

Taxation in Poland

September 2017



Corporation Income Tax

Scope

A company (legal entity) that is resident in Poland for tax purposes is subject to corporate income tax ("CIT") on its worldwide income. A non-resident company is liable to CIT only on income generated in Poland. Taxation of non-residents may be further limited, if the non-resident's home country has concluded a Double Tax Treaty with Poland.

A company is considered as a Polish resident if its registered office or management is located in Poland. Thus, Polish subsidiaries of foreign companies are treated as residents of Poland for CIT purposes.

The CIT is collected at the flat rate of 19% or 15% for small taxpayers (i.e. taxpayers whose value of sales revenue – including the amount of VAT due – did not exceed in the previous fiscal year, the amount corresponding to the equivalent of EUR 1.2 million, expressed in PLN) and for those starting a business.

Administration

Companies are required to submit an annual 'self-assessment' return within 3 months of the tax year end. The annual CIT liability should be settled within the same period.

As a rule, CIT is payable in monthly instalments by 20th day of each month for the preceding month. Monthly instalments are calculated based on year-to-date financial data beginning from the first month of the tax year. Small taxpayers, i.e. companies, whose gross sales revenue including output Value Added Tax in the previous tax year was less than EUR 1,200,000 may pay in quarterly instalments. Quarterly method of CIT settlement may be also applied by companies starting business activity, but only in their first tax year. In the following periods they would have to pay CIT monthly, unless they are small taxpayers. Additionally, provided certain conditions are met, taxpayers may apply simplified method of CIT payment, i.e. equal to 1/12 of due CIT stated in a tax return from the previous tax year. If no due CIT was revealed, taxpayers may pay monthly instalments equal to 1/12 of due tax resulting from a tax return submitted in a tax year preceding the current tax year by two years.

Penalties may be charged for failure to notify the tax authority of an annual liability to CIT within 3 months after the tax year end and for late filing of a tax return. Penalties may also be imposed if tax is outstanding.

Filing

The majority of tax declarations, tax information and tax returns (including CIT-8, IFT-2) have to be submitted via electronic communication. This means that each entity that hires over 5 employees is obliged to submit tax declarations and tax information (among others CIT-8, IFT-2) via electronic communication.

Documents submitted electronically have to be labelled with an electronic signature verified with a valid "qualified certificate". In order to obtain so-called "electronic signature" it is necessary to submit an application one of the subjects authorized to grant certificates and to fulfill the formal requirements essential to confirm an identity of the person who apply for the issuance of the signature.

Tax base

The tax base is the overall income, being the difference between aggregated taxable revenues and aggregated tax deductible costs. The tax base generally includes all sources of income (with certain exemptions). There is no special treatment for income such as interest or capital gains.

The starting point is in accordance with generally accepted accounting principles, with certain statutory adjustments. Some of the most common adjustments are:

- Representation and entertainment expenses
- Depreciation write-offs from cars, which value exceeds EUR 20,000 in the part exceeding this value
- Tax penalties and budget interest
- Donations
- Income taxes paid in Poland and abroad
- Expenses not incurred with the purpose of generating or securing taxable revenues
- Unpaid interest
- Accruals
- Unrealized foreign exchange gains and losses.

Thin capitalization

Beginning from 2015, new rules of thin capitalization restriction were introduced. In line with the new versions of the existing rule 'thin capitalization' restrictions apply to loans granted by a much broader group of related parties, also to indirectly related parties.

The proposed rules changed the limit of interest recognized as tax deductible due to the fact that instead of 3:1 debt-to-share capital ratio, now the 'thin capitalization' limit is 1:1 but with respect to debt vs equity (not share capital).

Withholding Tax

The general withholding ("WHT") rate for dividends is 19%. Payments made by Polish residents to foreign entities (non-residents) as a consideration for intangible supplies (such as consulting or management services) are subject to 20% WHT rate. The same WHT rate is applicable to interest and royalties paid to non-residents.

Based on the Polish CIT Law, WHT rates may be avoided in respect to dividends, royalties and interest if the payments are made to parent or sister company.

