

A nighttime photograph of a city skyline. The central focus is a tall, modern skyscraper with a curved facade, illuminated from within and featuring the EY logo at the top. The building's windows are lit up, showing interior lights. To the left, another building has a sign that reads 'BANKO'. In the background, other skyscrapers are visible, some with red and blue lighting. The foreground shows a busy street with light trails from cars and a roundabout. The overall scene is vibrant and urban.

# Doing business in Poland



Building a better  
working world



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# Preface

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This publication has been prepared by EY Poland in order to provide a quick overview and useful practical advice on issues that face investors starting and building a business in Poland. In particular, we hope that it will help investors to avoid common pitfalls and clarify areas where forethought and planning will help problems to be avoided.

Investment in Poland remains an attractive proposition, as the country proved resistant and resilient to the recent global economic and financial downturn. In 2016, Poland remained one of Europe's top recipient of foreign direct investment offering many opportunities, and encouraging foreign investment in the main sectors of the economy is a key priority for the country.

Each chapter of "Doing business in Poland" offers an authoritative summary of one key area of the business environment. These areas include general view of the market and the current investment climate in Poland, legal framework, tax system, employment regulations, public procurement, real estate, accounting and auditing, as well as, information on several sectors of the Polish economy.

This publication, written by professionals from EY, is a highly summarized version of the rules in force as of 1 January 2017. The authors are all leading experts in their fields, with a proven track-record in providing expert advice to domestic and foreign clients about all aspects of the Polish business environment. While the information contained in this publication was to the best of our knowledge correct at the time of writing, the rapid pace of change in Poland means that laws and regulations are unlikely to remain static. We would therefore urge readers to treat this publication only as a general overview, and not a substitute for comprehensive professional advice, which should be sought before making any investment decisions or engaging in any significant transaction.

We wish you every success doing business in Poland.







# Business climate

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## 1.1. Market overview and key drivers

Since the collapse of communism in 1989, Poland has made a remarkable progress, moving from a centrally planned to market economy. Trade liberalization, economic restructuring, privatization, capital inflows, and gradual adaptation of legal and administrative standards suitable for market practices have improved economic structures dramatically. After joining the EU in 2004, Poland became a member of the vast European Single Market where goods, services, capital and labor move as freely as within a single country.

Since 1992, Poland has not experienced any recession. In fact, Polish economy grew rapidly with only three short periods of deceleration (but no recession): at the beginning of 2000', during the global financial crisis in 2008-2009 and in 2012-2013 - always mainly due to external factors. Moreover, Poland is one of few EU countries that have never been subject to the EU macroeconomic imbalance procedure.

A fact to remember is that during the recent global economic downturn, Poland has been the only country in the EU to show growth in GDP (as opposed to recession in other EU countries). Poland's economic performance in recent years might be ascribed to several factors, including: (1) strong private consumption, supported by labor market performance, (2) flexible exchange rate, (3) diversified foreign trade structure and very good exports performance, (4) competitiveness of Polish firms, and (5) sound financial sector.

Currently, Polish economy is once again growing at a pace close to its potential rate of growth (3.9% y/y in 2015, ca. 2.8% y/y in 2016 and 3.1% y/y in 2017, according to the World Bank estimation), proving its long-term robustness even in the environment of external uncertainty. International institutions' forecasts call for at least several years of stable economic growth (slightly above 3% annually). Private consumption is expected to remain the main growth driver, supported by accelerating wage growth and fiscal transfers. Investment activity contracted in 2016, but should gradually recover as utilization of EU funds picks up.



## 1.2. Grants and tax incentives for investments in Poland

Poland has been successful in improving its business environment over the past decade as evidenced by its move up in international rankings comparing countries in terms of competitiveness and ease of doing business (e.g. Global Competitiveness Report, World Bank's Doing Business). This improvement is reflected in recognition of Poland as one of the top prospective location for foreign investors (not only in the CEE region but in Europe as a whole) and continuous inflows of foreign capital into Poland. In fact, between 2004 and 2015, the stock of Foreign Direct Investment in Poland has increased from EUR 67 bn to over EUR 204 bn.

There are several reasons why foreign companies view Poland as an attractive location for their investment:

- ▶ Poland was one of few countries in the EU where real unit labor costs have decreased since 2004. Importantly, the real ULC are generally more stable in Poland than in other EU countries, including large, developed economies
- ▶ Poland has access to the EU Single Market of over 500 million customers, as well as a large domestic market of approx. 38 million customers
- ▶ Poland is a source of young, skilled workforce with good knowledge of foreign languages
- ▶ Poland has built a system of incentives (both domestic and from EU sources) to encourage foreign investment.

