

International Tax

Poland Highlights

In Plain English



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Investment basics:

Currency – Polish Zloty (PLN)

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

Accounting principles/financial statements

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

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

Corporate taxation:

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

Basis – Resident entities are taxed on worldwide income; nonresident entities are taxed only on Polish- source income. Foreign-source income derived by residents generally is subject to corporation tax in the same way as Polish-source income, usually with a foreign tax credit available, unless a tax treaty provides otherwise. Branches generally are taxed in the same manner as subsidiaries.

Taxable income – Corporation tax is imposed on a company's profits, which consist of two sources (i.e. "baskets") of income: capital gains and other income (which includes business/trading income).

Normal business expenses (with some limitations including interest and other financing costs and payments for intangible services purchased from related parties) may be deducted in computing taxable income.

Rate – The standard corporation income tax rate is 19%. A lower tax rate of 9% applicable to income other than capital gains may be available to small taxpayers and taxpayers commencing business activity with revenues not exceeding PLN 1.2 million in the year (with certain exceptions). Tax capital groups (groups of two or more companies having a fiscal unity for corporation tax purposes) may not benefit from the lower rate.

Surtax – No

Alternative minimum tax – Minimum tax applies on income from the ownership or joint ownership of certain leased/rented buildings located in Poland. The tax is imposed at a rate of 0.035% per month on the total initial tax value of the taxpayer's buildings, decreased by PLN 10 million. The tax is deductible from advance corporation income tax payments.

Taxation of dividends – Dividends received by a Polish resident company (with certain exceptions in the case of limited joint stock partnerships) from another Polish, EU/EEA, or Swiss company are exempt from taxation if: (1) certain holding and participation requirements are met; and (2) the dividends are not related to a transaction (or a set of transactions) undertaken to benefit from a tax exemption and that does not reflect economic reality.

If the exemption does not apply, dividends received are taxable, but a credit for foreign withholding tax and in some cases

underlying foreign corporate tax paid is available, where appropriate.

Capital gains – Capital gains are taxed as a separate source of income at the standard corporation tax rate of 19% (see “Taxable income,” above). An exemption may be available for venture capital companies (limited liability companies and limited partnerships resident in Poland) on gains from the transfer of shares acquired during 2016-2023 in companies conducting research and development (R&D) activities, provided certain requirements are met. Under certain conditions, some investment funds and alternative investment vehicles also may benefit from an exemption on the sale of shares.

Losses – Losses from a particular source of income may be carried forward for five years against income from the same source, but the deduction is restricted to 50% of the loss incurred. Alternatively, the taxpayer may offset up to PLN 5 million of the loss in any one year with the remainder deductible in the four remaining years of the five-year period, subject to the 50% offset rule.

The carryback of losses is not permitted.

Foreign tax relief – Foreign tax paid may be credited against Polish tax on the same profits, but the credit is limited to the amount of Polish tax payable on the foreign income.

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

Holding company regime – No

Incentives – An additional deduction ranging from 100% to 150% of qualifying expenses incurred for R&D activities may be available.

A one-time depreciation write-off of up to

EUR 50,000 also may be available for small and start-up taxpayers.

A notional interest deduction of up to PLN 250,000 per year is available if certain conditions are fulfilled. Page **2** of **11**

A 5% tax rate may be applied to income derived by a taxpayer from selected IP (e.g. inventions, patents, medication or software) that is created, developed or improved by the taxpayer’s R&D activity (with certain restrictions).

Other – A taxpayer entering into a transaction with another person should check that person’s name and bank account against the “white list,” a register of all active VAT payers and their bank accounts that is publicly available on a government website (see “Value added tax” below). If the person or the bank account is not included on the white list, payments to the bank account will not be tax deductible for income tax purposes.

Compliance for corporations:

Tax year – Taxpayers may choose the calendar year or another 12-month period. **Consolidated returns** – Companies may form a tax consolidated group, whereby all companies in the group are treated as a single taxpayer for corporate income tax purposes.

