Poland country profile

EU Tax Centre

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Key tax factors for efficient cross-border business and investment involving Poland

EU Member State Yes

Double Tax Treaties With the following countries, territories and jurisdictions:

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

Note: (a) Applies to Individuals only.

Most important forms of doing business Capital companies (S.A., sp. z o.o.), Partnerships, Branches, Rep. Offices.

Legal entity capital requirements S.A. - PLN 100,000, Sp. z o.o. - PLN 5,000.

Residence and tax system

A company is resident if either its legal seat or its place of management is located in Poland. Resident companies are taxed on their worldwide income. Non-resident companies are taxed only on their Polish source income.

Compliance requirements for CIT purposes

- Fiscal year is generally a period of 12 consecutive months;
- Monthly tax advance payments should be made (simplified monthly advances equal to 1/12 of the previous year tax due possible);
- No filing obligation during the year;
- Annual tax return should be filed and the remaining balance paid within three months after the end of each tax year.

Corporate Income tax rate

The standard corporate income tax rate ('CIT') is 19 percent. As of January 1, 2019, a 9 percent preferential CIT rate is generally available to taxpayers whose business income (excluding capital gains) during the tax year did not exceed the equivalent of EUR 1,200,000. Specific anti-avoidance rules should be observed.

Withholding tax rates

On dividends paid to non-resident companies

19 percent.

Dividends paid to EU, EEA and Swiss parent companies are exempt subject to:

(i) a minimum holding requirement: 10 percent (25 percent for Switzerland), and

(ii) a minimum holding period of two years.

Reduction / exemption of withholding tax ('WHT') available under Double Tax Treaties ('DTTs').

On interest paid to non-resident companies

20 percent.

Exemption on interest paid to specific EU/EEA and Swiss related companies available from July 1, 2013.

Reduction of WHT applicable under DTTs.

On patent royalties and certain copyright royalties paid to non-resident companies

20 percent.

Exemption on payments to specific EU/EEA and Swiss related companies available from July 1, 2013.

Reduction / exemption of WHT applicable under DTTs.

On fees for technical services

20 percent for the use of, or the right to use, industrial equipment, including means of transport, commercial or scientific equipment, or for the use of know-how (exemption on payments to specific EU/EEA and Swiss-related companies available from July 1, 2013).

Reduction / exemption of WHT applicable under DTTs.

On other payments

20 percent, unless DTT provides otherwise, on payments for intangible services (accounting, marketing, HR, management, etc.).

20 percent on payments for services provided by foreign entities in the area of entertainment or sports performed/organized through individuals or companies operating in the area of artistic events, entertainment or sports on Polish territory.

Reduction / exemption of WHT applicable under DTTs.

Branch withholding taxes

No.

New withholding tax regime as of January 1, 2019

As of 2019 new WHT collection rules have been implemented in Poland: reduced DTT rates or exemption under the relevant DTT, as well as WHT exemptions under the EU Interest-Royalties Directive and EU Parent-Subsidiary regime apply as long as the aggregate qualifying payments to a given taxpayer (interest, royalties, fees for certain intangible services and dividends) do not exceed the threshold of PLN 2,000,000 annually.

However, even in such cases (payments below the threshold), the Polish payer is obliged to ensure due care in verifying whether the reduced WHT rates / exemptions may indeed be applied.

If the aggregate qualifying payments to a particular taxpayer exceed PLN 2,000,000, the Polish WHT remitter is generally obliged to collect and pay WHT at standard domestic rates (i.e. at 20 percent for other qualifying payments and 19 percent for dividends), disregarding any WHT domestic exemptions and DTT reliefs.

In such cases the foreign taxpayer may reclaim withheld taxes on the basis of a refund procedure, which could take at least 6 months (the tax authorities may decide to request additional data and prolong the procedure). The reclaim procedure may be initiated by the taxpayer (foreign entity) or by a tax remitter, but in the latter case only if the remitter has actually suffered the economic burden of tax (e.g. if the gross-up clause is used).

