

Taxation



3.1 Corporate Income Tax (CIT)

The Personal Income Tax, Corporate Income Tax and Value Added Tax Acts were all introduced in the early 1990s. Since then the Polish tax system has been subject to frequent and fundamental changes. These changes have been made through various mechanisms: changes in laws, varying court decisions, authorities' rulings and accepted practice.

Tax law has also undergone substantial modification and amendment due to Poland's accession to the European Union. The new Value Added Tax Act came into effect on the accession date (1 May 2004). The Corporate Income Tax Act has been significantly modified mainly in terms of cross-border transactions such as payment of dividends and restructurings.

Scope

Resident vs. non-resident

A company is regarded as a Polish resident if it has either its registered office or place of management in Poland. The term "place of management" is in principle determined under the effective management test defined in many treaties (i.e. the place where the management board or equivalent meets and takes decisions). Resident companies pay corporate income tax on their worldwide income and capital gains. Non-resident companies are taxed only on income and capital gains earned in Poland, unless a specific double tax treaty (DTT) provides otherwise. With effect from 1 January 2017, a non-exhaustive list of cases in which a non-resident's income is considered to have been earned in Poland was added to the CIT Act. A foreign partnership is subject to corporate income tax in Poland only if it is treated in its home country as an entity subject to corporate income tax. Otherwise, the income of its partners may be subject to taxation in Poland (see below).

Taxation of partnerships formed by companies

Partnerships are tax transparent entities, except for some cases of foreign partnerships (see above). Revenues earned and costs borne by partnerships are subject to corporate income tax at the level of the corporate partners, in proportion to their shares of interest.

Branch vs. subsidiary

A branch of a non-resident company is generally taxed on the same rules as a Polish company. The branch will usually be taxed on income determined on the basis of accounting records which must be kept in Polish currency (PLN). However, there are regulations under which coefficients (determining deemed profitability) can be applied for specific revenue categories if the tax base cannot be determined from the books (see the coefficients section). There is no branch withholding tax on the transfer of profits from a branch to its head office, as from a legal point of view, a branch is considered part of the foreign company.

A branch can be transformed into a subsidiary through the transfer of assets or the business to the subsidiary.

Foreign-source income

Income from an overseas representative office or permanent establishment of a Polish resident company is included in the company's total taxable income unless exemption can be applied under a DTT (about 80% of treaties provide exemption). In some circumstances, Polish law allows overseas corporate income tax paid to be credited against Polish tax payable, but usually only up to the amount of Polish tax on that income (referred to as "ordinary tax credit"). Any excess foreign tax is lost (subject to the comments further down).

Inbound dividends

Inbound dividends from a subsidiary in another EU or EEA Member State can be exempt from income tax in Poland.

This applies if the Polish parent has held a minimum 10% capital participation in the subsidiary for an uninterrupted period of at least two years. The shareholding period requirement does not have to be met upfront on the payment date.

The above also applies to permanent establishments of non-resident EU/ EEA companies located in Poland if they receive dividends from another EU/EEA resident company.

The exemption may also apply in the case of inbound dividend received from a Swiss subsidiary; however, the required minimum participation of the Polish parent in the Swiss subsidiary is 25%.

The above exemption does not apply if income from participation, including redemption proceeds, is received as a result of liquidation of the legal entity making the payments. In other cases of inbound dividends, exemption may result from DTTs. Tax credit (both direct and underlying) may also be applicable, depending on a number of requirements under both domestic rules and DTTs.

Based on domestic rules:

- ▶ Direct, proportional ordinary tax credit is available when any income of a Polish tax resident is taxed abroad and such income is not tax exempt in Poland
- ▶ Additional underlying, proportional tax credit is applicable whenever a company being a Polish tax resident holds a minimum of 75% shares in an entity taxed on its worldwide income in any treaty country outside the EU/EEA/ Switzerland.

The Polish taxpayer has to have held shares in the subsidiary for an uninterrupted period of two years. The shareholding period requirement does not have to be met upfront on the payment date (the taxpayer can declare that it intends to hold the shares and can meet the holding period criterion after payment).

Tax year

Corporate income tax is payable annually. However, advance monthly payments usually have to be made when cumulative income in a tax year is recorded (quarterly in the start-up year). In certain circumstances, special rules on simplified advance monthly payments or a payment deferral mechanism may be applied. The tax year generally consists of twelve consecutive months and usually corresponds to the calendar year. At start-up, a company may choose to extend its first tax year up to 18 months if it was established in the second half of a calendar year and chose the calendar year as its tax year. A company is free to change its tax year by choosing a different twelve-month period.

Any such change has to be notified to the relevant tax office. When a company changes its tax year, the first tax year after the change cannot be shorter than twelve or longer than twenty three consecutive months.

Groups of companies

Tax consolidation

A “tax capital group” may be formed for corporate income tax purposes. Taxable

income for the group is calculated by combining the incomes and losses of all the companies forming the group.

A tax capital group may be formed only by limited liability or joint-stock companies based in Poland and under certain conditions specified in the CIT Act. These requirements have to be met continuously throughout the period of the group's existence. Breach of any requirement will lead to termination of the group's capacity of taxpayer and in potential tax arrears at the level of group members.

As the tax authorities have up to six years to inspect taxpayers, they could challenge the tax position of the companies forming the group retrospectively.

Group losses

A tax capital group cannot utilise tax losses generated by group members prior to formation of the group. Any tax loss generated by the group cannot be offset by its members against their tax profits after the group ceases to exist.

Asset transfers

The transfer of assets between companies in tax capital groups is treated as a normal disposal. However, transfer pricing restrictions do not apply to any transactions between the tax capital group member companies.

In addition, donations between companies in a tax capital group should be treated as tax deductible costs for the donor. Donations outside the group are not deductible.

Determination of tax base

In practice, taxable income is arrived at by adjusting accounting results for tax purposes. Taxpayers have to keep accounting records in a manner allowing the tax base and the amount of tax payable to be determined. Otherwise, income may be assessed by the tax authorities.

Rates

The standard corporate income tax rate is 19%. A reduced CIT rate of 15% is applicable starting from 1 January 2017 to small taxpayers earning revenues (inclusive of VAT) equivalent to EUR 1.2m or less and for taxpayers starting a new business for their first tax year in operation.

Returns and payments

An annual tax return must be filed and any tax due paid by the end of the third month of the following tax year. Monthly advance payments are required in most cases; however, there is no monthly tax return filing obligation. In certain circumstances, a company may benefit from a simplified advance payment procedure.

Fines and late payment interest may be imposed (at an annual rate calculated as 200% of the lombard credit rate announced by the National Bank of Poland) on the amount of any tax arrears at a rate of 8% p.a. as of 31 December 2016. In specific cases the reduced interest rate may be applicable (50% of the standard rate).

Revenues

Generally, taxable revenues of corporate entities carrying out business are recognised on an accrual basis. As a rule, revenue is recognised on the date when goods or property rights are disposed of or when a service is supplied (or supplied in part), but no later than:

- ▶ The invoice issue date, or
- ▶ The date payment is received.

If the parties agree that services of a continuous nature are accounted for over reporting periods, revenue is recognised on the last day of the reporting period set out in the contract or on the invoice; in this case, revenue must be reported at least once a year.

The definition of revenues includes free and partially free benefits.

Payment of a liability in kind

If a taxpayer settles a liability in whole or in part by providing consideration in kind (non-cash consideration), he should recognize taxable revenue in the amount of the liability settled as a result of such consideration, not lower than the market value of the contribution in kind.

Capital gains

Taxable capital gains are calculated by deducting sale-related costs and expenses from the sale proceeds. They are then aggregated with other sources of income and taxed at the standard tax rate. If the

sale price differs substantially from market value, the tax office may require an independent expert valuation. Exemptions may apply under DTTs.

Capital losses are generally deductible from ordinary business income.

With effect from 1 January 2017 a capital gain arising from a contribution in kind other than an enterprise or its organised part to a company made in exchange for the issue of shares will generally carry the liability to recognise revenue equal to the value of the contribution as set out in the company's articles of association or other document of a similar nature which is not, however, less than the market value of the contribution.

In some situations the tax point is deferred until the shares acquired in exchange for the contribution are disposed of, e.g. when:

- ▶ A contribution involves an enterprise or an organised part of an enterprise
- ▶ Shares are contributed to an EEA resident company and, as a result, (i) the shareholding of the acquiring company in the company whose shares are contributed exceeds 50% in terms of voting power, or (ii) the acquiring company increases its shareholding if it held over 50% of the voting power prior to the contribution.

Tax deductible costs linked to contributions in kind vary according to the type of asset contributed.