Filing and payment – Taxpayers must self-assess and pay advance income tax during the year and may use a simplified method based on previous years’ results. The final calculation and reconciliation of the tax due must be made within three months of the end of the tax year. Payments of tax must be made to the taxpayer’s individual bank account number provided by the tax authorities.

Penalties – Statutory penalty interest applies at a rate determined by reference to the National Bank of Poland’s Lombard rate, subject to a minimum rate of 8%. Persons responsible for the tax reconciliation, as well as members of the management board in certain cases, are subject to penalties for noncompliance. Corporate entities also may be subject to penalties.

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

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

Individual taxation:

Residence – An individual is resident if his/her center of personal or economic interest is in Poland or if he/she stays in Poland for more than 183 days in the tax year (these rules may be modified under certain tax treaties).

Basis – Residents are taxed on their

worldwide income. Nonresidents are taxed only on Polish-source income.

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

Rates – In general, progressive rates of 17%-32% apply, although certain individuals (e.g. those carrying out business activities) may opt for a flat rate under the “lump sum” regime or a flat 19% tax rate (with the deduction of normal business expenses subject to some limitations, but without relief for most other deductions and allowances or the option for joint spousal or single parent filing). Taxpayers may apply a preferential 5% tax rate to selected IP, as can corporations. Rental income (earned outside the scope of individual business activity) is subject to tax at progressive rates (17%-32%) or a flat rate of 8.5% or 12.5% under the lump sum regime.

Individuals whose annual income from specific sources (including, for example, income taxed at progressive rates, income from the sale of shares/securities and income from business activity taxed at a linear rate) exceeds PLN 1 million are subject to an additional 4% solidarity surcharge on the portion of income in excess of PLN 1 million.

Where an individual moves assets outside of Poland or loses Polish tax residency, exit tax at 19% (3% in specific cases) may apply on unrealized gains.

Individuals under the age of 26 who derive their income from employment or personal service contracts are exempt from tax on income up to PLN 85,528. Social security

contributions are still required, if applicable.

Capital gains – Capital gains are a separate source of income. Capital gains derived from the sale of real estate within five years of the end of the year in which the property was purchased are taxed at 19% (subject to certain exemptions). Gains derived from the sale of shares, stock, securities and cryptocurrencies, together with investment income such as dividends or interest, also are taxed at the 19% rate (different detailed taxation rules apply to various sources of income within this category).

Deductions and allowances – Deductions include items such as donations, certain employee social security contributions, expenses incurred by disabled persons and, in certain cases, qualifying expenses incurred for R&D activities or contributions to an individual pension insurance account. Personal allowances also are available (e.g. a childcare allowance).

Foreign tax relief – Foreign tax paid may be credited against Polish tax on the same profits, but the credit is limited to the amount of Polish tax payable on the foreign income. Additional tax relief (“abolition relief”) applies to income from certain sources (e.g. employment or business activity income) such that this foreign income is effectively tax-exempt on a progressive basis.

Compliance for individuals:

Tax year – Calendar year

Filing status – Individual tax returns generally are required although married couples and single parents may be eligible to opt for preferential joint spousal/single parent filing regimes.

Filing and payment – Advance payments

of income tax on an employee’s salary or personal service contract income are remitted to the tax authorities by the Polish employer/company on a monthly basis. Other income generally is self-assessed. Individuals generally are required to submit an annual tax return determining the final amount of tax due by 30 April following the tax year. Earlier filing dates apply for the exit tax and lump sum tax regimes. Payments of tax should be made to the taxpayer’s individual bank account number provided by the tax authorities.

Penalties – Individuals may be subject to penalties for noncompliance.

Rulings – See “Rulings” under “Compliance for corporations” above.

Withholding tax:

New withholding tax rules applicable to certain cross-border payments exceeding PLN 2 million per recipient per year have been enacted but entry into force of the new rules has been postponed until 30 June 2020 (for both corporations and individuals).