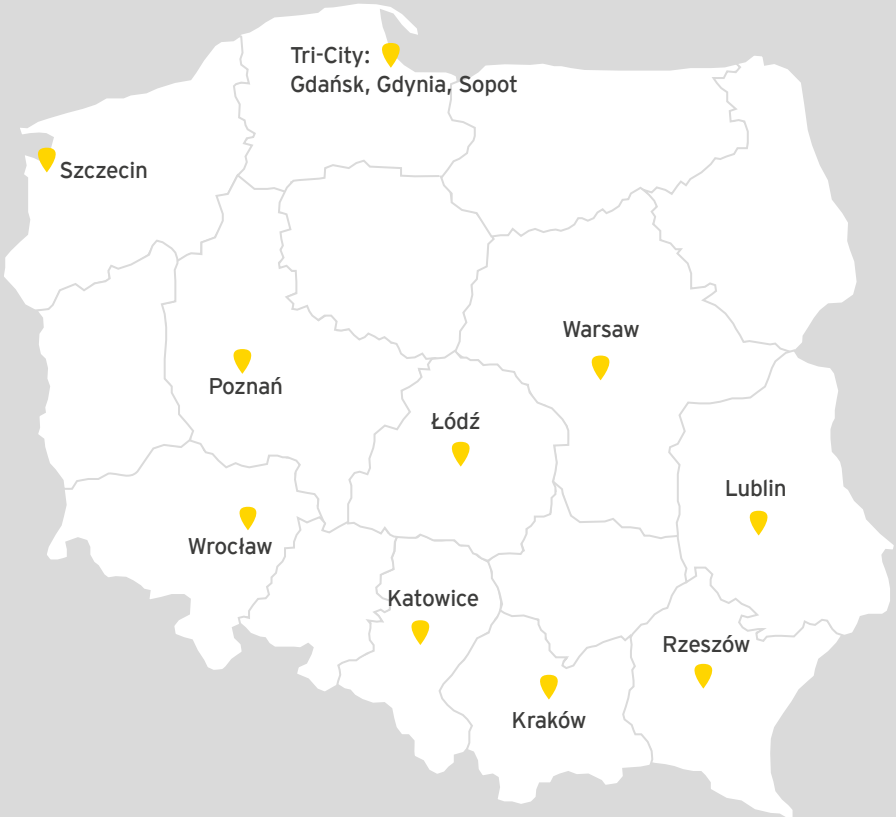
As of December 2015, the most important sources of foreign direct investment in Poland included large euro area economies and important international financial centers, among others: Netherlands, Germany, Luxembourg, France and Spain.

### Top 10 sources of FDI in Poland (2015)

1	Netherlands
2	Germany
3	Luxembourg
4	France
5	Spain
6	UK
7	Italy
8	Austria
9	Cyprus
10	Belgium

Source: Narodowy Bank Polski

## Selected main SSC/BPO and R&D centers' locations in Poland



Source: EY

## Selected BPOs/SSCs operating in major Polish cities

### Tri-city

Amazon  
Bayer  
First Data Corp.  
Geoban  
Intel Europe Inc.  
Lufthansa  
Luxoft  
Nordea Bank  
Sony Pictures Global Business Service  
State Street  
Thomson Reuters  
ThyssenKrupp  
WNS Global Services

### Szczecin

Arvato  
Coloplast  
Convergys  
Convergys International  
Dansk Supermarked  
DGS  
Metro Services  
Tieto  
Unicredit

### Bydgoszcz

Alcatel Lucent  
Atos  
JPMorgan Chase  
Mobica

Nokia Networks

Teleplan

### Poznań

Arvato  
Bridgestone  
Carl Zeiss  
Carlsberg  
CenturyLink  
Dalkia  
Franklin Templeton  
GlaxoSmithKline Services  
IKEA  
Jeronimo Martins  
MAN  
MARS  
McKinsey  
Roche  
Veolia

### Warsaw

3M  
Accenture  
AVON  
BNP Paribas  
Citi Group  
Coca-Cola  
Colgate-Palmolive Services  
Faurecia  
GE  
Google

Hewlett-Packard

IBM

ITMAGINATION

Jones Lang LaSalle

Microsoft

MoneyGram

Oracle

Procter & Gamble

Roche

Royal Bank of Scotland (RBS)