There are two exemptions to the abovementioned mechanism, under which it should still be possible for the Polish tax remitter to apply the preferential tax rate or exemption at source (at the moment of payment) – even though the limit of PLN 2,000,000 is exceeded, namely:

1) a WHT statement is submitted to the relevant tax office by the Polish entity, or

2) a WHT clearance is obtained by the foreign entity.

The WHT statement should confirm that the Polish entity holds the documents necessary to apply a preferential WHT rate or WHT exemption and that it does not know of any circumstances that would exclude the possibility of applying a reduced WHT rate or WHT exemption. The WHT remitter can only make the statement once it has verified with due care whether the foreign company is entitled to the tax benefit. The statement should be signed by all the members of the tax remitter's management board, it cannot be signed by a proxy and it is only valid for up to two months.

The WHT clearance is a specific clearance opinion from the tax authorities confirming the application of the tax exemption to a given taxpayer (payment recipient). The WHT clearance only covers exemptions under the EU Interest-Royalties Directive and the EU Parent-Subsidiary Directive. This option is not available when applying reduced WHT rates under DTTs. WHT clearance should be issued by the tax authorities within 6 months and if issued is generally valid for 36 months.

According to the specific decree, the application of the WHT mechanism will be deferred until June 30, 2019 for most cross-border payments (with some exceptions). However, the remitters are nevertheless obliged to ensure due care in verifying the requirements for the application of the reduced rate / exemption.

The new regulations also broadened the definition of 'beneficial owner' contained in Polish domestic law. Under the new definition, a person / entity must cumulatively meet the following tests in order to prove beneficial owner status:

1) receives income for its own benefit, including deciding how it should be used, and bears the economic risk associated with the loss of this income or part of it,

2) is not an intermediary, representative, trustee or other entity legally or actually obliged to transfer all or part of the income to another entity;

3) carries on genuine business activities in its state of residence, if income is obtained in connection with such business activities – here the conditions under the Controlled Foreign Company ('CFC') rules provided for in the Polish CIT regulations should be assessed.

It should be emphasized that the lack of due care by the Polish tax remitter may not only result in a restriction of benefits in the form of preferential taxation resulting from the CIT Act / EU Directives or DTTs, but an additional tax liability (between 10 percent -30 percent of the tax that had not been paid) may also be imposed or the fiscal-penal liability for the responsible individuals may arise..

Holding rules

Dividend received from resident/non-resident subsidiaries

- Credit method. Underlying credit available for non-EU and non-EEA treaty countries except Switzerland:
    - Minimum holding requirement: 75 percent;
    - Minimum holding period: 2 years.
- Participation exemption for dividends from Polish subsidiaries and subsidiaries located in EU Member States, EEA states and in Switzerland, provided that:
    - Minimum holding requirement: 10 percent (25 percent for Switzerland);
    - Minimum holding period: 2 years.

Capital gains obtained from resident/non-resident subsidiaries

Generally taxable.

Tax losses

Losses may be carried forward for five years. Up to 50 percent of the loss may be offset in each year. Loss carry back is not allowed.

As of January 1, 2019, there is a possibility of one-off utilization of a tax loss carried-forward (up to PLN 5,000,000). If the tax loss exceeds this limit, the excess of the tax loss can be settled over the remainder of the 5-year carry-forward period (but no more than 50 percent of the tax loss can be utilized in any one tax year).

As of January 1, 2018, loss is offset within each income basket (capital or business profits basket).

Tax consolidation rules/Group relief rules

Resident companies with an average share capital of at least PLN 500,000 may form a fiscal group. It must be formed for at least three tax years. Additional requirements:

- The parent company must hold 75 percent of the shares in the subsidiaries;
- The subsidiaries may not hold shares in the other companies of the group;
- The companies may not be exempt from corporate income tax;
- The annual ratio of net income to gross income must be above 2 percent.
- Members of the group may not have any tax arrears.

Registration duties

Capital duty on incorporation of a company and on share capital increase (0.5 percent of share capital or increase of share capital). Capital allocated to share premium is not taxed.

Transfer duties

On the transfer of shares

1 percent (share-for-share deal may be exempt under specific conditions).

On the transfer of land and buildings

2 percent if not subject to VAT or VAT exempt.