Dividends, interest, royalties and services

Dividend distributions are generally subject to 19% withholding tax levied on the gross distribution amount, unless a DTT provides otherwise. Income from sharing in profits of corporate entities paid by a Polish company to companies established in Poland or in EEA countries may be exempt from withholding tax where the dividend recipient holds a minimum 10% share in the dividend payer's share capital for at least 2 years. Also, dividends paid to a Swiss parent company may be exempt, though the shareholding threshold in this case is 25%.

According to the CIT Act, the exemption will not apply to a legal transaction or a series of legal transactions which, having been put into operation for the main purpose or one of the main purposes of obtaining a tax advantage, are not genuine having regard to all relevant facts and circumstances.

A legal transaction that is not genuine is a transaction which is undertaken in order to benefit from a tax exemption and which does not reflect economic reality, i.e. it is not conducted for valid commercial reasons and it results, in particular, in the transfer of the ownership of the dividend payer's shares or the dividend payer earning income (revenue) transferred in the form of a dividend.

Interest and royalties are subject to standard tax rates at payee level and are generally deductible for the payer. Payments of interest and royalties

to foreign companies are subject to 20% withholding tax unless a DTT provides otherwise and a tax residence certificate is provided.

Interest and royalties paid by a Polish company to companies established in Poland, EEA countries or Switzerland may be exempt from withholding tax where the recipient has held a minimum 25% share in the payer's share capital for at least 2 years or the payee has held a minimum 25% share in the recipient's share capital for at least 2 years. Moreover, with effect from 1st January 2017 the recipient must be the beneficial owner of such payments which means that he receives them for his own benefit and in doing so does not act as an intermediary for the benefit of other entities.

The minimum holding period does not have to be fulfilled upfront on the payment date. If the holding period is not fulfilled after payment, the recipient is obliged to pay the withholding tax (at a treaty rate, if applicable) together with late payment interest.

The right to exemption is conditional on the Polish payer being provided with a certificate of the recipient's tax residence and a statement that the recipient is not benefiting from an income tax exemption on its worldwide income. For interest and royalties income, with effect from 1st January 2017 a statement confirming that the recipient company is the beneficial owner of the payment is also required.

Under the CIT Act, the 20% withholding tax rate also applies to fees paid for certain services (e.g. advisory, accounting, market research, legal assistance, advertising,

management and control, data processing, search and selection, guarantees and pledges and other similar services), unless the relevant treaty provides otherwise. Under most DTTs such payments are treated as business income taxable in the taxpayer's country of residence and hence not taxable in Poland, unless attributable to a permanent establishment in Poland.

Coefficients

Where it is impossible to determine the taxable income of foreign entities based on accounting records, the tax authorities may assess taxable income by applying the relevant coefficient for specific revenue categories.

The coefficients are: 5% for wholesale and retail activities performed in Poland (understood as selling goods to Polish recipients irrespective of where the agreement was concluded, unless the relevant DTT provides otherwise), 10% for construction, assembly and transport services, 60% for agency activities, 80% for legal or expert services and 20% for income derived from other sources. Taxable income is then taxed at the standard rate.

Costs

As a rule, costs incurred for the purpose of generating income, retaining or protecting sources of income are divided into the following categories:

- ▶ Direct costs (attributable to particular revenues), and
- ▶ Other (indirect) costs.

Direct costs (attributable to particular revenues) are recognised for tax purposes:

- ▶ In the tax year in which the related income was earned, or
- ▶ In the tax year following the year for which the financial statements are prepared/ the annual tax return filed if the costs were incurred after the financial statements are prepared/ the annual tax return is filed for the tax year in which the related income was earned.

Other (indirect) costs are tax deductible on the date they are incurred. If they relate to a period longer than the tax year and it is impossible to determine which part should be attributed to a given tax year they should be allocated pro rata to the length of the period to which they relate.

Depreciation

Assets which have a useful life of more than one year are subject to depreciation.

Tax depreciation is often different from book depreciation. Tax depreciation rates are specified in tax law and cannot be exceeded. Both straight line and reducing balance methods are allowed (the latter applies only to machinery and equipment, except for passenger cars). In certain circumstances, accelerated tax depreciation can be applied. Land is not depreciated.

Low value assets (up to PLN 3,500 net) may be written off immediately.

Intangible assets subject to amortisation are:

- ▶ Certain rights to use real estate
- ▶ Intellectual property rights and licences
- ▶ Industrial property rights
- ▶ Know-how (with the exception of know-how contributed in kind)

- ▶ Goodwill resulting from the purchase of a business; goodwill on share deals or mergers is excluded from tax amortisation
- ▶ Certain research and development costs.

Intangibles are amortised over a minimal period usually ranging from twelve months (e.g. development costs) to sixty months (e.g. goodwill).

Bad debts

Bad debts, written off as uncollectible, are tax deductible only if they were previously accounted for as revenues for tax purposes. Bad debts that are deemed to be uncollectible may be tax deductible under certain conditions specified in the CIT Act.

If debts are considered uncollectible, an impairment write-down on receivables may be recognised as a tax deductible cost under certain conditions specified in the CIT Act.

There are special rules on bad debt provisions for banks.

Thin capitalisation

Interest due on a loan extended by a related party (indirect shareholders with at least 25% of the borrower's shares in terms of voting power) is not recognised as a tax deductible cost when the debt-to-equity ratio exceeds 1:1 in the portion in which the loan exceeds this ratio. The amount of debt is compared with the amount of borrower's equity.

Please also note that there is an alternative method governing tax deductibility of interest introduced in the Polish CIT Act.

Under this method (as a second option applied at the taxpayer's sole discretion and continued for a minimum period of three years, with a notification required), interest and expenses arising from all loans (whether granted by related or non-related

entities) are tax deductible based on the value of the tax assets (up to a specified percentage determined as the National Bank of Poland's reference rate [as at the last day of the preceding year] plus 1.25%). Furthermore, tax deductible interest cannot

Examples of annual depreciation rates

Asset	Depreciation rate (%)	Depreciation period
Buildings	1.5 - 10	66 years and 7 months - 10 years
Office equipment	14	7 years and 2 months
Computers	30	3 years and 4 months
Motor vehicles	20	5 years
Plant and machinery	5 to 20	5 to 20 years

exceed 50% of operating profit. Interest paid but not deducted in a given tax year can be carried forward over the next 5 tax years (within the applicable caps).

Until 31 December 2014 the deductibility restrictions applied to direct shareholders only and the debt-to-equity ratio was 3:1; however, the amount of a debt was compared with the amount of a company's share capital.

For thin capitalization purposes, a "loan" is widely understood as any kind of debt claim including debt securities and certain deposits.

The deductibility of interest on loans granted before 1 January 2015 remains governed by the former regime, unless a taxpayer opts for the application of the revised thin capitalization rules.

Others

There are certain exceptions to the matching concept, e.g. interest or foreign exchange gains/losses is generally taxable/deductible when settled. Certain expenditures are not tax deductible, e.g.:

- ▶ Certain penalties and fines
- ▶ Accrued interest payable
- ▶ Provisions, with some exceptions
- ▶ Expenditure on benefits granted to supervisory board members (excluding remuneration) or shareholders
- ▶ Expenditure incurred in excess of the statutory limit (e.g. depreciation charges and insurance of passenger cars valued over EUR 20,000)
- ▶ Business entertainment expenses.

Losses

Tax losses suffered by a corporate income taxpayer may be carried forward and set off against income over the five following tax years up to half the cumulated loss per year. Losses cannot be carried back.

Withholding tax

The standard withholding tax rate is 19% on dividends and 20% on interest and royalties. The rate may be reduced inter alia under a DTT upon presentation of a certificate of tax residence. The table below shows the withholding tax rates under Polish DTTs.