These WHT rates may also be reduced (in respect to dividends) or avoided (in respect to intangible services) by specific provisions of Double Tax Treaties concluded by Poland and the respective countries in which beneficiaries of the payments are based, if certain minimal administrative formalities are completed. Also, dividends, royalties and interest paid by Polish residents to numerous European countries receive special beneficial treatment based on regulations which implement various EU directives.

Losses

Tax losses may be carried forward and utilized over five consecutive tax years, however, in any particular year may be deducted no more than 50% of a loss. Thus, the minimum period in which tax loss carried forward may be utilized is two years.

Transfer Pricing

Transactions between related parties should be conducted in accordance with the arm's-length principle. The tax authority may increase the taxable base if the pricing used between related parties differs from that which would have occurred between unrelated parties in a similar business transaction and if the difference results in income being shifted from a Polish taxpayer to another entity (whether a Polish resident or not). Similar rules apply to transactions between Polish residents and the residents of tax haven countries.

The Polish transfer pricing regulations (including CIT Law) provide for specific detailed requirements for statutory transfer pricing documentation. As of 2017, new requirements in this respect will be applicable¹. Those requirements are generally in line with the three-tier approach adopted by the OECD, however there are also some country specific requirements.

Personal Income Tax

Rates

In general, Polish personal income tax (“PIT”) system is of a progressive nature and currently provides for two rates: 18% and 32%, in excess of a personal allowance (variables).

Income (in PLN)	Income tax (in PLN)
up to 85,528	18% minus the variables amount exempt from tax
above 85,528	14,839.02 + 32% of a surplus over 85,528

Individuals conducting business activity as sole traders or partners in partnerships can be taxed with a flat 19% PIT tax rate, provided that certain conditions are met. The same flat tax rate applies to interest and capital gains.

Scope

Polish tax residents are subject to PIT on their worldwide income. As a Polish PIT resident is treated a person, who has a centre of personal or business interests or spends more than 183 days in Poland in a year. It is enough to satisfy one of these conditions to become a Polish tax resident. Double taxation issues are resolved based on the relevant Double Tax Treaty. Otherwise, if no treaty applies, double taxation may be avoided based on the Polish PIT provisions. In general, income tax paid abroad may be proportionally credited against Polish PIT liability.

Non-residents are subject to PIT only on their income received from the Polish sources.

The taxable base is calculated as the sum of income generated from all taxable sources, subject to a number of exceptions (i.e. some sources are taxed separately and left outside the overall income calculation).

Income from a particular source is defined as the surplus of revenue from such source over the tax-deductible costs related to the same source. If within one source of income tax-deductible costs exceed revenue, the result is a tax loss.

The taxpayers are entitled to enjoy with reliefs and deductions (e.g. child benefit, charitable contributions, joint-married tax reconciliation).

Administration

The employers have remitter obligations during the tax year. The tax advances should be calculated using the appropriate tax rates (18% or 32%) and paid to the relevant tax office by the 20th day of following month. Reporting obligations cover also preparing annual information (PIT-11 form to be issued by the end of February of the year following the given fiscal year). According to the general rule annual information should be filed electronically.

¹ One obligation, i.e. Country-by-country reporting will have to be fulfilled also for 2016.

Taxpayers are required to submit the annual return until April 30th of the consecutive tax year and settle the annual PIT due within the same period. The annual PIT liability is calculated as a difference between due tax declared in the annual PIT return and the sum of instalments collected during the year. Starting from 2015, the tax authorities prepare pre-filing tax return for the taxpayers.

Payroll taxes and Social Security

Both the employer and the employee are obligated to contribute to the Polish social security system. Apart from paying its own share, the employer is obligated to withhold the employee's share of the social security contributions and remit them on monthly basis to the Social Security Authorities (ZUS). Pension and disability insurance are limited to the annual cap (PLN 127 890 in 2017).

