electricity;
- Changes in the taxation of passenger vehicles;
- Movement of excise goods under suspension regime Excise Movement and Control System (EMCS);
- Import of excise goods from non-EU countries and sending them forward using duty suspension, arrangements and
- Changes in the scope and conditions of certain excise duty exemptions.

General rules

Excise duties are levied on the production, sale, import and intra-community acquisition of „excise goods,“ which are listed in the excise duty law and include, (among others) alcohol, cigarettes, energy products (petrol, oils, gas etc.), passenger cars and electricity.

Depending on the excise goods in question, one of the four methods of calculating excise tax may be applicable:

- A percentage of the taxable base;
- An amount per unit;
- A percentage of the maximum retail price and
- An amount per unit and a percentage of the maximum retail price.

The excise rate for car petrol is PLN 1,565 per 1,000 litres. Passenger cars are subject to the following excise rates:

- A rate of 3.1% for cars with an engine cubic capacity not exceeding 2000 cm³; and
- rate of 18.6% for cars with an engine cubic capacity exceeding 2000 cm³.

Notwithstanding the above information, Polish excise duty law provides for a wide system of excise duty exemptions as well as 0% taxation. Under specific circumstances, such preferential treatment may apply to certain goods that are otherwise taxed based on the general rules. This circumstance concerns, for example, specific energy products used for purposes other than fuel or for heating.

Property tax

Property tax rates are fixed by municipalities within limits set in the Law on Local Taxes and Fees. In 2011, the land used for business purposes is subject to a rate limit of PLN 0,80 per square metre. Buildings used for business purposes are subject to a rate limit of PLN 21,05 per square metre.

Capital tax

A share capital increase is subject to a 0.5% capital tax, payable by a company that receives a capital contribution. This tax applies equally to limited-liability companies as well as to joint-stock companies. A merger, division, or the transformation of one company into another company is no longer subject to capital tax, even if the transaction results in a share capital increase for any party. A similar exemption applies to a capital increase resulting from an in-kind contribution, including a whole business or its branch.

Taxes on individuals

Significant developments

Important amendments to personal income tax (PIT) regulations, implemented in 2011, include the following:

- Implementation of specific regulations concerning the taxation of income received from holding shares in a non-legal entity (partnership), in particular, among others, the contribution of assets to a non-legal entity, evaluation and depreciation of assets contributed to a non-legal entity, determining the revenue and costs from the disposal of assets contributed to such an entity, personal tax consequences of the liquidation of a non-legal entity or the resignation of a shareholder of such an entity;
- Modification of the rules concerning certain tax relief and tax exemptions (for example, the amended act modifies the documentation requirements with respect to the deduction of internet expenses and rehabilitation expenses, and modifies certain tax exemptions. It extends, amongst others, the tax exemption connected

with accommodation benefits provided by employers to employees for all forms of such accommodation;

- Modification of certain rules concerning joint tax reconciliation with a spouse and a joint tax reconciliation with a child;
- Changes related to certain rules for determining income from business activity and
- Application of tax exemption for income from share incentive (or similar) programmes, regardless of the method of purchase or acquisition of the shares, and also to the shares of companies with their seats in other EU or EEA member states.

Territoriality and residence

Definition of a resident

A resident is a person who:

1. Has a centre of personal or business interests (a life interest centre) in the territory of Poland or
2. Spends more than 183 days in a fiscal year in the Polish territory.

Taxations of residents and non-residents

Polish tax residents pay Polish PIT on their worldwide income. Non-residents are subject to Polish tax on their Polish-sourced income only. In many cases, non-residents can benefit from a 20% flat tax rate calculated on their revenues (i.e. with no deduction of costs). This flat tax applies to various sources of income, including management fees (but not to employment contracts). The above general rules, resulting from the Polish domestic legislation, may be modified by the applicable double tax treaties.

Gross income

Overall income

PIT is levied on an individual's overall income. The taxable base is calculated as the sum of income generated from all taxable sources, subject to a number of exceptions (some sources are taxed separately and left outside the overall income calculation).

Income from a particular source is defined as the surplus of revenue from such source over the tax-deductible costs related to the same source. The tax-deductible costs exceeding revenue within a single source of income result in a tax loss. Annual loss generated within a source of income cannot be set-off against income generated from other sources. Instead, a taxpayer is entitled to make a carryforward by deducting such a loss over the next five years from the income derived from the same source; however, in any particular year, the taxpayer cannot deduct more than 50% of the loss, subject to the carryforward.

Employee income

Employee revenue includes basic, overtime and supplemental pays,

awards and bonuses, compensation for unused holiday or vacation time, all other monetary amounts and benefits in kind, as well as all other free services from the employer.