Withholding tax rates under Poland's tax treaties (%)

	Dividends (%)	Interest (%)	Royalties (%)
Albania	5/10 (d)	10	5
Algeria (gg)	5/15 (d)	0/10 (k)	10
Armenia	10	5	10
Australia	15	10	10
Austria	5/15 (a)	0/5 (k)	5
Azerbaijan	10	10	10
Bangladesh	10/15 (a)	0/10 (k)	10
Belarus	10/15 (e)	10	0
Belgium	5/15 (cc)	0/5 (k)	5
Bulgaria	10	0/10 (k)	5
Canada	5/15 (a)	0/10 (pp)	5/10 (qq)
Chile	5/15 (c)	15 (dd)	5/15 (h)(ee)
China	10	0/10 (k)	7/10 (h)
Croatia	5/15 (d)	0/10 (k)	10
Cyprus	0/5(oo)	0/5 (k)	5
Czech Republic	5	0/5 (k)	10
Denmark	0/5/15 (s)	0/5 (k)	5
Egypt	12	0/12 (k)	12
Estonia	5/15 (d)	0/10 (k)	10
Finland	5/15 (y)	0/5 (k)	5

	Dividends (%)	Interest (%)	Royalties (%)
France	5/15 (a)	0	0/10 (p)
Georgia	10	0/8 (k)	8
Germany	5/15 (jj)	0/5 (k)	5
Greece	19	10	10
Hungary	10	0/10 (k)	10
Iceland	5/15 (y)	0/10 (k)	10
India	10	0/10 (k)	15
Indonesia	10/15 (c)	0/10 (k)	15
Iran	7	0/10 (k)	10
Ireland	0/15 (kk)	0/10 (k)	0/10 (v)
Israel	5/10 (b)	5	5/10 (h)
Italy	10	0/10 (k)	10
Japan	10	0/10 (k)	0/10 (i)
Jordan	10	0/10 (k)	10
Kazakhstan	10/15 (c)	0/10 (k)	10
Korea	5/10 (a)	0/10 (k)	10
Kuwait	0/5 (z)	0/5 (k)	15
Kyrgyzstan	10	0/10 (k)	10
Latvia	5/15 (d)	0/10 (k)	10
Lebanon	5	0/5 (k)	10
Lithuania	5/15 (d)	0/10 (k)	10
Luxembourg	0/15 (oo)	0/5 (k)	5
Macedonia	5/15 (d)	0/10 (k)	10
Malaysia	0	15	15
Malta	0/10 (hh)	0/5 (k)	5
Mexico	5/15 (d)	0/10/15 (k)(aa)	10
Moldova	5/15 (d)	0/10 (k)	10
Mongolia	10	0/10 (k)	5
Morocco	7/15 (d)	10	10

	Dividends (%)	Interest (%)	Royalties (%)
Netherlands	5/15 (a)	0/5 (k)	5
New Zealand	15	10	10
Nigeria (gg)	10	0/10 (k)	10
Norway	0/15 (hh)	0/5 (k)	5
Pakistan	15 (j)	0/20 (k)	15/20 (n)
Philippines	10/15 (d)	0/10 (k)	15
Portugal	10/15 (o)	0/10 (k)	10
Qatar	5	0/5 (k)	5
Romania	5/15 (d)	0/10 (k)	10
Russian Federation	10	0/10 (k)	10 (w)
Singapore	0/5/10 (bb)(oo)	0/5 (k)	2/5(h)
Slovak Republic	0/5 (oo)	0/5 (k)	5
Slovenia	5/15 (d)	0/10 (k)	10
South Africa	5/15 (d)	0/10 (k)	10
Spain	5/15 (d)	0	0/10 (f)
Sri Lanka	15	0/10 (k)	0/10 (l)
Sweden	5/15 (d)	0	5
Switzerland	0/15 (ll)	0/5/10 (mm)	0/5/10 (nn)
Syria	10	0/10 (k)	18
Tajikistan	5/15 (d)	10	10
Thailand	19 (t)	0/10/20 (k)(m)	5/15 (f)
Tunisia	5/10 (d)	12	12
Turkey	10/15 (d)	0/10 (k)	10
Ukraine	5/15 (d)	0/10 (k)	10
United Arab Emirates	0/5 (z)	0/5 (k)	5
United Kingdom	0/10 (ff)	0/5 (k)	5
United States	5/15 (g)	0	10
Uruguay (gg)	15	0/15 (k)	15
Uzbekistan	5/15 (c)	0/10 (k)	10

	Dividends (%)	Interest (%)	Royalties (%)
Vietnam	10/15 (d)	10	10/15 (q)
Yugoslavia (u)	5/15 (y)	10	10
Zimbabwe	10/15 (d)	10	10
Non treaty countries	19	20	20 (x)

- (a) The lower rate applies if the dividend recipient is a company that owns at least 10% of the payer.
- (b) The lower rate applies if the dividend recipient is a company that owns at least 15% of the payer.
- (c) The lower rate applies if the dividend recipient is a company that owns at least 20% of the payer.
- (d) The lower rate applies if the dividend recipient is a company that owns at least 25% of the payer.
- (e) The lower rate applies if the dividend recipient is a company that owns more than 30% of the payer.
- (f) The lower rate applies to royalties paid for copyrights, among other items; the higher rate applies to royalties for patents, trademarks and industrial, commercial or scientific equipment or information.
- (g) The lower rate applies if the dividend recipient is a company that owns at least 10% of the voting shares of the payer.
- (h) The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
- (i) The lower rate applies to so-called "cultural" royalties.
- (j) This rate applies if the dividend recipient is a company that owns at least one-third of the payer.
- (k) The 0% rate applies to, among other items, interest paid to government units, local authorities and central banks. In certain countries, the rate also applies to banks (the list of exempt or preferred recipients varies by country). The relevant treaty should be consulted in all cases.
- (l) The 0% rate applies to royalties paid for, among other items, copyrights. The 10% rate applies to royalties paid for patents, trademarks and for industrial, commercial or scientific equipment or information.
- (m) The 20% rate applies if the interest recipient is not a financial or insurance institution or a government unit.
- (n) The lower rate applies to know-how; the higher rate applies to copyrights, patents and trademarks.
- (o) The 10% rate applies if, on the dividend payment date, the dividend recipient has owned at least 25% of the share capital of the payer for an uninterrupted period of minimum two years. The 15% rate applies to other dividends.
- (p) The lower rate applies to royalties paid for the following: copyrights: the

- use of, or the right to use, industrial, commercial and scientific equipment; services comprising of scientific or technical studies; or research and advisory, supervisory or management services. The treaty should be checked in all cases.
- (q) The lower rate applies to know-how, patents and trademarks.
- (r) The lower rate applies to certain dividends paid to government units or companies.
- (s) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the capital of the dividend payer for at least one year and if the dividends are declared within this holding period. The 5% rate applies to dividends paid to pension funds or other similar institutions operating in the pension system field. The 15% rate applies to other dividends.
- (t) As the rate under Polish domestic law is 19%, the treaty rate of 20% does not apply.
- (u) The treaty with the Federal Republic of Yugoslavia applies to the Republic of Serbia and the Republic of Montenegro.
- (v) Lower rate applies to fees for technical services.
- (w) 10% rate also applies to fees for technical services.
- (x) 20% rate also applies to certain services (e.g. advisory, accounting, market research, legal assistance, advertising, management and control, data processing, search and selection, guarantees and pledges and similar services).
- (y) The lower rate applies if the beneficial owner is a company (other than a partnership) that controls directly at least 25% of the capital of the company paying the dividend.
- (z) Lower rate applies if dividend owner is the government or a government institution.
- (aa) 10% rate applies to interest paid to banks and insurance companies and to interest on bonds.
- (bb) The 0% rate applies to certain dividends paid to government units or companies.
- (cc) Lower rate applies if dividend recipient is a company that:
- ▶ owns at least 25% of the payer's shares, or
 - ▶ owns at least 10% of the payer's shares, provided the value of the investment is at least EUR 500,000 or equivalent.
- (dd) Treaty rate is 15% for all types of interest. However, under the most-favoured-nation clause in a protocol to the treaty, the 15% rate is replaced by the more favourable rate which was agreed to in any treaty that Chile entered into with another jurisdiction. For example, under Chile's tax treaty with Spain, a 5% rate applies to certain types of interest payments, including interest paid to banks or insurance companies or interest derived from bonds or securities that are regularly and substantially traded on a recognised securities market.