VAT

The system of Value Added Tax ("VAT") in Poland is essentially similar as that used in the rest of the EU. VAT is levied on supplies of most goods and services. Entrepreneurs conducting activities subject to VAT should register as VAT taxpayers. In general, VAT reporting period is a month, but part of a small taxpayers may also opt for a quarterly reporting period. Most of the taxpayers are obliged to prepare and submit SAF-T files without tax authorities request. Businesses conducting intra-community transactions or transaction on sensitive goods are also obliged to submit additional VAT returns reporting such transactions.

As a rule, VAT is effectively a tax on consumer expenditure, thus the final VAT burden should not fall on business activity. This is achieved through the mechanism of VAT calculation, which, under certain conditions, allows entrepreneurs registered as VAT taxpayers to recover input VAT (included in the price of purchased goods or services).

Polish VAT is levied on the following activities:

- Supply of goods and services within the territory of Poland
- Export of goods outside the territory of the EU
- Import of goods from non-EU countries
- Intra-community acquisition of goods (i.e. import of goods from EU member states)
- Intra-community supply of goods (i.e. export of goods to EU member states);

Since January 1, 2011, the VAT rates are 23% (standard rate), 8%, 5%, 0% and exemption.

VAT calculation

In general, the VAT due equals output VAT less input VAT. As a rule, input VAT may be deducted from output VAT when a taxpayer receives an invoice for goods or services purchased, or in the two subsequent VAT reporting periods. However, to deduct input VAT the purchased supply has to be linked to VATable activities. Furthermore, there are certain exemptions when input VAT should not be deducted, i.e. on gastronomy or hotels expenses, or may be partially deducted, i.e. on expenses for operation or use of passengers cars).

Refunds

According to the Polish VAT rules, when input VAT (available for deduction) exceeds output VAT, taxpayer is entitled to direct refunds. The standard refund period for entities registered for VAT purposes in Poland is 60 days (180 days if no deductible VAT sale is reported in a given settlement period). There are also separate regulations on VAT refunds for foreign entrepreneurs purchasing goods and services from Polish VAT payers.

Other taxes and incentives

Standard Audit File – Tax

New regulations introduce so called Standard Audit File for Tax (SAF-T) in Poland (pl. Jednolity Plik Kontrolny – JPK), which is treated as a regular evidence for the purposes of tax control activities.

SAF-T is an international standard for electronic exchange of reliable accounting and tax data format. Given standard has been defined by the OECD. The format of the file is based on the XML format.

This means that the tax authorities in the course of tax control will be empowered to request taxpayer for submission of data in a predefined electronic format (XML file in an agreed form and logic).

Further amended provisions included an obligation to monthly VAT reporting in a SAF-T data format. According to the bill, the obligation to generate VAT reports in a SAF-T data format and their monthly reporting to the tax authorities apply initially only to the largest enterprises for each month begun on or after 1 July 2016. It means that Large Enterprises will be obliged to file VAT reports in the SAF-T data format already on 25 August 2016.

The obligation to generate VAT reports in the SAF-T data format will apply to small and medium enterprises since January 2017. As for Microenterprises, the obligation will come into effect on January 2018.

Excise duties

Excise is levied on the production, sale, import and intra-community acquisition of “excise goods” which are enumerated in the excise duty law and include, among others, alcohol, cigarettes, energy products (e.g. petrol, oils, gas), electricity and raw tobacco. In addition excise duty is levied on the import and intra-Community acquisition of passenger cars in Poland as well as in case of the first sale of a passenger car which not yet registered in Poland if it was manufactured in Poland.

Excise duty rates depend on the type of excise good and may be of the following types:

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

Excise duty law indicates various exemptions of excise duty based on the agreements on international cooperation (exemptions for EU institutions, diplomats, consular international organizations, armed forces of North Atlantic Treaty) and other exemptions for economic operators which in the most cases depend on the final use of the excise product and several conditions (for example for fuel for aircrafts, electricity used by energy-intensive entities, completely denatured ethyl alcohol).