Stamp duties

Yes, on some legal actions such as issuance of the certificate or submitting a power of attorney.

Real estate taxes

Yes, the tax rates are set by the local authorities, subject to the maximum rates.

Controlled Foreign Company rules

Yes (CFC legislation in force since January 1, 2015).

As of January 1, 2019 the CFC provisions have been extended to, for example, foundations, trusts, tax capital groups (or particular companies included in the tax capital groups), business units separated within foreign companies and foreign permanent establishments of international units.

Transfer pricing rules

General transfer pricing rules

OECD Guidelines apply. Advance Pricing Agreements ('APA') available.

Documentation requirement

As of January 1, 2019, companies are obliged to prepare tax documentation (the 'Local File') on related party transactions whose annual value exceeds the statutory limits.

The Local File should include a benchmark study and should be prepared within 9 months of the end of the given tax year (statement on fulfillment of the obligation must to be submitted to the tax authorities). The Local File must be submitted to the tax authorities within seven days upon request.

As of 2019, failure to comply with transfer pricing obligations may result in an additional tax liability (10-30 percent).

Consolidated entities may be required to prepare a Master File.

Thin capitalization rules

As of January 1, 2018, thin cap rules according to the ATA Directive - interest limitation to 30 percent of EBITDA (deductibility of debt financing cost surplus over interest income – i.e. net value of debt financing up to 30 percent of "EBITDA").

Net debt value limit up to which no interest deductibility rules restrictions apply amounts to PLN 3,000,000.

In accordance with the grandfathering rules, old rules will continue to apply to old loans until the end of FY 2018. With effect from FY 2019 all loans are subject to new earning stripping provisions.

General Anti-Avoidance rules (GAAR)

When establishing the nature of a transaction, tax authorities consider the intention of the parties and the purpose of a transaction, rather than relying solely on the representation made by the parties. If the transaction was fictitious and the parties intended to hide its real nature, the legal consequences of the real transaction will be taken into account.

New GAAR took effect on July 15, 2016. These rules give the tax authorities the right to determine the amount of tax payable without taking into account transactions that: were carried out primarily in order to obtain a tax benefit (or such a tax benefit was one of the main aims of the transaction), which under the given circumstances would be contradictory to the spirit and intent of tax law or a particular provision thereof and have an artificial character.

In assessing whether obtaining a tax benefit was the primary or one of the primary reasons behind the transactions, the taxpayer's business motivation for the transactions should be taken into account. A transaction is not deemed to have an artificial character if, under the same circumstances, another entity acting reasonably and driven by legitimate objectives (thus not for the purposes of obtaining a tax benefit) would have performed the transaction primarily for business reasons. Such business reasons should not include obtaining a tax benefit, which is contradictory to the spirit and intent of tax law or a particular provision thereof.

If obtaining the tax benefit was the only reason for an action, then the tax benefits resulting from the artificial action will be forfeited, as if the transaction (action aimed at obtaining the tax benefit) had never taken place.

As a consequence of applying the GAAR, the taxpayer may be charged late payment interest on potential tax arrears. An additional tax liability may also be imposed on a taxpayer.

According to the new GAAR legislation, the tax benefit is defined quite broadly as: avoiding a tax liability, delaying the moment when a tax liability arises, reducing the amount of a tax liability, generating a tax loss or increasing the amount of a tax loss; realizing a tax overpayment or right to receive a tax refund or an increase in the amount of an overpayment or increase in the amount of a tax refund, as well as the absence of an obligation to collect the tax by the tax remitter if it stems from avoiding a tax liability, delaying the moment when a tax liability arises or reducing the amount of a tax liability.

Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions/Anti-Hybrid rules

Certain exemptions apply only if there are legal grounds for the exchange of fiscal information between Poland and the relevant State.

Tax neutrality will not apply to a merger, a division or an exchange of shares if the transaction is not justified by sound economic reasons, but was entered into for the purpose of avoiding tax. Specific anti-abuse clauses apply under DTTs.

Certain transactions / arrangements are specifically excluded from the Interest and Royalties Directive exemption.