Samsung

SAP

Siemens

TNT Express

Xerox

### Łódź

Accenture

Bosch-Siemens

Citi Group

DHL Express

Ericpol

Fujitsu

Hewlett-Packard

Infosys

SAP

Takeda

Teleca

TomTom

UPS Global Business Services

Veolia

**Wrocław**

Alstom

Atos

BNY Mellon

Capgemini

Credit Suisse

Dolby

EY Global Services

Google

Hewlett-Packard

HP

IBM

Luxoft

McKinsey

Merck

Nokia Networks

Qatar Airways

Ruukki

UBS

UPS

Viessmann

Volvo IT

**Katowice**

ArcelorMittal

Capgemini

Dunlop

General Motors

IBM

ING Services

Kroll Ontrack

Orange

PwC

Rockwell Automation

Saint Gobain

Sopra Steria

Unilever

Wincor Nixdorf

**Lublin**

Asseco Business Solutions

Compugroup Medical

Convergys

Genpact

Orange

Sii

**Kraków**

ABB

Akamai

Alexander Mann Solutions

Amway

Brown Brothers Harriman

Capgemini

CH2M

Cisco

Delphi

Electrolux

Euroclear

Google

Heineken

Hitachi

HSBC

IBM

International Paper

Lufthansa Global Business Services

Luxoft

Motorola

Nokia

Philip Morris International

Rolls-Royce

RWE

Sabre

Shell

State Street

Uber

UBS

**Rzeszów**

Asseco

BorgWarner

Deloitte

Hamilton Sundstrand

Mobica

MTU Aero Engines

Nestlé

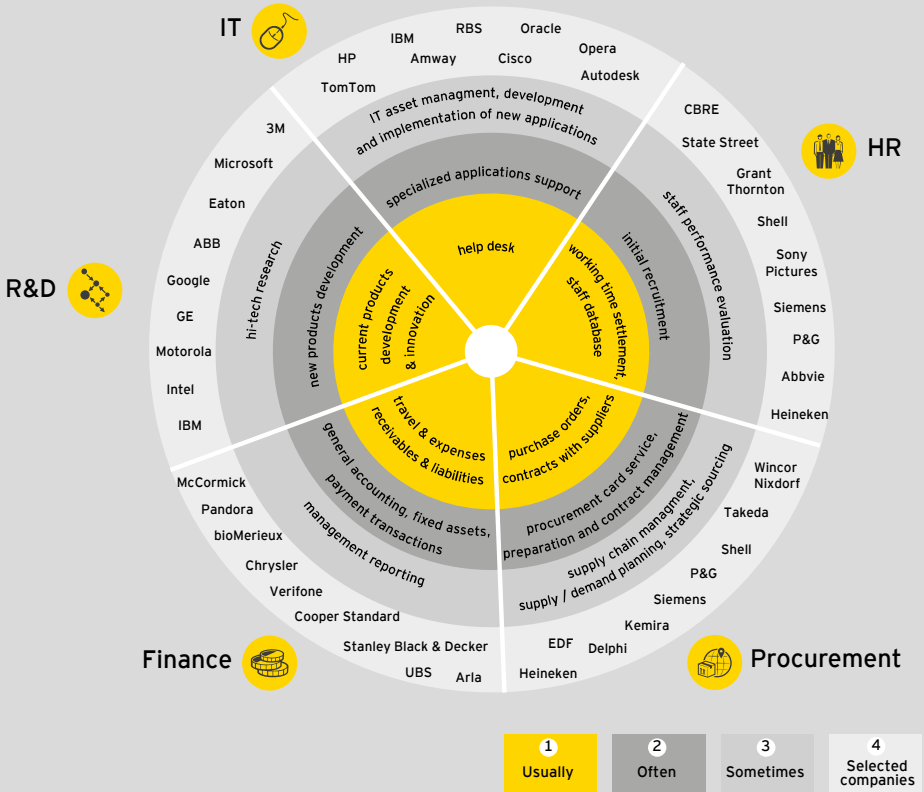
Pratt & Whitney

Source: EY, ABSL

Starting from basic accounting and call-center functions, the range of processes realized by BPOs/SSCs, along with their maturing presence in Poland became more complex and diverse. It is clearly visible

that companies investing in this sector in Poland, recognizing local potential, are interested in developing their activities in more advanced areas, such as high-tech R&D and substantive process management.

## Diversity of processes and functions executed in BPOs/SSCs in Poland



Source: EY



## Investment incentives in Poland

There are many opportunities for companies to obtain financial support for projects in Poland from both European Union Funds and domestic sources. In this publication we focus on the most popular of the aid schemes available for companies but it is worth noting that there are many more that can be utilised. Therefore, when considering a new investment in Poland, it is important for each case to be analysed individually - various sources and types of support may be available, depending on the scope of the project.

Regardless of the form of support, the incentive system as a whole complies with EU legislation and requirements concerning state aid.