Customs duties

Poland is subject to the Union Customs Code and other EU customs regulations. Customs duties are collected and managed by customs authorities in various member states and partially transferred to the EU budget. Customs duty is levied on the importation of goods from outside the EU to Poland or other EU country. Once the relevant customs duty is paid in any of the member states, the imported goods can circulate within the whole EU with no further customs restrictions.

Based on the EU customs duty tariff, the standard customs duty rates vary and depend on the classification of the imported goods.

Civil law activities tax

Civil law activities tax (“CLAT”) is levied on certain contracts and amendments to such contracts if they result in an increase in the base of CLAT, such as:

- Contracts of sale and exchange of things and property rights (if not subject to VAT)
- Loan agreements
- Foundation deeds of a partnership or company.

However, a transaction is out of CLAT if at least one of the parties to the transaction is subject to or exempt from VAT, with some exemptions (e.g. sale of real estate, sale of shares). CLAT rate depends on the type of contract, i.e. loans are subject to 2% CLAT rate (except for loans granted by shareholders to a capital company), acquisition of shares is subject to 1% CLAT rate and increase in a company’s share capital is subject to 0.5% CLAT rate.

Retail sale tax

The retailers are to be taxed on the revenues achieved on retail sales (e-commerce sales should not be subject to this tax). The retail tax should be imposed on the excess of the revenues over the amount of PLN 17m (ca. EUR 3.9m), without VAT, calculated in principal based on the turnover registered by the cash registers.

The retailers shall be obliged to submit tax returns, calculate and pay retail tax in the monthly settlement periods. However, no tax return must be submitted in case the revenues in the given month do not exceed the value of PLN 17m. The Act introduces two tax rates: 0.8% of the tax base for the given month, in the part not exceeding the amount of PLN 170m and 1.4% of the excess of the tax base, in the part exceeding the amount of PLN 170m.

The Retail Tax Act includes certain exemptions from taxation, among others in respect of:

- Energy, water, natural gas, heat supply to consumers made by network utilities
- Supply of some fuels designated for heating fuel purposes
- Supply of medicines, special purpose nutrition, reimbursed or partially refunded medical products.

Real estate tax

In Poland real estate tax (“RET”) rates are set up by municipalities within limits specified by the Law on Local Taxes and Fees. In 2017, land used for business purposes is subject to RET at a rate limit of PLN 0.89 (approx. EUR 0.2) per square meter, while buildings used for business purposes are subject to RET at a rate limit of PLN 22.66 (approx. EUR 5) per square meter of usable area. Additionally, certain structures and constructions used for business purposes are also subject to RET, in general based at 2% of their value.

Donations and inheritance Tax

Gifts and inheritances of Polish property are subject to taxation. The PIT taxpayers are their beneficiaries. The tax is levied on the market value of the property less debts and related expenses. Inheritance tax rates vary from 3% up to 20%, depending on beneficiary’s classification. A part of the inheritance is tax exempt.

Special Economic Zones

Polish legislation provides investment incentives related to business activities carried in 14 zones defined as Special Economic Zones (“SEZ”). In order to benefit from certain incentives, permit from the Ministry of the Economy is required. SEZ offer CIT exemption up to 50% of the investment expenditure, i.e. the entity is exempt from the CIT up to 50% of the investment expenses.

Other than the CIT exemption, SEZ offer the following benefits for investors:

- Availability of a land with all necessary infrastructure
- Availability of a “built to suit” real estate for lease or purchase
- Availability of grants
- Administrative support from the SEZ administrator

Research and Development tax relief

The new tax relief is available from the beginning of 2016 (“Relief for new technology”) is available to all entities operating in Poland, except for entrepreneurs carrying out business activity in SEZ.

An entrepreneur applying for the R&D relief is entitled to deduct from its tax base up to 130% of qualified and incurred expenditures, for example:

- Remuneration and social security contributions of employees
- Goods and resources
- Expertises, consultancy services, scientific researches
- Paid use of the research equipment in R&D
- Depreciation of fixed assets and intangible assets used in R&D.

The taxpayer should define the activities and qualified costs for the R&D and keep records of said costs.

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