Generally, assuming the new rules will be effective as from 1 July 2020, unless the payer either: (i) provides the tax authorities with a statement that a withholding tax exemption or reduced rate is applicable; or (ii) obtains an opinion from the tax authorities that an exemption based on the EU directives may be applied, the payer must withhold tax at the standard rate on the surplus over PLN 2 million at the time of payment. A refund subsequently may be requested from the tax authorities.

Additionally, as from 1 January 2019, payers of income responsible for remitting the tax must exercise appropriate diligence with respect to verifying the grounds for applying

exemptions or reduced rates. Beneficial ownership requirements also have been strengthened as from 2019.

The Polish Ministry of Finance has issued for public consultation draft explanatory notes on certain practical aspects of the new regulations, including an explanation of beneficial owner and the extent of the due diligence required by those responsible for remitting the tax. However, no final version of this document has been published yet and further changes to the withholding tax regime are expected during 2020.

Dividends – Dividends paid by a Polish resident company to a nonresident company or individual are subject to withholding tax at 19%, unless the rate is reduced under a tax treaty or the dividends qualify for an exemption under the EU parent-subsidiary directive, provided the dividend is not related to a transaction (or a set of transactions) undertaken to benefit from a tax exemption and that does not reflect economic reality. See “Withholding tax,” above, for new rules applicable to certain payments as from 1 July 2020 (assuming no further postponement in the law’s enactment).

Interest – Interest paid to a nonresident company is subject to a 20% withholding tax, unless the rate is reduced under a tax treaty or the EU interest and royalties directive, provided the interest is not related to a transaction (or a set of transactions) undertaken to benefit from a tax exemption and does not reflect economic reality. An exemption based on the directive may be available only if the recipient is the beneficial owner of the interest. A 19% withholding tax rate generally applies to resident and nonresident individuals (unless reduced under a tax treaty). See “Withholding tax,”

above, for new rules applicable to certain payments as from 1 July 2020 (assuming no further postponement in the law’s enactment).

Royalties – Royalties paid to a nonresident company or individual are subject to a 20% withholding tax, unless the rate is reduced under a tax treaty or the EU interest and royalties directive provided the royalties are not related to a transaction (or a set of transactions) undertaken to benefit from a tax exemption and does not reflect economic reality. An exemption based on the directive may be available only if the recipient is the beneficial owner of the royalties. See “Withholding tax,” above, for new rules applicable to certain payments as from 1 July 2020 (assuming no further postponement in the law’s enactment).

Fees for technical services – See “Other” below.

Branch remittance tax – No

Other – Fees for specified intangible services (e.g. advisory, accounting, legal, technical, advertising, data processing, market research, recruiting, management, control services, guarantees, etc.) are subject to a 20% withholding tax (subject to the provisions of an applicable tax treaty). See “Withholding tax,” above, for new rules applicable to certain payments as from 1 July 2020 (assuming no further postponement in the law’s enactment).

Anti-avoidance rules:

Transfer pricing – The Polish transfer pricing rules generally follow the OECD guidelines and if prices for related party transactions are not in accordance with the arm’s length principle, the tax authorities may make an adjustment. Generally, two entities are

considered related parties if one entity exercises effective influence over the other (e.g. by owning, directly or indirectly, at least 25% of its shares) or if the same entity exercises effective influence over both of them.

Transfer pricing documentation must be prepared for related party transactions (see “Disclosure requirements” below.) Safe harbor provisions for transactions involving loans and low value-added services have been in effect since 2019.

Advance pricing agreements are permitted.

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

Controlled foreign companies – Under the controlled foreign company (CFC) rules, Polish taxpayers are taxed at 19% on the income of their CFCs. A subsidiary is characterized as a CFC if the:

Entity is located in a country that engages in “harmful tax practices;”

- Country of the entity’s seat or place of management, registration or location does not engage in the exchange of information with Poland or the EU; or
- Polish company effectively controls or holds (either on its own or jointly with its related entities) over 50% of a foreign entity

that derives at least 33% of its revenue from passive income; and the amount of tax actually paid by the foreign entity is lower than the difference between the tax that would have been payable had the entity been a Polish resident and the tax the foreign entity actually paid. The rules do not apply if a CFC carries out relevant genuine economic activities. The tax base (taxable income) under the CFC regime may be reduced by the amounts already included in the Polish taxpayer’s tax base in respect of dividends received from a CFC and income from the sale of shares in a CFC. A specific anti-avoidance rule applies under the CFC legislation, requiring a business reason for the associations between entities and ignoring artificial and circular shareholding structures.