General provisions on the admissibility of state aid are set out in the Treaty on the Functioning of the European Union<sup>1</sup>, the relevant European Commission regulations, e.g. Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty<sup>2</sup> and the Act of 30 April 2004 on Proceedings in State Aid Cases<sup>3</sup>.

<sup>1</sup> Consolidated version of the Treaty on the Functioning of the European Union, European Union, October 2012.

<sup>2</sup> Official Journal L 187/1, 26.06.2014.

<sup>3</sup> Journal of Laws of 2016, item 1808, unified text.

## Regional aid for new investments

Regional aid is the most popular type of aid for companies carrying out investment projects in Poland. It is granted only for "initial" or "new" investments, which are generally defined as investments related to:

- ▶ Setting-up of a new establishment
- ▶ Extension of the capacity of an existing establishment
- ▶ Diversification of the output of an establishment into products not previously produced
- ▶ Fundamental change in the overall production process of an existing establishment
- ▶ Acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking.

However, in the case of large companies executing investment projects in mazowieckie voivodeship aid can only be granted for investments related to:

- ▶ Setting up of a new establishment, or
- ▶ Diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity<sup>4</sup> to the activity previously performed in the establishment.

<sup>4</sup> The same or a similar activity - an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains, OJ L 393, 30.12.2006, p. 1.

## How do I calculate the maximum level of regional aid available for my investment in Poland?

The maximum level of aid a project can receive depends on the size of the company and where in Poland the project is to be located, and is calculated as a percentage of the higher amount of:

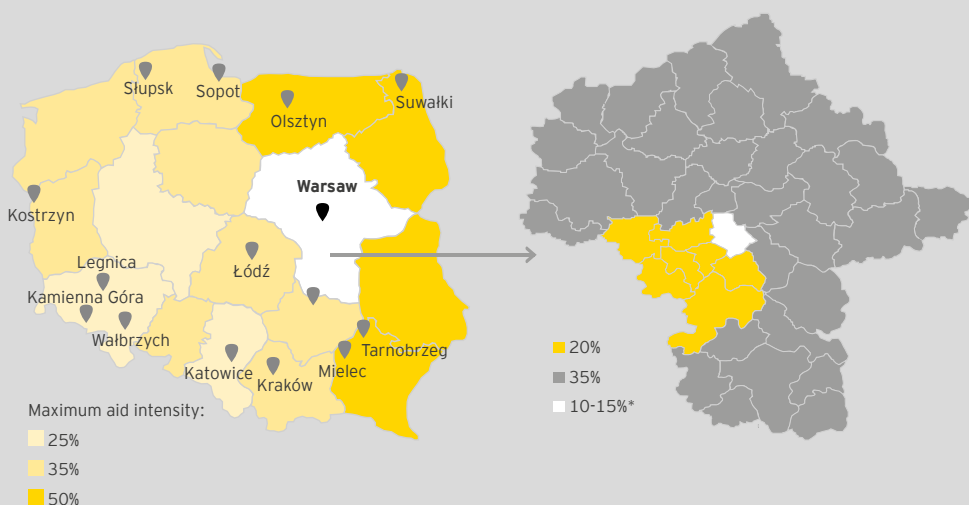
a) investment costs in tangible and intangible assets;

b) the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years; or

c) a combination of points (a) and (b) not exceeding the amount of (a) or (b), whichever is higher.

The percentage is the so-called “maximum aid intensity” applicable in a given region where the project is to be located - please see on the map below.

## Map of regional aid intensities in Poland, 2014-2020



### \*Warsaw:

15% until 31.12.2017

10% from 01.01.2018

### All aid intensities increased by:

10 p.p. for medium-sized companies

20 p.p. for small companies

Please note, however, that additional restrictions apply for calculating levels of aid for so-called “large investment projects”, i.e. projects exceeding the expenditure level of EUR 50mn - such projects are eligible for “adjusted aid amount” (i.e. aid lower than the amount which would normally arise from the calculation: regional aid intensity x eligible costs)<sup>5</sup>. Additionally, if the following levels of aid are exceeded, the aid has to be individually notified to the European Commission (i.e. presented for verification and approval):

Aid intensity in the region	Notification threshold (level of aid)
10%	EUR 7.5mn
15%	EUR 11.25mn
25%	EUR 18.75mn
35%	EUR 26.25mn
50%	EUR 37.5mn

<sup>5</sup> Basic formula for calculating the adjusted aid amount is as follows:

**maximum aid amount = R × (A + 0,50 × B + 0 × C)**, where:

- ▶ R is the maximum aid intensity applicable in the area concerned established in an approved regional aid intensity map and which is in force on the date of granting the aid, excluding the increased aid intensity for SMEs
- ▶ A is the initial EUR 50 mn of eligible costs,
- ▶ B is the part of eligible costs between EUR 50 mn and EUR 100 mn and
- ▶ C is the part of eligible costs above EUR 100 mn

Please also note that any initial investment started by the same beneficiary (at a group level) within a period of 3 years from the date of start of works on another aided investment in the same region (at the level 3 of the Nomenclature of Territorial Units for Statistics) is considered to be part of a so-called “single investment project”.