- (ee) General treaty rate for royalties is 15%. However, under the most-favoured-nation clause in a protocol to the treaty, the 15% rate is replaced by the more favourable rate which was agreed to in any treaty that Chile entered into with another jurisdiction. For example, under Chile's tax treaty with Spain, the general withholding tax rate for royalties is 10%.
- (ff) The 0% rate applies if the beneficial owner of the dividends is a company that holds at least 10% of the share capital of the dividend payer for an uninterrupted period of at least two years.
- (gg) The ratification procedure has not yet been completed. Therefore, the treaty has not yet entered into force.
- (hh) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 10% of the capital of the company paying the dividends on the date on which the dividends are paid and has held the capital or will have held the capital for an uninterrupted 24-month period that includes the date of payment of the dividends.
- (ii) The rate is 10% if Switzerland imposes a withholding tax on royalties paid to non-residents.
- (jj) The lower rate applies if the recipient of the dividends is a company (other than a partnership) that owns directly at least 10% of the payer. Certain limitations on the application of the preferential rates may apply.
- (kk) The lower rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the voting power of the payer. Under the Ireland treaty, if Ireland levies tax at source on dividends, the 0% rate is replaced by a rate of 5%.
- (ll) The 0% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the company paying the dividends on the date the dividends are paid and has done so or will have done so for an uninterrupted 24-month period in which that date falls. The 0% rate may also apply to dividends paid to certain pension funds.
- (mm) The 10% rate applies to interest paid before 1 July 2013. For interest paid on or after 1 July 2013, the 5% rate applies unless an exemption applies. The 0% rate applies to such interest if any of the following conditions is satisfied:
- ▶ The beneficial owner of the interest is a company (other than a partnership) that holds directly at least 25% of the share capital of the payer of the interest.
 - ▶ The payer of the interest holds directly at least 25% of the share capital of the beneficial owner of the interest.
 - ▶ An EU/EEA company holds directly at least 25% of the share capital of both the beneficial owner of the interest and the payer of the interest.
- (nn) For royalties paid before 1 July 2013, the 10% rate applies if Switzerland's

local law imposes withholding tax on royalties paid to non-residents. Otherwise, a 0% rate applies. For royalties paid on or after 1 July 2013, a 5% rate applies unless an exemption applies. The 0% rate applies to such royalties if any of the following conditions is satisfied:

- ▶ The beneficial owner of the royalties is a company (other than a partnership) that holds directly at least 25% of the share capital of the payer of the royalties.
- ▶ The payer of the royalties holds directly at least 25% of the share capital of the beneficial owner of the royalties.
- ▶ An EU/EEA company holds directly at least 25% of the share capital of both the beneficial owner of the royalties and the payer of the royalties.

Furthermore, if Poland enters into an agreement with an EU or EEA country that allows it to apply a rate that is lower than 5%, such lower rate will also apply to royalties paid between Poland and Switzerland.

(oo) The lower rate (5% rate under the Singapore treaty) applies if the beneficial owner is a company (other than a partnership) that has held directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of 24 months.

(pp) The 0% rate applies to the following:

- ▶ Interest arising in Poland and paid to a resident of Canada with respect to

a loan made, guaranteed or insured by Export Development Canada or to a credit extended, guaranteed or insured by Export Development Canada.

- ▶ Interest arising in Canada and paid to a resident of Poland with respect to a loan made, guaranteed or insured by an export financing organization that is wholly owned by the state of Poland or to a credit extended, guaranteed or insured by an export financing organization that is wholly owned by the state of Poland.
- ▶ Interest arising in Poland or Canada and paid to a resident of the other contracting state with respect to indebtedness arising as a result of the sale by a resident of the other contracting state of equipment, merchandise or services (unless the sale or indebtedness is between related persons or unless the beneficial owner of the interest is a person other than the vendor or a person related to the vendor).

(qq) The lower rate applies to copyright royalties and similar payments with respect to the production or reproduction of literary, dramatic, musical or artistic works and royalties for the use of, or the right to use, patents or information concerning industrial, commercial or scientific experience (with some exceptions).

Tax incentives

Special Economic Zones (SEZs)

Polish CIT provisions allow companies to apply for a permit to conduct business activities within one of SEZs, giving them right to benefit from CIT exemption. The maximum value of the exemption is calculated on the basis of an aid intensity applicable to a given location and eligible investment's costs (capital expenditures) or two-years' costs of newly created jobs.

Relevant information on the SEZ functioning and the rules on applying for the CIT exemption have been outlined in the Chapter 1.2.

Research & Development tax relief

The deduction allows for the partial recovery of expenses borne by a taxpayer conducting R&D activities. For more information on the R&D tax relief please see Chapter 1.2.

Transfer pricing

Poland has implemented transfer pricing rules based on the arm's length principle. Where an individual or a corporate entity participates (directly or indirectly) in the management or control of, or holds at least 25% of shares in (until 31 December 2016 at least 5%), another corporate entity and the entities do not comply with the arm's length principle, transfer pricing restrictions may be applied. When an individual or a corporate entity takes part (directly or indirectly) in the management or control of, or holds stocks in multiple entities, these restrictions also apply to transactions between these entities.

In such cases, the tax authorities may assess and adjust the taxpayer's profit using the following methods: comparable uncontrolled price method, resale price method, reasonable margin (cost plus) method, or transaction profit methods. Poland generally follows the OECD's Transfer Pricing Guidelines with respect to profit assessment methods. However, Polish formal documentation requirements for transactions with related companies and the penalty regime for transfer pricing adjustments are relatively restrictive.

Effective from 2017, fundamental changes have been introduced regarding the obligations attaching to and the scope transfer pricing documentation, specifically the new thresholds for transactions to be documented, the extended scope of data to be presented in the documentation, obligatory benchmarks reflecting the local market for certain type of entities.

The applicability of the TP documentation requirement is determined by the size of the taxpayer, namely:

- ▶ < EUR 2m - no documentation required;
- ▶ EUR 2m - EUR 10m - a local documentation file, but with an extended scope;
- ▶ EUR 10m - EUR 20m - the above plus a benchmarking study plus a report on the intercompany transaction submitted together with the annual tax return;
- ▶ EUR 20m - EUR 750m - the above plus master file documentation;
- ▶ > EUR 750m - the above plus a Country-by-Country Report on income earned by foreign subsidiaries.

In addition, the requirement to submit a simplified report on transactions concluded with related parties along with the annual CIT return applicable for taxpayers with revenues or expenses exceeding EUR 10m has been introduced. Taxpayers are also required to submit a signed declaration confirming that they have their transfer pricing documentation (the declaration must be filed together with the annual CIT return).

Moreover, effective from 2016, domestic entities must file a Country-by-Country Report (according to the template provided by the Polish Ministry of Finance) within 12 months from the last day of their tax year if certain conditions are met.

As the deadline for submitting transfer pricing documentation is short (seven days from the date of the request), in practical terms taxpayers should prepare their documentation while the transaction is being carried out.

If the tax authorities or tax inspection authorities assess a taxpayer's income in an amount higher (or loss in an amount lower) than that declared by the taxpayer in connection with a transaction and the taxpayer fails to submit the required documentation, any additional income assessed as a result of a TP adjustment will be taxed at a penalty rate of 50%.

In 2013 the Transfer Pricing Regulation was amended to introduced provisions governing business restructurings, low value adding services and shareholder costs. In addition, the Ministry of Finance has issued detailed guidance on how to audit business restructurings, so now tax authorities have tangible tools to be used in auditing business restructuring projects.

Moreover, in 2014, a Special Task Force was set up to intensify transfer pricing audits and assess the formal criteria for selecting entities for transfer pricing audits with the use of professional IT tools and transfer pricing databases such as Amadeus or RoyaltyStat.

Polish representatives of the Ministry of Finance also actively participate in the OECD's work under the BEPS (Base Erosion and Profit Shifting) Initiative, implementing the results of that work in the Polish legislation. As the Ministry's representatives have declared, they are planning to issue special guidelines on transfer pricing documentation and on intangibles to be distributed to tax offices.

Tax authorities' interest in auditing transfer pricing is increasing steadily in Poland. According to an official communication, the tax audit priorities are business restructurings, financial transactions, transactions involving intangibles and attribution of profits to PE's.

Transfer pricing audits in Poland also focus on asset management, automotive industry, banking and capital markets, consumer products, pharmaceuticals, oil and gas industry, power and utilities, technology and real estate.

Payments to tax havens

The requirement to prepare documentation also applies to transactions in which the payment is made directly or indirectly to an entity whose residence, registered office or place of management is situated in a territory or country that pursues harmful tax competition practices (the so-called "tax havens"), even if the entity based in a tax

haven is not a related party. The Minister of Finance has published a list of countries and territories pursuing harmful tax competition policies.

Advanced Pricing Agreements (APAs)

As of 1 January 2006, APAs are available in Poland. Under Polish regulations, three types of APA are possible:

- ▶ a unilateral APA:
 - a. domestic (only for domestic related entities);
 - b. foreign (for a domestic entity related to a foreign entity or domestic entities related to the same foreign entity);
- ▶ a bilateral APA;
- ▶ a multilateral APA.

A taxpayer's main benefit from an APA is that the tax authorities approve the method applied to calculate the transfer price in his transaction. APAs in Poland are entered into for a maximum period of 5 years and can be extended.

They may apply to a planned transaction which will be concluded after the application for the APA has been filed or a transaction that has already been concluded and is currently in progress.