	Tax exemption on dividends received by Polish resident companies from EU/EEA/Swiss subsidiaries does not apply if the amounts paid are tax deductible for the distributing company. The taxpayer cannot benefit from the dividend distribution exemption if: - the dividend payment results from arrangements / transactions that are primarily aimed at benefitting from the exemption and the obtaining of the exemption results in more than merely elimination of double taxation, and - these agreements / transactions are not of a genuine nature, i.e. business justification test.
Advance Ruling system	Yes
IP / R&D incentives	From 2017: tax deduction on R&D activities (R&D tax credit) – 50 percent of the salaries of employees involved in research and development activity and 30 percent or 50 percent of other costs connected with R&D. Until 2016: tax deduction on R&D activities (R&D tax credit) – 30 percent of salaries of employees involved in research and development activity and 10 percent or 20 percent of other costs connected with R&D. Until 2015: 50 percent extra tax deduction on new technology expenses. As of January 1, 2019 an Innovation Box (IP Box) has been introduced that provides for a 5 percent preferential tax rate to apply to income generated by qualified intellectual property rights (including any rights created, developed or improved on by a taxpayer within his R&D activities, which were recognized as IP rights in Poland or within the EU). Qualifying income (loss) from IP includes IP license fees or charges, sale of IP, IP included in the sale price of goods or services and compensation for infringement of IP rights. There is a special formula for calculating the IP Box income. A tax loss from IP may be settled in five consecutive years (without 50 percent limit), but solely from the same IP or the same type of product or service.
Other incentives	Research and development expenditure can either be deducted in the year when it is incurred or through tax write-offs. As of January 1, 2019 certain notional external financing costs may be treated as tax-deductible costs (notional interest deduction), with the costs being limited to PLN 250,000 in a given tax year.
VAT	The standard rate is 23 percent, and the reduced rates are 0 percent, 5 percent and 8 percent.
Other relevant points of attention	As of January 1, 2017, a domestic definition of income earned within the territory of Poland was introduced. The definition will be used when determining the limited tax liability of non-Polish residents.

The amendments to the CIT Act provide for a wide range of examples of situations when the income of a non-resident is explicitly deemed as earned “within the territory of the Republic of Poland” for the purposes of determining the taxpayer's limited tax liability in Poland. According to this definition, the following types of income qualify as Polish source income:

- Income from all types of activities performed within the territory of Poland, including activities of a permanent establishment located in Poland.
- Income derived from real estate located in Poland as well as from property rights to such real estate, including income from the sale of the real estate as a whole or in parts and the sale of any property rights to such real estate.
- Income from securities and derivative financial instruments that do not constitute securities authorized for public trading on a regulated exchange market in Poland, including income from the sale of such securities and financial instruments or from the realization of property rights arising therefrom.
- Income from the alienation of shares in a company, or participation in a partnership, investment fund or collective investment undertaking, where at least 50 percent of the total value of assets are directly or indirectly derived from immovable property located in Poland or property rights to such immovable property.
- Income from the settlement of receivables, including those put at disposal, paid or set-off by individuals, companies or entities without legal personality having a place of residence, registered office or management within the territory of Poland, regardless of the place where the agreement was concluded or the service was performed.

Taxation of unrealized gains (exit tax)

As of 2019 the taxation of unrealized gains has been introduced with a new exit tax imposed both on Polish companies and individuals. The scope of exit taxation includes the transfer of assets outside Poland, change of Polish tax residence and donation / contribution of assets outside Poland – as long as Poland loses wholly or partially the right to tax an asset. The amount of exit tax paid abroad by the Polish resident can be deducted from the total income.

The general exit tax rate is 19 percent for companies and individuals, with tax-deductible costs being taken into account when determining the amount of the taxable gain. A reduced rate of 3 percent applies to individuals who do not take any tax-deductible costs into account. There is also an exemption for individuals if the total value of assets transferred does not exceed PLN 4,000,000.

The exit tax does not apply to temporary asset transfers (for a period not exceeding 12 months) under specific circumstances.

Source: Polish tax law and local tax administration guidelines, updated 2018.

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