If the amount of investment expenditures of such combined investment exceeds the level of EUR 50mn the above rules for “large investment projects” would be applied.

### What types of costs are eligible for regional aid?

As mentioned above, aid available for a given project is calculated on the basis of either investment costs or employment costs. Companies applying for aid are entitled to choose the higher of the two amounts as the basis for calculating the aid pool.

If the aid pool is based on investment costs, expenses eligible for aid may include

- ▶ Expenditure on land, buildings and plant/machinery
- ▶ Technology transfer costs (purchase of patent rights, licenses, know-how or unpatented technical knowledge) - if additional conditions are met
- ▶ Costs of financial lease of assets other than land and buildings, provided that the assets are purchased on expiry of the lease term
- ▶ Costs of leasing land and buildings if the lease continues for at least 5 years (3 years for SME) after the investment is finished.

In the case a large enterprise applies for the aid, the assets it purchases must be new in order to qualify those expenses as eligible for funding. This does not apply to SMEs and takeovers.

If the aid pool is based on employment costs, expenses eligible for aid are two-year employment costs of new employees (costs related to job creation resulting from the new investment). The two-year employment costs cover:

- ▶ Gross wages, and
- ▶ All obligatory employment-related payments (e.g. social security contributions) made by the company.

Please note that new jobs are defined as a net increase in the number of employees directly employed in a company compared with the average level of employment over the previous 12 months.

## Can different types of aid received from different sources be combined?

Regional aid available in Poland can be granted in different forms, such as:

- ▶ CIT exemption in so-called special economic zones (SEZ)
- ▶ Government grants (support from domestic budget)
- ▶ Cash grants or loans from EU funds.

Different types of regional aid can be combined together. The only limitation is the aid intensity level set for the region where the investment is located. Please note that this rule applies only to aid granted for a single investment. It is not forbidden to receive new aid for other investments in Poland.

## What are the most important rules related to regional aid?

Firstly, in general, the project for which the funding is pursued must not be started before the application is submitted to the respective authority.

Secondly, regional aid cannot be granted to a beneficiary that has closed down the same or a similar activity in the European Economic Area in the 2 years preceding its application for regional investment aid or which, at the time of the aid application, has concrete plans to close down such an activity within a period of up to 2 years after the initial investment for which aid is requested is completed in the area concerned. Please, however, note that there are plans to amend provisions regulating the above in 2017.

Thirdly, if the aid has been granted, one of the most important requirements is to maintain the investment and its results (such as new jobs, assets bought) in the region for a minimum of 5 years (3 years for SME) after the investment is finished.