Polish APA regulations place no restrictions on the value of the transaction to be covered by the APA. However, when applying for an APA, the taxpayer generally has to pay a fee of 1% of the transaction value. The fee caps are specified in the Polish APA law and are as follows:

- ▶ for a domestic APA the minimum fee is PLN 5,000 and the maximum is PLN 50,000
- ▶ for a unilateral foreign APA the minimum fee is PLN 20,000 and the maximum is PLN 100,000;
- ▶ for a bilateral and multilateral APA the minimum fee is PLN 50,000 and the maximum is PLN 200,000.

An APA decision is issued within the shortest possible time and the procedure will not exceed:

- ▶ 6 months - for domestic APAs
- ▶ 12 months - for bilateral APAs
- ▶ 18 months - for multilateral APAs.

Every year the number of the APA applications filed with and the APA decisions issued by the Ministry of Finance is increasing. Also, the number of bilateral agreements is increasing steadily.

Miscellaneous matters

General Anti-Avoidance Rule (GAAR)

Introduced in the Polish tax system with effect from 15th July 2016, the GAAR is to apply to legal arrangements devised first and foremost with a view to achieving a "tax benefit" that is inconsistent with the purpose and substance of tax laws in a given situation and whenever reliance on solutions of that type is "artificial".

The applicability of the GAAR is to be limited to cases in which a taxpayer achieved an aggregate "tax benefit" in excess of PLN 100,000 in a given reporting

period. The tax benefit may consist in the taxpayer reducing, avoiding or postponing his tax liability, a tax overpayment or his entitlement to a tax refund being created, or else an increase in the amount of a tax overpayment or tax refund.

Tax neutrality of mergers/demergers and exchange of shares

Only mergers, demergers and exchanges of shares that are commercially justified warrant preferential tax treatment (tax neutrality). Tax authorities are currently in a position to challenge the tax neutrality of such transactions if they are carried out with the sole purpose of achieving tax gains and do not have any commercial justification. Moreover, if a merger, demerger or exchange of shares has no commercial justification, it is assumed that the principal or one of the principal objectives of the transaction is tax evasion or tax avoidance.

Controlled foreign companies (CFC)

Effective from 1 January 2015, certain income or gains derived by foreign subsidiaries of Polish taxpayers that fit the definition of a CFC are subject to tax in Poland.

A CFC's income is subject to tax in Poland at 19% at the level of the Polish shareholder. The shareholder is liable to tax on the portion of the CFC's profits in which the shareholder participates after deducting any dividends received from the CFC and on gains on the disposal of shares in the CFC (these amounts may be deducted over the following five tax years).

The tax payable in Poland may be decreased by a relevant proportion of the corporate income tax liability paid by the CFC.

CFC taxation rules do not apply under certain conditions.

Standard Audit File for Tax (SAF-T)

Following a recent amendment to the Tax Code, a SAF-T (Standard Audit File for Tax) has been introduced. The SAF-T is a set of files with a specific logic structure in which a taxpayer will be required to provide selected data from his account books and information about supporting documents at the tax authorities' request.

The new audit regime, which applies not only to VAT accounts but also other taxes and the checking of books of account and tax returns in a broad sense, includes the following structures:

- ▶ Account books;
- ▶ Bank statements;
- ▶ Warehouses;
- ▶ VAT records;
- ▶ VAT invoices;
- ▶ Tax revenue and expense ledger;
- ▶ Revenue records.

Taxpayers are required to submit their data in the SAF-T format on request for the purpose of a preliminary tax inquiry, a tax audit and tax proceedings, and on a monthly basis in the case of VAT returns.

From 1 July 2016 onward, large enterprises (within the meaning of the Freedom of Establishment Act) are required to

generate data in the SAF-T format for VAT records and to provide it to tax authorities. For small and medium enterprises, this requirement has been applicable since 1 January 2017.

Failure to comply may adversely affect the position of a taxpayer during a tax audit and may also result in tax penalties.

The Polish Ministry of Finance has confirmed that the requirement to transmit data in the SAF-T format also applies for foreign companies with limited liability to tax in Poland (for example those with Polish VAT registration numbers only).

New taxes - tax on financial institutions and retail tax

In February 2016, tax on financial institutions was imposed on various financial institutions, i.e. domestic banks, branches of foreign banks, branches of credit institutions, cooperative savings and credit unions, domestic insurance companies, domestic reinsurance companies, branches and main branches of foreign insurance companies and foreign reinsurance companies.

The taxable amount is calculated as the excess of total assets shown in the trial balance a taxpayer prepares at each month-end over:

- ▶ PLN 4b for domestic banks, branches of foreign banks, branches of credit institutions and cooperative savings-and-credit funds;
- ▶ PLN 2b for domestic insurers, domestic reinsurers, branches of foreign insurers and foreign reinsurers and principal

branches of foreign insurers and foreign reinsurers;

- ▶ PLN 200m for consumer loan lending institutions; the tax base should be calculated jointly for all related taxpayers.

Retail tax has been introduced on revenues earned on retail sales (defined as sales made to consumers, subject to certain exclusions). The new tax applies on a progressive scale including two rates and the tax thresholds as follows:

- ▶ A rate of 0.8% applies to income on net retail sales over PLN 17m up to PLN 170m;
- ▶ A rate of 1.4% applies to net retail sales over PLN 170m.

Please note, however, that the Ministry of Finance has suspended the retail sales tax; according to the new bill the retail sales tax will apply only to revenues earned from 1 January 2018.

3.2. Personal Income Tax (PIT)

Individuals who are domiciled (resident) in Poland pay tax on their worldwide income.

Under an amendment to the law (in force since 2007), an individual is deemed to be tax resident in Poland if:

- ▶ His/her center of vital interests is in Poland, or
- ▶ He/she stays in Poland for more than 183 days in a tax year (calendar year).

Limited taxation (e.g. on Polish source income only) applies to those individuals who are not domiciled (resident) in Poland.

Income tax is payable on most sources of income, including cash and in-kind benefits, which are generally taxable as salary.

One of the exceptions is employer-provided housing cost if certain conditions are met and up to certain limits.

Interest income from personal, e.g. non-business, bank accounts and income from dividends is subject to 19%.

The above flat rate applies unless a DTT provides for a reduced tax rate or excludes Poland's right to tax. In order to benefit from treaty regulations, an individual must, however, provide the interest/dividend payer with a certificate of foreign residence.

Capital gains on the sale of shares are also subject to 19% tax, while gains earned on the disposal of other assets may be taxed as normal income. There are certain exceptions



and exemptions, including the income from sale of movable property held for longer than six months, which is tax free. In the case of the sale of real estate acquired or built after 2007, income (proceeds less costs) is taxed at 19%, unless a specific exemption applies (e.g. to real estate held for more than five years).

Current standard tax brackets are as follows:

Personal income tax rates

Tax assessment basis in PLN	Tax rate
up to 85,528 (ca. 19,000 EUR)	18% of assessment basis minus tax free allowance
over 85,528	15,395.04 + 32% of any amount exceeding 85,528 minus tax free allowance

Note: Cumulative tax is shown net of the annual tax credit (see Deductions and exemptions).

For some individuals (e.g. the self-employed or members of civil partnerships) a flat 19% tax rate is available if certain conditions are met.

Special rules for expatriates

Tax non residents in Poland (individuals with limited liability for Polish tax) will be taxable solely on income received in connection with the performance of duties in Poland or from Polish sources. For those who qualify for limited tax liability, income from board duties (under certain conditions) and Polish civil contracts such as personal services contracts or specific task agreements may be taxed at a flat rate of 20% if certain

conditions are met. In such cases, no deductions are available.

Social security contributions

Social security contributions for pension and disability are paid by the employee and by the employer only up to an annual cumulative earnings limit. In 2017 the limit is PLN 127,890 (ca. 28,400 EUR). The other social security contributions (2.45% to be paid by the employee and 0.67%-3.86% to be paid by the employer) are payable irrespective of the earnings amount. See social security rates below.

In addition to the above social security contributions, the employer pays 2.45% of the calculation base to the Labor Fund and 0.1% of the calculation base to the Guaranteed Employee Benefits Fund.

Labour Fund contribution is not payable for:

- ▶ employees returning from maternity leave or parental leave for 36 months after return from leave,
- ▶ new employees older than 50 years old, who were unemployed (registered by competent authority) for minimum 30 days before being hired by the company - for the period of 12 months from the start of an employment,
- ▶ new employees under 30 years old, who were directed to work in the company by the competent authority - for the period of 12 months from the start of an employment.

Healthcare contribution

The healthcare contribution is 9% (in 2017) of employment income less the employee social security contribution

withheld. The healthcare contribution can be deducted from tax on employment income at up to 7.75% of the calculation basis. Consequently, the remaining part of the healthcare contribution (1.25% of the assessment basis) is left as an additional non-deductible cost (decreasing after-tax income).