Special rules for non-residents

Specified types of income, if earned by non-residents, are subject to special treatment. The specified types of income are taxed at a flat rate of 20% calculated on revenue (cost deductions are not allowed), unless a double tax treaty between Poland and the individual's country of residence provides otherwise. These types of earnings include the following:

1. Revenue from copyrights and other intellectual property such as trademarks, patents and designs including revenue from the sale of the rights in question.
2. Income from the transfer of technology and know-how.
3. Remuneration for leasing industrial, commercial or scientific equipment.
4. Income from independent work in the fields of art, literature, science, education, journalism and sports, including income from participation in artistic, scientific and cultural competitions.
5. Income from work commissioned by national or local authorities or administrative bodies, courts and prosecutors.
6. Income received as fees for membership of boards of directors, supervisory boards, committees and other decision-making bodies of legal entities.
7. Income from rendering personal services based on an agreement with a legal person or other entity, as long as these services are not rendered within the scope of independent business activity, i.e. they are not offered to the public.
8. Income received from activities performed personally under management or similar contracts.

Transfer of real property

Transfer of real property, if made within the scope of regular business activity, is taxed on general rules. Consequently, it is added to other business income and taxed, based on the progressive scale or the 19% flat rate (*see the Tax rates section*).

However, special rules apply if the transfer of property is made outside the scope of business activity. These rules vary according to the date on which the real property was acquired.

If a sale transaction involves real property acquired before 1 January 2007, then PIT is levied on the revenue. The relevant tax rate is 10%. This tax is subject to a number of exemptions. For example, the transaction will not be subject to PIT if the sale is made after the lapse of five years after the end of the tax year in which the property in question was purchased. Furthermore, a seller may avoid the 10% tax if he/she spends the relevant proceeds on purchasing another real property for personal accommodation; the purchase should be made within two years after the sale, subject to the exemption.

If the real property was purchased from 1 January 2007 onwards, the subsequent disposal is taxed at the 19% rate calculated on income. The income equals the difference between the revenue on sale and the cost of earning that revenue, increased by the overall amount of depreciation allowances (if any) made on the property in question before the disposal. Revenue earned from the disposal of residential real estate can be exempt from taxation in some cases. If a sale transaction involves real property acquired after 1 January 2007 but before 1 January 2009,

the income is exempt from tax only if the taxpayer was registered for permanent residency in the relevant building or flat for at least 12 months prior to the disposal date. If the real property was purchased from 1 January 2009 onwards, the tax can be avoided only if the revenue from the transaction is spent on purchasing another real property for personal accommodation. Again, the purchase should be made within two years after the sale, subject to the exemption.

Transfer of shares

Transfer of shares is taxed by a separate 19% tax calculated on the income (revenue less expenses on acquisition). This income is not added to income from other sources.

Dividends and interest

Income from dividends paid by joint-stock companies and limited liability companies is not added to an individual's overall income. Instead, it is subject to 19% tax calculated on revenue (deductions are not allowable). The same rules apply to the interest on loans and savings.

The exception concerns loans granted within the scope of regular business activities. In this case, general PIT rules apply. Consequently, both the revenues and the costs associated with such loans are taken into account when calculating the taxable base. Subsequently, income from business activity is taxed according to the progressive scale or the 19% flat rate (*see the Tax rates section*).

Exempt income

More than 130 types of income are tax exempt. The most important types are the following:

1. Damages received on the basis of administrative law, civil law and other legal acts (subject to numerous exceptions);
2. Receipts from property insurance and personal insurance claims (subject to some exceptions);
3. Remuneration paid to individual businessmen out of international aid funds established by foreign financial institutions or other countries, based on agreements concluded between such institutions or countries and the Polish government;
4. Cash equivalents provided to employees when they need to use their own tools, goods and equipment for their work;
5. Reimbursement of an employee's costs for relocation to another place of employment and the costs of settling in the new place (up to 200% of the monthly salary due to the employee in the month of transfer);
6. Limited daily allowances and other amounts due to employees during business trips;
7. Additional pay granted to employees who are temporarily transferred to work away from home and other benefits granted according to the principles and limits outlined in the rules for state employees;
8. Expenses covered by an employer for employees staying in hotels or for employees' accommodation rented by their employer (up to a certain limit);
9. Limited payments to employees who use their private cars for company business and
10. Income originating outside the Polish territory if an agreement for the avoidance of double taxation signed by Poland and the foreign country provides for such an exemption.

Tax deductible

There is a standard deduction for employees. In most typical circumstances, it is PLN 111,25 (approximately EUR 28) per month.

An individual carrying out independent work may claim various allowances, depending on the type of activities performed. In a typical situation, the standard deduction is 20% of revenue. The most favourable treatment relates to revenue from copyrights; the relevant standard cost deduction is 50% of the revenue.