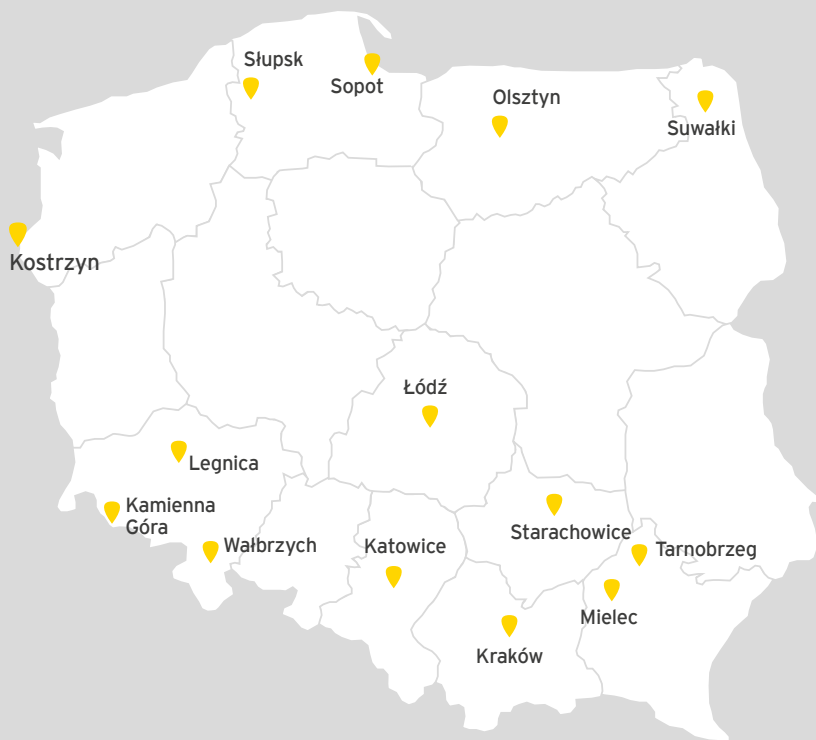
## State aid in Special Economic Zones

Companies investing in Poland are able to benefit from corporate income tax (CIT) exemption for business activities conducted within SEZs. SEZs were created in the mid-1990s and cover selected parts of Poland where companies can operate on preferential terms and conditions. This type of support is also a type of regional aid and is available based on a SEZ permit until the SEZ ceases existence - which at present is set for 31 December 2026 for all 14 SEZs.

There are 14 headquarters, one for each of the SEZs (see map), while each SEZ consists of several sub-zones located in different places, not necessarily adjacent to each other.

Please note that the SEZ regulations are planned to be amended in 2017.

## SEZs headquarters' locations



### How do I calculate the maximum aid available in the form of CIT exemption in SEZs?

The amount of support available in SEZs is calculated in the same way as other types of regional aid, i.e. according to the map of regional aid intensities. However, in this aid scheme there are no cash payments (as with EU and domestic grants) - the

benefit is CIT exemption. We explain below how the CIT exemption limit is determined.

The support is granted for a new investment or costs of new jobs created. Therefore, the maximum aid available is calculated according to the map of regional aid intensities (and based on investment or employment costs). Afterwards, this aid "pool" is utilised as CIT exemption in

relation to income generated on business activities carried out by an investor in the SEZ area and listed in the SEZ permit.

The investor can utilise the aid pool until the end of the SEZ's existence.

### **What is a SEZ permit?**

To benefit from CIT exemption the investor must obtain a permit to operate in a SEZ. The permit specifies the conditions which the investor must meet, e.g. the value of the planned investment, the intended level of employment, and deadlines by which all the obligations set out in the permit must be met.

The SEZ permit also specifies (by reference to Polish statistical classifications) the activities to be performed in the SEZ which qualify for CIT exemption. Revenues from activities not explicitly mentioned in the SEZ permit are taxable on standard rules.

According to regional aid rules, generally the investment activities can be started only after the SEZ permit is issued. Moreover, only investment costs borne (invoices paid) and new jobs created after the SEZ permit is issued may be treated as eligible for state aid.

### **How can I locate my investment in a SEZ?**

Investors can locate their investments (business activity) in the area already covered by SEZ status or they can apply for a SEZ border extension to cover private land where the planned investment is to be located. In the latter case, the investor has to fulfil specific criteria. The SEZ extension process takes at least 6 months as it requires an amendment to the Council of Ministers Resolution. Planned amendments to the SEZ regulations currently proceeded by the Polish Government foresee measures improving the procedure.

### **How do I apply?**

There are no calls for proposals in SEZs. Companies can submit an application at any time during the year. A decision to extend the SEZ and/or issue a SEZ permit is taken within a formal negotiating procedure.

### **Government grant**

The government grant (Multi-Annual Support Programme - MASP) is a regional aid scheme financed from the Polish budget and dedicated to supporting large investments considered vital to the Polish economy. It has recently been prolonged to the year 2023, however, some changes to the Programme are expected to be introduced as soon as this year.

Support within MASP may be granted to:

- ▶ Investments in the so-called "priority sectors": automotive, electronics, aviation, biotechnology, modern services (particularly IT centres, BPOs and telecommunications) and R&D
- ▶ "Significant" investments in other sectors.

As a rule, support cannot be granted if the local unemployment ratio is lower than 75% of the national average, unless:

- ▶ Investment is executed in the modern services or R&D sector, or
- ▶ Investment is executed in the warminko-mazurskie, podlaskie, lubelskie, świętokrzyskie or podkarpackie voivodship or
- ▶ Eligible costs and new jobs meet the threshold for "significant" investments.

Support may be based on a two-year employment costs of new staff hired or eligible investment costs. Depending on the type of eligible costs there are different entry criteria for projects.

## What are the entry criteria?

### **A** Support based on two year employment costs of newly created jobs

Support can be granted to entrepreneurs meeting the following entry criteria:

- ▶ For “priority” production sectors: incurring investment costs of at least PLN 40mn and creating at least 250 new jobs
- ▶ For modern services sector: creating at least 250 new jobs with minimal investment in fixed assets (excluding rental costs) in the amount of PLN 1.5 mn
- ▶ For R&D sector: incurring investment costs of at least PLN 1.0 mn and creating at least 35 new jobs (for employees with university degrees)
- ▶ For other sectors: only “significant” investments.