Hybrids – No

Economic substance requirements – No

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

Transfer pricing documentation must be prepared for related party transactions exceeding certain thresholds in a tax year (PLN 10 million for uniform transactions including tangible goods or financial transactions, PLN 2 million for uniform transactions including services and other types of transactions, and PLN 100,000 for transactions with entities located in a country that engages in “harmful tax practices”). As from 2020, domestic transactions may be excluded from transfer pricing documentation requirements if certain conditions are met.

Taxpayers whose consolidated revenue exceeds PLN 200 million also must prepare

a master file that contains additional information about the whole related party group.

All taxpayers obliged to prepare transfer pricing documentation must submit a statement confirming that they have the compliant transfer pricing documentation available and that the covered transactions were concluded at arm's length. Late submission, failure to submit, or submission of false statements may result in penalties charged to the members of the management board. Taxpayers also may be required to prepare and submit a simplified report on related party transactions (TP-R form).

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

Taxpayers whose consolidated revenue exceeded the equivalent of EUR 750 million in the preceding tax year also must produce a country-by-county report, which contains additional information about the income and tax paid by group subsidiaries, their places of conducting business and their permanent establishments.

Mandatory disclosure rules apply to both cross-border and domestic arrangements. The obligation to report "marketable" (repeatable) tax planning schemes falls principally on the intermediary and is performed on a no-names basis provided the intermediary is compelled to secrecy under legal professional privilege (i.e. is a tax advisor, legal counsel or attorney at law) and its secrecy obligation is not lifted by the taxpayer. "Bespoke" (i.e. tailor-made) schemes are reportable by the taxpayer, unless the intermediary's secrecy obligation

under legal professional privilege is lifted or the intermediary is not entitled to invoke a legal professional privilege.

Exit tax – Exit tax applies to corporations (and individuals) in the case of a change of tax residence or associated transfer of assets outside of Poland.

General anti-avoidance rule – A general anti-avoidance rule (GAAR) allows the tax authorities to eliminate the tax benefit of a transaction/action in cases where obtaining such benefit is the main or one of the main reasons for undertaking the transaction/action and the conduct is artificial. In assessing whether a tax benefit should be deemed the main or one of the main aims of performing a transaction/action, the economic reasons for performing the transaction/action as indicated by the taxpayer must be considered.

In certain cases where the tax authorities apply the anti-avoidance regulations, additional tax liabilities may be imposed.

Value added tax:

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

Rates – The standard VAT rate is 23%. Preferential rates of 5% and 8% apply to certain goods and services; other goods and services (e.g. intra-community supplies, exports, etc.) may be zero-rated or exempt. A new VAT rates matrix applicable to particular products and services will enter into force in April 2020.

Registration – The registration threshold for VAT purposes is annual turnover of

PLN 200,000 unless the entrepreneur is engaged in an activity that is not subject to VAT exemptions (e.g. sale of alcohol and tobacco, provision of legal services). Nonresidents that make taxable supplies of goods or services in Poland generally must register.

Filing and payment – VAT returns and a JPK_VAT file (the Polish equivalent of the Standard Audit File for Tax, SAF-T) must be submitted and the VAT due paid within 25 days following the month in which the VAT obligation arose. Taxpayers generally must file VAT returns in electronic form, including taxpayers that are EU VAT registered and taxpayers that are suppliers or buyers subject to the reverse charge mechanism. Other possibilities regarding filing or payment may exist in certain cases (e.g. a quarterly reconciliation for small taxpayers). VAT returns will have to be submitted in the form of an updated JPK_VAT file as from 1 April 2020 for large taxpayers (i.e. taxpayers either with more than 250 employees, yearly revenue exceeding EUR 50 million or a balance sheet (i.e. total assets) exceeding EUR 43 million) and as from 1 July 2020 for all other taxpayers.