Individuals running business activities as sole traders or partners in partnerships can deduct all expenses incurred to derive revenue or to „protect a source of income”. However, it should be noted that there is also a list of items that are not deductible even if they meet the above general conditions. This list contains over 60 items, including, among others, the following:

1. Written-off lapsed receivables;
2. Entertainment costs;
3. Accrued but unpaid interest;
4. Accounting and comparable provisions;
5. Tax penalties and penalty interest;
6. Part of the insurance premium paid on a passenger car (the part calculated on the excess of the car value over EUR 20,000) and
7. Part of the depreciation write-offs made on a passenger car (the part calculated on the excess of the car value over EUR 20,000).

Other deductions

The employee's portion of social security contributions is deductible from gross income before tax. Other expenses that may be deducted from gross income

include donations (subject to numerous conditions and up to a limit of 6% of taxable income; only food donations are not subject to the limit).

Personal allowances

For 2011, a personal allowance of PLN 556 (approximately EUR 146) for all taxpayers who are taxed is based on the general rules. This allowance is deducted against PIT (not the taxable base). (See also the tax scale in the *Tax rates category*).

Further, the annual PIT due for 2011 can be reduced by PLN 1,112 (approximately EUR 280) for each child in a family (including foster families). If a child was in the taxpayers' custody only for a period of time, the allowance is proportionately lowered.

Tax credits

Foreign income

When a Polish resident earns income in a foreign country that has not concluded a double tax treaty with Poland, double taxation is avoided based on the credit method. The Polish resident is liable for income tax imposed on the worldwide income, but this tax is proportionately reduced by income tax paid abroad. Numerous double tax treaties provide for the same credit method. However, some of them provide for the exemption method, i.e. foreign income covered by such treaty is exempted from taxation in Poland.

Note: From 1 January 2008, special tax relief has been introduced. This tax relief uses a complex deduction system, which effectively allows Polish residents to use the exemption method for all their foreign income, even if the applicable double tax treaty states that the credit method should be used. However,

this relief is not applicable to income earned in tax havens.

Other taxes

Social security insurance

Both the employer and the employee are obliged to contribute to the Polish social security system. Apart from paying their own share, the employer is obliged to withhold the employee's share of social security contributions and remit it to the Social Security Board (ZUS). In both cases, the relevant payments are made monthly.

In 2011, the employer pays total contributions in the range of 17.48% to 20.14% of the employee's gross salary (the employer's contribution includes an accident insurance element that varies according to the business sector). The contribution rate for the employee is 13.71% of gross salary. The social security contributions payable by the employer and the employee are tax-deductible items in their respective tax settlements.

The above rates apply to salaries below a cap of PLN 100,770 (approximately EUR 25,830). Above this cap, salary is subject to a contribution rate of 3.22% to 6.15% payable by the employer and 2.45% payable by the employee.

Details of the social security contribution calculation are shown in the following table:

	Contribution amount	Paid by
Pensions and disability insurance	14.26% of total gross salary (up to a cap of PLN 100,770)	Employer
	11.26% of total gross salary (up to a cap of PLN 100,770)	Employee
Sickness insurance	2.45% of total gross salary	Employee
Accident insurance	1.80% of total gross salary (the rate applicable to employers, that employ up to 9 employees) 0.67% - 3.60% of total gross salary (the rate applicable to employers, that employ more than 9 employees - the precise rate depends on the business sector)	
Labour Fund	2.45% of total gross salary	Employer
Employee Guaranteed Benefits Fund	0.10% of total gross salary	Employer

Health insurance

Expatriates from EU countries are entitled to an exemption from social security contributions under EU regulations. The basic condition is that an E101/A1 certificate has to be obtained in the expatriate's home country.

Polish nationals who are subject to social security insurance are generally subject to additional obligatory national health insurance. Some categories of individuals (such as sole traders) may voluntarily participate in this system. Foreign individuals are subject to obligatory health insurance only if they are subject to Polish social insurance and if they are residing in Poland on the basis of a visa with work permit, residence card or temporary residence card. Foreign individuals not referred to above are neither obliged nor entitled to participate (i.e. voluntarily) in the national health insurance system, unless an appropriate international agreement provides otherwise.

The monthly contribution rate for health insurance is 9% of the assessment base. In the case of obligatory participation, the assessment base is equal to the individual's gross income less social security contributions. In the case of voluntary participation, the amount of the assessment base is declared by the insured individual but cannot be lower than the average national salary as published from time to time. Contributions to health insurance are deducted from PIT, although only up to a limit of 7.75% of the assessment base. Therefore, that part of the insurance contribution, equal to 1.25% of the assessment base, is an additional financial burden on top of PIT.

Tax administration

The employer is obliged to withhold the employee's monthly advance payments. The advance payment for a particular month should be remitted by the twentieth of the following month. The employer is obliged to file with the tax office the tax return, including information on the employee's income and tax advances withheld with respect to that income. The above tax return is filed only once for the whole year.

The final PIT settlement is made by the individuals themselves. With some exceptions, individuals are obliged to submit the annual return for the tax year by 30 April of the following year. Within the same deadline, they have to pay the difference between the annual tax due and the total amount of advance payments made during the year.

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