“Significant” investments mean investments with eligible costs of at least PLN 750mn and creating at least 200 new jobs or with eligible cost of at least PLN 500mn and creating at least 500 new jobs.

The level of support based on newly created jobs ranges from PLN 3,200 to PLN 15,600 per job, depending on a specific set of criteria.

In the case of investments in voivodships: warmińsko-mazurskie, podlaskie, świętokrzyskie, lubelskie, podkarpackie, the above level of support is increased by 20%.

### **B** Support based on eligible investment costs

Support can be granted to entrepreneurs fulfilling the following entry criteria:

- ▶ For “priority” sectors: incurring investment costs of at least PLN 160mn and creating at least 50 new jobs
- ▶ For R&D sector: incurring investment costs of at least PLN 10mn and creating at least 35 new jobs (for employees with university degrees)
- ▶ For other sectors: only “significant” investments.

“Significant” investments mean investments with eligible costs of at least PLN 750mn and creating at least 200 new jobs or with eligible cost of at least PLN 500mn and creating at least 500 new jobs.

The level of support based on eligible investment costs ranges between 2%-7.5% of eligible investment costs, depending on a specific set of criteria.

In the case of investments in voivodships: warmińsko-mazurskie, podlaskie, świętokrzyskie, lubelskie, podkarpackie, the level of support is increased by 5 p.p. of eligible investment costs up to the level of 12,5%.



Having fulfilled the entry criteria, projects are evaluated against additional detailed criteria, including i.a.:

- ▶ Processes performed by the company (services provided to other parties)
- ▶ Human capital (% of employees with a university degree)
- ▶ Investment location
- ▶ Other (e.g. cooperation with universities, the company's reputation, unique operations performed).

### How do I apply?

There are no calls for proposals. Companies can submit applications at any time during the year.

### Cash grants from EU funds

EU member states are currently implementing the 2014-2020 financial perspective, i.e. the seven-year framework for EU spending. Over this period Poland is to receive the largest share of aid from EU Funds of all EU members. In particular, EUR 82.5bn has been allocated for various operational programmes to be distributed among defined beneficiaries, including companies.

Operational programmes set out the general terms and conditions for projects for which aid will be granted. In the case of companies registered in Poland aid will be focused on R&D but other activities can also receive support, e.g.:

- ▶ Innovative new investments, which use new technologies, by SMEs

- ▶ Energy efficiency projects
- ▶ Production of energy from renewable sources.

### How are cash grants from EU funds accessed?

In order to be eligible for a cash grant from EU funds, applications have to be filed within calls for proposals.

When applications are submitted they are thoroughly evaluated in accordance with specified criteria. The assessment process takes approx. 3-5 months and covers a formal and content evaluation. In the content evaluation the application has to be awarded a minimum number of marks to secure the right to the grant. However, in the most popular aid schemes the minimum number of points can be insufficient to actually receive the grant, due to the limited budget and high competition; if this is the case, cash grants go to applicants with the highest scores.

## State aid for Research and Development

State aid for R&D-related projects can be granted for:

1. **R&D projects** - that assume carrying out:
  - ▶ Fundamental research<sup>6</sup>
  - ▶ Industrial research<sup>7</sup>
  - ▶ Experimental development<sup>8</sup>

<sup>6</sup> Fundamental research - experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view.

<sup>7</sup> Industrial research - planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation.

<sup>8</sup> Experimental development - acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services; this may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services.

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily

- ▶ Feasibility studies<sup>9</sup>.

2. **R&D infrastructure** - required for setting up or developing R&D unit (centre).

Eligible costs of R&D projects include mainly operational costs (e.g. remuneration, depreciation, external R&D services, materials) while in the case of R&D infrastructure the eligible costs include investment expenditures.

The maximum support for large companies carrying out industrial research and development works is 65% and 40% of eligible costs respectively (provided that certain conditions are met). Support for R&D infrastructure is calculated according to the map of regional aid intensities.

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the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements.

<sup>9</sup> Feasibility study - evaluation and analysis of the potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success.

### How do I calculate the maximum level of support available for my R&D project?

The maximum level of aid a project can receive depends on the type of the project.