A split payment mechanism is mandatory for certain select transactions under penalty of VAT sanctions. For other types of transactions, the split payment mechanism is voluntary with certain incentives for the purchaser.

The tax authorities may impose penalties of 20% or 30% of understated output VAT or overstated input VAT, increased to 100% of input VAT claimed from so called “empty invoices.”

List of registered VAT taxpayers and bank accounts (“white list”) – A taxpayer entering into a transaction with a supplier

should check the person’s name and bank account against the “white list,” a register of all active VAT payers and their bank accounts that is publicly available on a government website. If the supplier or the bank account is not included in the white list, payments to the bank account will not be tax deductible for income tax purposes and the taxpayer will be jointly and severally liable for the supplier’s VAT arrears up to the value of VAT resulting from the transaction. These rules apply as from 1 January 2020. The bank account should be verified on the day of the transfer order. However, if the payment is made to an unreported bank account of a supplier who is on the white list, the taxpayer will be able to notify the head of the relevant tax office about the supplier’s bank account number within three days from the date of the transfer order.

Other taxes on corporations and individuals:

Unless otherwise stated, the taxes in this section apply both to companies and individuals and are imposed at the federal level.

Social security contributions – Employers and employees must make social security contributions in total equal to approximately 35% of an employee’s remuneration, subject to certain caps, with approximately 21% paid by the employer and 14% by the employee.

Contributions are withheld and remitted by the employer, together with the employer’s contribution. The employee contributions are deductible when calculating the employee’s taxable earnings. Employees also are required to make a 9% healthcare contribution, which is partly tax deductible (and is collected and remitted by the employer). Specific rules apply to self-employed individuals.

Employee Capital Plans (PPK), which are generally a type of retirement savings plan financed jointly by the employee, the employer and the government and operated by third party financial institutions, were introduced and apply as from July 2019 for companies with over 250 employees, as from 1 January 2020 for companies with 50 to 250 employees, as from 1 July 2020 for companies with 10 to 49 employees, and as from 1 January 2021 for all other companies. Employees but also otherwise designated hired individuals (subject to specific regulations) may voluntarily participate in PPK. Persons are enrolled by default but have an option to opt out. Basic employee contributions are 2% of gross remuneration and basic employer contributions are 1.5%. There are no caps.

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

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

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

Transfer tax – Tax is imposed at a rate of 0.5%-2% on certain types of transaction (e.g. sales, exchanges of rights, loans) that generally are not covered by VAT. As a rule, transactions exempt from VAT are not subject to transfer tax (except for real estate and shares).

Stamp duty – Stamp duty is levied, for example, when filing a power of attorney and when the (central or local) authorities are requested to perform activities, such as

issuing certificates, granting approval, etc. The applicable rates or fixed amounts are specified in the stamp duty law.

Net wealth/worth tax – No

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

Other – Excise tax is charged on the turnover of selected goods. Shipping companies may opt to pay tonnage tax on certain types of income. A special tax is imposed on the excavation of silver, copper, crude oil and natural gas.

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

A tax on revenues from retail sales was introduced in 2016, but its collection has been suspended until 1 July 2020 due to the initiation of proceedings concerning possible incompatibility of the tax with EU law (further postponements are possible). In its current form, the tax would apply to retailers whose monthly turnover exceeds PLN 17 million at 0.8% on monthly turnover between PLN 17 million and PLN 170 million, and 1.4% on monthly turnover exceeding PLN 170 million.

Exit tax applies to individuals in the case of a change of tax residence or associated transfer of assets outside of Poland. It also

applies to corporations (see “Anti-avoidance rules,” above).

Tax treaties: Poland has signed the OECD multilateral instrument (MLI) and deposited its instrument of ratification with the OECD on 23 January 2018 and the MLI entered into force for Poland on 1 July 2018

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

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