In general, for individuals working under personal service contracts, contributions are computed in a similar way as for employment income, e.g. payable at the same rates, allocated between the service provider and the principal as between employee and employer and subject to the same limits, or uncapped as appropriate. In certain cases, it may be possible to avoid payment of sickness and accident insurance. If a personal service contract is concluded with an employer (next to the employment contract), social security is payable as in the case of an employment contract.

Where an individual has concluded a contract with a third party and already pays contributions in respect of, e.g. an employment contract, payment of contributions for the personal service contract is generally voluntary unless work is performed for the ultimate benefit of the original employer. However, in general, remuneration under a full-time employment contract must be subject to social security contributions at minimum wage level - PLN 2,000 (ca. 450 EUR) per month or higher (in 2017).

Since Poland's accession to the EU on 1 May 2004, European social security regulations apply. The general rule is that contributions are paid to the social security system of the country where the work is actually performed (exceptions are available).

Noteworthy, Poland is a party of additional totalization agreements i.a. with U.S., Canada, South Korea, Ukraine and Australia. These agreements work in similar way to intra-EU regulations.

Social security contributions as a percentage of the calculation base and how they are financed [%]

Social security contribution	Contribution as a percentage of the calculation base	Financed by	
		Employer	Employee
Pension	19.52	9.76	9.76
Disability	8.00	6.50	1.50
Sickness	2.45		2.45
Industrial injury	0.67-3.60*	0.67-3.60	
Total in 2017	30.64-33.57	16.93-19.86	13.71

Deductions and exemptions

A deduction of PLN 111.25 (ca. 25 EUR) per month is available in respect of expenses associated with earning employment income. Those with more than one employment are entitled to an increased deduction of up to 1.5 times the maximum. An additional increase in expenses is available if the taxpayer lives in a place other than the place of work. Furthermore, there is a possibility of applying 50% deductible costs of earned revenue, as remuneration for the appropriate use / disposition of said right related to the work performed, which is subject to copyright.

Individuals working under Polish civil contracts (but not expatriates with limited tax liability or those with management contracts) may deduct 20% of their income as tax costs, irrespective of whether these costs are actually incurred.

Higher deductions are available to individuals working under Polish civil contracts if their actual expenses are higher than 20%.

A tax free allowance is available depending on the amount of earned income due to the recent changes. Starting from 2017, the annual tax credit value is diversified. In regard of taxpayers with the lowest income i.e. not exceeding PLN 6,600 (ca. 1460 EUR), the deduction amounts to PLN 1,188 (ca. 255 EUR). Taxpayers whose income shall exceed PLN 127,000 (ca. 28,220 EUR) should not decrease their income by the deductible amount. For taxpayers with income between PLN 6,600 and PLN 127,000, the deduction will be calculated based on the special formula.

Married couples are entitled to the allowance, regardless of whether they are taxed separately or jointly. Parents raising children may benefit from an annual tax allowance of PLN 1,112.04 (ca. 250 EUR) per child for the first and the second child and up to PLN 2,700 (ca. 600 EUR) - depending on the number of children, if certain conditions are met. However, this tax allowance is calculated proportionally to the number of months during which the child has been staying with the parents.

Benefits in kind or cash benefits received by an employee in connection with the financing of social activity from the company's social benefits fund, are exempted from PIT up to the maximum PLN 380 (ca. 85 EUR) excluding vouchers, coupons and other that allow for their exchange into goods or services.

If a benefit for nursery or children's clubs of employee's children is not paid from company's social benefits fund - it should be exempted from PIT up to PLN 400 (ca. 90 EUR) per each child monthly. If it is connected with kindergarten expenses, the exemption is restricted to PLN 200 (ca. 45 EUR).

Additionally, under the Abolition Act that came into force on 6 August 2008 and consequent amendments to the Personal Income Tax Act as of 1 January 2009, there is a possibility of deduction of the difference between tax obligations calculated based on the foreign tax credit method versus exemption with progression scenario. This deduction can as a rule be made by Polish individuals receiving income for work in foreign countries with which Poland has signed a DTT specifying

the credit method as the double taxation avoidance method or if there is no DTT.

Mandatory employee financed social security and healthcare contributions paid abroad within the EU, the EEA and Switzerland are generally deductible for tax purposes in Poland. However, there are several exceptions: contributions cannot be deducted from income or tax in another EU (or EEA country or Switzerland) and the taxpayer needs to prove the amount of contributions paid, calculation basis and applied rate.

Research & Development tax relief

As mentioned in chapter 1.2 related to the investment tax incentives, in tax year 2017 and on, within the scope of Research & Development tax relief, it is possible to deduct from tax base up to 50% of employment costs connected with works of the R&D department of a large company. Additionally it is possible to deduct up to 30% of other qualified costs.

Returns and payments

Polish employers must withhold tax from their employees' taxable salary and remit it to the tax office by the 20th day of the month following the month of payment. However, employers may not be required to withhold tax prepayments from income paid to employees for work abroad if this income is or would be taxed outside Poland. In this case, tax prepayments are withheld on the employee's request. In certain cases, employees may opt for the employer to file their annual tax return and settle any

outstanding liability through an adjustment to the subsequent year's withholdings.

Self-employed individuals, who work in Poland, or expatriates and those paid by a foreign entity, are personally responsible for paying monthly tax advances (so called "shadow payroll"), generally by the 20th day of the following month.

An annual return disclosing all income sources and showing any additional tax payable must normally be filed (and the tax due paid) by 30 April of the following year.

Self-employed individuals benefiting from a flat tax rate are obliged to file their annual return by 31 January or 30 April, depending on the taxation method applicable to their income. A separate annual tax return should be filed for capital gains (e.g. on the sale of shares). Married tax resident couples may file joint returns if certain conditions are met. Their tax liability is then calculated on half the total income and multiplied by two. Joint returns may also be filed, provided (among other conditions) that one or both spouses are tax residents of another EU/EEA country or Switzerland (and are able to prove it by attaching a tax residence certificate to the Polish tax return by 30 April at the latest) and that they receive at least 75% of their income from Polish sources. This regime can also be applied provided there is a provision in a DTT/international agreement allowing exchange of information between the relevant tax authorities.

Disclosure requirements

Disclosure requirements apply to entities that benefit from work or services provided

by non residents individuals within the meaning of the currency law. In a situation where the remuneration of such persons is paid by non-residents (e.g. by a foreign company), the Polish entity using such work or services will be required to collect, prepare and disclose information concerning the remuneration for work or services provided to it.

The requirement arise if:

- ▶ in connection with tax treaties and other international agreements ratified by Poland, it may affect the tax obligation or tax liability of persons receiving the remuneration
- ▶ a non-resident participates, directly or indirectly, in the management or control of an entity subject to the duty of disclosure, or holds an interest in such an entity's share capital, to which at least 5% of all voting rights are attached.

The above information (ORD-W1) should be disclosed without a prior request from the tax authorities by the last day of the month following the month in which the non-resident started providing services (working).

3.3. Value Added Tax (VAT)

General

Value added tax was introduced in Poland in 1993. The first attempts to bring the country's VAT system into line with Community regulations were made prior to Poland's entry into the European Union. The final step to ensure compliance was taken on 1 May 2004, when a new VAT Act came into force. However, based on the Accession Treaty, there are several derogations as far as harmonisation is concerned.

Scope of VAT

Under Polish VAT law, VAT is payable on the following transactions:

- ▶ supplies of goods and services in Poland for consideration. A supply of goods includes a taxpayer handing over business-related goods for nonbusiness purposes, e.g. donations. However, VAT is not payable on a supply of samples and small gifts;
- ▶ export of goods outside the EU/import of goods from outside the EU;
- ▶ an intra-Community acquisition of goods (from the EU) carried out for consideration in Poland; this includes the movement of goods between different Member States within the same business;



- ▶ an Intra-Community supply of goods (to the EU); this includes the movement of goods between different Member States within the same business.

Events which fall outside the scope of VAT include the sale of a business or an organised part thereof.

Taxpayers

Taxpayers are legal entities, unincorporated organisational units, and individuals that independently carry on a business activity, regardless of the purpose or the effect of such activity. The use of the word “independently” means that employees under employment contracts are not liable to VAT. Other persons rendering services under ad-hoc agreements also fall outside the scope of VAT provided that they are bound to the employer by an employment contract or by any other legal ties creating a legal relationship with regard to working conditions, remuneration the employer’s liability.

VAT is paid by entities that are the recipients of services rendered or goods supplied by taxpayers that do not have their registered office, fixed place of business, or place of residence in Poland. However, if goods are supplied and a taxpayer not established in Poland is at least registered for Polish VAT purposes, the reverse-charge mechanism does not apply.

VAT is also paid by entities:

- ▶ Performing intra-Community supplies of new means of transport;
- ▶ Carrying out intra-Community acquisitions in Poland, or;

- ▶ performing distance sales to Polish customers in excess of the PLN 160,000 threshold.

Public bodies that act within the scope of their normal activities are not considered taxpayers.

VAT registration

Entities that perform activities subject to VAT in Poland are required to register for VAT before undertaking their first taxable activity. Once registered, they gain the status of active VAT payers.

Taxpayers that are eligible for a VAT exemption with no right to deduct input VAT (activity- or entity-related) may register for VAT. They receive a confirmation from the tax office that they are registered as VAT-exempt persons. Taxpayers must notify the Polish tax authorities in advance if they intend to carry out any intra-Community transactions. Once this notification is filed, the entity is registered as an EU VAT payer. Taxpayers whose net amount of taxable sales did not exceed PLN 200,000 in the previous year are exempt from VAT. Similarly, taxpayers that start to make their taxable sales during the tax year are exempt from VAT if the expected net amount of their taxable sales in a corresponding fraction does not exceed PLN 200,000. Taxpayers can, however, opt for taxation provided that they notify the relevant tax office of their intention.

Tax representative

VAT payers that have no registered office, fixed place of business or place of residence in Poland or other EU country are required to appoint a tax representative.

The tax representative is jointly liable with the business he represents for all Polish tax liabilities.

'Place of supply' rules

The place of supply of goods is considered to be:

- ▶ The place where the goods are at the time of dispatch or transport to the purchaser;
- ▶ The place of installation or assembly;
- ▶ The place where the goods are at the time of delivery (if they are not dispatched or transported);
- ▶ As regards the delivery of goods on board ships, planes or trains – the place where the transport starts;
- ▶ The country of import.

The place of an intra-Community acquisition is generally the place where the transport or dispatch ends.

In principle, the place of supply of services to a taxable person is the place where the customer has its business or fixed place of business or place of residence. However, there are special 'place of supply' rules applicable for e.g.:

- ▶ services connected with real property – the place of supply is where the property is situated;
- ▶ passenger transport services – the place of supply is the place where the transport takes place, having regard to distances covered.

The place of supply of services to a non-taxable person is the place where the supplier has its business or has a fixed

place located in a place other than the place where he has established his business from which the service is supplied or, in the absence of such place of business or fixed place, the place where he has his permanent address or usually resides. However, the place of supply of intangible services, e. g. consultancy, advertising, electronic services, is the place of establishment of the customer provided that the customer is a taxpayer established in a third country.

VAT rates and taxable amount

In Poland, there are three VAT rates: the standard rate of 22%, and the reduced rates of 7% and of 0%. The standard rate applies to all supplies of goods or services, unless a specific provision allows a reduced rate or exemption. For example, the 7% VAT rate applies to healthcare-related goods and hotel services.

The standard and reduced rates were temporarily increased to 23% and 8% respectively (due to the high level of public debt). The increase took effect on 1 January 2011 and will be valid until at least 1 January 2019.

Zero-rated supplies include exports of goods outside the European Union and intra-Community supplies of goods.

Under the VAT Act, some supplies are exempt (no right to deduct input VAT), e.g. supplies of financial, educational or healthcare services and supplies of buildings or parts thereof.

Also, there are some specific goods (e.g. metal elements, electronic equipment) and services (e.g. construction services

if rendered by a subcontractor) which are to be reported on a reverse-charge basis locally. This means that even if they are supplied within the country, it is the purchaser and not the supplier who is liable to report the VAT using the reverse-charge mechanism.

The taxable amount for VAT purposes corresponds to all the sums included in the payment which a supplier of goods or services has received or will receive in respect of the supply from a customer or a third party, including grants, subsidies or similar subsidies received which directly affect the price of the goods or services supplied by a taxable person. The same rules apply when determining the taxable amount of an intra-Community acquisition of goods.

When goods are imported, the taxable amount is the customs value plus any customs and excise duties, including provision, packaging, transport and insurance costs incurred up to the first destination in Poland.

Tax point

General rules

In principle, under Polish VAT law the tax point is the day when goods are released or services completed.

However, for selected supplies (e.g. electricity, telecommunications, leasing or printing) the tax point is deemed to arise at a different date (usually the payment deadline, the date of receipt of the payment or the invoice date).

Prepayments

The tax point of an advance payment or prepayment received before goods are released or services completed is the payment receipt date.

Exported goods

The tax point is set according to the general rules.

Imported goods

The tax point of imported goods is usually the date the customs debt arises.

Intra-Community acquisition

The tax point of an intra-Community acquisition of goods is the 15th day of the month following that in which the goods thus acquired are supplied. However, if the supplier issues an invoice prior to this deadline, the tax point arises when the invoice is issued.

Intra-Community supplies

The tax point of an intra-Community supply of goods is the 15th day of the month following that in which the supply is made. If the taxpayer issues an invoice prior to this deadline, the tax point arises when the invoice is issued.

Recovery of input VAT

General rules

A taxpayer may reclaim input tax, e.g. the VAT paid on the goods and services supplied and used for purposes of his taxable activity, by deducting it from output

tax, e.g. the VAT charged on the supplies made.

Input tax includes:

- ▶ VAT paid on goods and services supplied within Poland;
- ▶ VAT paid on imports;
- ▶ VAT self-assessed on an intra-Community acquisition of goods;
- ▶ VAT self-assessed on purchases of goods and services taxed under the reverse charge mechanism.

Input tax on e.g. the purchase of hotel and restaurant services cannot be reclaimed. In the case of the purchase or lease of a passenger car or fuel, diesel or gas used for passenger cars the reclaimable input VAT can in certain cases be limited to 50%.

Input tax directly related to exempt supplies is generally not reclaimable (but it can, under certain conditions, be deducted for corporate income tax purposes), except for input tax on financial services rendered to entities established outside the EU.

Partial recovery

If a taxpayer makes both exempt and taxable supplies and cannot allocate his input VAT accordingly, it cannot recover it in whole. To determine the amount of VAT that can be reclaimed, the taxpayer calculates the tax as the proportion of the turnover from taxable supplies in his total turnover (so-called pro-rata VAT deduction). The proportion is then adjusted at the end of the tax year. As a result, capital goods adjustments are required to be made with respect to fixed assets (adjusted for

a period of five years) and real property (adjusted for a period of ten years).

If a taxpayer carries on both business activities as well as an activity not classified as a business activity and cannot allocate his input VAT accordingly, it cannot reclaim it. To determine the amount of VAT that can be reclaimed, the taxpayer calculates the tax based on a separately calculated coefficient (so-called pre-pro-rata VAT deduction; detailed rules are provided by the law, and various methods are allowed). The proportion is then adjusted at the end of the tax year. As in the case of the pro-rata VAT deduction, capital goods adjustments are required to be made with respect to fixed assets (adjusted for a period of five years) and real property (adjusted for a period of ten years).

VAT refunds

Any excess input VAT can either be carried forward and deducted from future VAT liabilities or refunded in cash. Refunds are generally made within 60 days, and in certain circumstances this period can be shortened to 25 days. Where a company does not perform any taxable activities in a given period, the refund period is extended to 180 days.

VAT returns, EC Sales Listings and INTRASTAT reporting

As a rule, VAT returns are filed on a monthly basis. VAT returns must be submitted and the VAT due paid in full by the 25th day of the month following the month in which the tax point arose. VAT returns must be filed in electronic form.

All taxable persons making intra-Community supplies and intra-Community acquisitions of goods or intra-Community supplies of services must file a monthly recapitulative statement (EC Sales List) with the tax office by the 25th day of the month following the end of the month EC Sales Lists must be filed in electronic form.

Polish taxpayers purchasing goods and services which are to be reported under the local reverse-charge mechanism (i.e. the entity liable to account for VAT is the customer) are required to file recapitulative statements summarizing these transactions. Rules for filing are the same as for EC Sales Lists.

Taxpayers (other than those classified as microenterprises under Polish law) are required to file the Standard Audit File for Tax (SAF-T). Every month they should electronically file, together with their VAT returns, a special electronic form (in XML format) showing all transactions entered in their VAT records. Additionally, at a tax office's request they are required to produce and file another XML file presenting all invoices issued in a given period.

Taxpayers who trade in goods with other EU countries must also complete statistical reports (INTRASTAT) on a monthly basis. Separate statistical reports are required for intra-Community acquisitions (INTRASTAT Arrivals) and for intra-Community supplies (INTRASTAT Dispatches). The submission deadline is the 10th day of the month following that in which the transaction should be declared (e.g. the month of the physical movement of the goods).

Special procedures under Polish VAT law

Special rules apply to:

- ▶ small entrepreneurs;
- ▶ flat-rate farmers;
- ▶ supply of tourist services;
- ▶ supply of second-hand goods, works of art, collectors' items and antiques;
- ▶ gold investments;
- ▶ tax refunds for tourists;
- ▶ foreign entities supplying electronic services to non-taxpayers within the EU.

3.4. Customs and Excise

Customs duty

Poland is a member of European Union, hence, the transactions involving the transfer of goods between Poland and other EU Member States are classified as intra-Community acquisitions and intra-Community supplies (neutral from a customs perspective). Moreover, Poland is a member of the Schengen zone, which means that all border posts and checks between Poland and other states forming the Schengen zone have been removed, enabling the free movement of goods without customs checks.

Customs provisions are applicable in case of transactions involving transfers of goods between Poland and non-EU countries. Such transactions are subject to uniform across the EU customs rules. As of 1 May 2016 these rules are included in the Union Customs Code (UCC) and accompanying legal acts..

Local practice

The import of goods to Poland is subject to customs rates resulting from the EU Common Customs Tariff. Goods are classified based on Combined Nomenclature (CN) system.



Any free-trade agreements concluded by the EU as well as the Generalised System of Preferences (GSP), under which reduced duty rates apply to goods imported from underdeveloped and least developed countries, are also applicable when importing the goods to Poland.

Also, any decisions on tariff quotas or customs suspensions applicable to goods imported to Poland have to be taken at the EU level.

Nevertheless, technical and procedural aspects of the customs system are still regulated by Polish provisions. This often has a significant effect on traders' businesses. It should also be noted that the way the EU Member States' customs authorities apply customs law is somewhat different across the EU. Some countries have a more flexible approach, while others are more inclined to adhere to a strict interpretation of Union customs law. The attitude of Polish customs authorities is getting progressively closer to this first approach, as they are becoming more and more experienced in the application of EU customs regulations.

Tariff databases

Information on duty rates, tariff preferences and quotas, customs suspensions and anti-dumping measures applicable to goods imported to Poland, according to Combined Nomenclature, can be found in the TARIC (the Integrated Community Tariff) - an online customs tariff database.

The Polish Ministry of Finance (Customs Department) also maintains a Polish tariff browser - ISZTAR - which integrates data

from the TARIC (goods nomenclature, duty rates, restrictions, tariff quotas, tariff ceilings, suspensions) and national data (VAT, excise duty, national restrictions and non-tariff measures not integrated in the TARIC). However, ISZTAR is a web browser and the data contained therein is not binding on economic operators and customs authorities. It means that all customs duty rates need to be checked in the Common Customs Tariff published in the Official Journal of the European Union.

AEO

On 1 January 2008, the implementing provisions for the Authorised Economic Operator (AEO) concept came into effect (e.g. from that date traders could apply for an AEO certificate). This initiative is intended to give trusted traders easier access to customs simplifications and to benefit from simplifications in respect of physical and document-based checks (e.g. less control, prior notification and choice of place of control).

In order to obtain an AEO certificate, traders need to undergo an audit to examine whether they fulfil the criteria of tax and customs compliance, appropriate record-keeping standards, and financial solvency, and whether they have appropriate security and safety standards.

An important point to note is that an AEO certificate granted in one EU Member State is recognised in the other Member States. Moreover, the EU has concluded arrangements on mutual recognition of AEO status with China, Switzerland, Norway, Japan and the USA.

AEO guidelines and self-assessment forms used by the Polish customs authorities are available on the Polish Ministry of Finance website (www.mf.gov.pl). On 1 May 2016 the criteria to become an AEO as well as benefits for AEO have been extended, with an introduction of the Union Customs Code. For example these benefits are: a reduction in customs and related guarantees, easy path to customs simplified procedures to be approved or renewed. Thus interest in obtaining AEO certificates is growing.

Even though traders are showing more and more interest in AEO certificates, the Polish customs administration is still developing its approach to the AEO certification process under UCC.

Centralised clearance

On 1 January 2009, the implementing provisions for the Single Authorisations for Simplified Procedures (SASP) came into effect. SASP, formerly known as Single European Authorisations (SEA). This scheme has been replaced with a centralised clearance as of 1 May 2016 which is available only for entities having AEO status. Centralised clearance is currently a scheme that enables an economic operator to be authorised in one Member State for all their non-EC import and export freight operations throughout the Community.

This enables economic operators to centralise the accounting and payment of customs duties for all transactions in the authorising Member State, although the actual control and release of goods may take place in another Member State.

This approach has not proved possible for Value Added Tax (VAT). This is because VAT is a destination-based tax and has to be accounted for in the Member State where the goods are 'consumed'. Similarly, the provision of trade statistics will also continue to be based on the actual location of the goods.

In order to obtain an authorization for centralised clearance, traders need to submit a request to the customs authorities. As centralised clearance enables export and import operations to be carried out within more than one Member State, granting the authorisation is associated with a consultancy procedure covering all the Member States involved (where goods are placed during export or import).

Together with the implementation of SASP rules, the criteria for authorisation being granted for a simplified customs procedure have been tightened and depend on AEO criteria being met. As a result, it was easier for traders who already had an AEO certificate to obtain authorisation, whereas traders with no AEO certificate had to fulfil AEO criteria prior to being granted a SASP. Once the SASP has been replaced by centralised clearance, based on Union Customs Code, an authorization for this scheme can currently be granted only for traders having an AEO status.

It should also be noted that authorisations for simplified customs procedures granted before 1 May 2016 will be subject to a customs authority audit to check if the authorised entities fulfil new AEO criteria implemented by the Union Customs Code.

Excise duty

According to the Polish legislation, excise duty is payable on:

- ▶ Excisable goods (energy products and electricity, alcohol and alcoholic beverages, manufactured tobacco), and
- ▶ Passenger cars.

As of 2 January 2012 excise duty is also payable on coal and coke, whereas as of 1 November 2013 on natural gas and other gas products. As of 1 January 2013 dried tobacco is subject to excise duty in Poland.

It should be noted that the scope of the Polish excise duty system is, to some extent, broader than the scope under EU legislation and covers, e.g. lubricating oils. Also, passenger cars are not subject to excise duty under EU provisions.

Taxable activities and payment of excise duty

Excise duty is charged on:

- ▶ Production of excisable goods
- ▶ Entry of excisable goods to an excise warehouse
- ▶ Import of excisable goods
- ▶ Intra-Community acquisition of excisable goods
- ▶ Shortages and losses of excisable goods
- ▶ Other activities, e.g. use of excisable goods exempt from excise duty for purposes other than intended.

Excise duty on passenger cars is charged on:

- ▶ Import of passenger cars not previously registered in Poland

- ▶ Intra-Community acquisition of passenger cars not previously registered in Poland
- ▶ First sale of passenger cars manufactured in Poland.

Excisable goods are subject to special rules with respect to production, holding and movement:

- ▶ Excise duty on excisable goods is chargeable in the country where the goods are released for consumption
- ▶ Production of excisable goods can take place, generally, in excise warehouses (except electricity, coal and coke, certain gas products)
- ▶ Production and holding of excisable goods can be performed, in general, under excise suspension arrangements
- ▶ Excise suspension procedure can also be applied to the movement of excisable goods, provided that the goods are moved between excise warehouses located within the EU or dispatched to a registered or non-registered trader operating in another EU Member State
- ▶ New excise duty regulations also introduce the obligation for excisable goods to be reloaded under excise duty suspension arrangements only in excise warehouses.

Generally speaking, excise duty is payable by producers, importers and traders effecting intra-Community acquisitions of excisable goods and passenger cars. Excise duty rates are expressed either as:

- ▶ A fixed amount per number of units of excisable goods (e.g. hl of pure alcohol or hl of product) - specific rate

- ▶ Both a fixed amount per number of units of excisable goods and a percentage of the maximum retail price (in the case of cigarettes) - mixed rate
- ▶ Percentage of the value in the case of passenger cars - ad valorem rate.

In the case of excisable goods (e.g. energy goods, manufactured tobacco, alcohol and alcoholic beverages), excise duty is paid in instalments on a daily basis and a final reconciliation is made monthly. Traders involved in export or intra-Community supplies of goods with excise duty paid are entitled to a refund of the excise duty.