In the case of R&D projects the value of aid is calculated as a percentage of eligible costs, whereby the percentage depends on the specific category of research and development works within the project outlined above. The specific aid intensities are presented in the table below:

Category of R&D	Maximum level of support			
	Small companies	Medium-sized companies	Large companies	Bonuses
Fundamental research		100%	n/a	
Industrial research	70%	60%	50%	<b>+15 p.p.</b> if additional conditions are met, e.g. effective collaboration between undertakings among which at least one is a SME, international collaboration, collaboration with a research and knowledge-dissemination organisation, or dissemination of the results of the project.  Total aid cannot exceed 80% of eligible costs.
Experimental development	45%	35%	25%	
Feasibility studies	70%	60%	50%	n/a

**In the case of R&D infrastructure projects aid is calculated based on the regional aid rules described above**, i.e. as a percentage (regional aid intensity) of eligible costs.

There are certain levels of aid which - when

exceeded - cause the obligation to notify the aid to the European Commission, for example:

- If the project is predominantly fundamental research (more than half of the eligible costs of the project are incurred through activities which fall

within the category of fundamental research), the notification threshold is EUR 40 million per undertaking, per project

- ▶ If the project is predominantly industrial research - EUR 20 million per undertaking, per project
- ▶ If the project is predominantly experimental development - EUR 15 million per undertaking, per project
- ▶ Aid for feasibility studies in preparation for research activities - EUR 7.5 million per study.

#### **What types of R&D projects' costs are eligible for aid?**

In the case of R&D projects expenses eligible for funding may include:

- ▶ Personnel costs: researchers, technicians and other supporting staff to the extent employed on the project
- ▶ Costs of subcontracting parts of substantive R&D works within the project
- ▶ Costs of instruments, equipment and intellectual property rights to the extent and for the period used for the project - depreciation costs corresponding to the life of the project, as calculated on the basis of accounting principles are considered as eligible
- ▶ Costs for of buildings and land, to the extent and for the duration period used for the project; with regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of accounting principles are considered as eligible; for

land, only costs of a lease or perpetual usufruct corresponding to the life of the project are eligible

- ▶ Additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project
- ▶ Indirect costs related to the project and its management.

In the case of **R&D infrastructure** projects expenses eligible for aid may include:

- ▶ Purchase of land - if additional conditions are met
- ▶ Purchase or creation of fixed assets other than land
- ▶ Purchase of construction works and materials
- ▶ Purchase of patent rights, licenses, know-how or unpatented technical knowledge - if additional conditions are met
- ▶ Costs of lease of assets - if additional conditions are met.

#### **Am I a large enterprise or an SME?**

As shown above, the level of aid an investor can receive depends directly on its size. It is therefore crucial to assess whether the investor meets the definition of a small or medium-sized enterprise (SME). If not, it will constitute a large enterprise.

Please see the following chart for a definition of SME:

Enterprise category	Level of employment (Annual Work Unit)	AND / OR	
		Annual turnover	Annual balance sheet total
Medium-sized	< 250	≤ EUR 50 mm	≤ EUR 43 mm
Small	< 50	≤ EUR 10 mm	≤ EUR 10 mm
Micro	< 10	≤ EUR 2 mm	≤ EUR 2 mm

However, it is important to note that even if a company itself fulfils the definition of an SME, it can in fact be a large company due to its shareholding structure. Therefore, apart from the general definition, one also has to learn what “linked” and “partner” enterprises are and what are the consequences of being one.

A company is a “linked enterprise” when it holds more than 50% of the capital or voting rights in another enterprise or another enterprise holds more than 50% of the capital or voting rights in the company. In the case of linked enterprises the size of the company in question is calculated by adding together the data (shown in the table above) of the company and that

of the linked enterprises. Additionally, enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.<sup>10</sup>

A company is a “partner enterprise” when it holds independently or with other linked enterprises 25-50% of the capital or voting rights in another enterprise or another enterprise holds 25-50% of the capital or voting rights in the company. If this is the case, the size of the company in question is calculated by adding together the data (shown in the table above) of the company and that of the partner companies situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater).

### **When to start the project so as not to lose aid opportunities?**

As a general rule, a written application for the aid has to be submitted before work on the project or activity starts. Start of works means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works.

<sup>10</sup> An ‘adjacent market’ is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

### **What should I additionally take into account when applying for R&D support?**

In the case of grants for R&D infrastructure, a company has to present R&D agenda for which the infrastructure is required. No fulfilment of the agenda in the future may result in the proportional return of aid granted.

The subject of R&D works planned to be carried out has to be justified by market needs and from a financial perspective.

The results of R&D works should be commercialized internally or externally (if justified economically) preferably in Poland.

Depending on the aid scheme, the minimum and maximum levels of eligible costs for R&D projects may be different.

### **R&D tax relief**

From the beginning of 2016, entrepreneurs conducting activities in the area of research and development (except from those, who pursue SEZ activities) may benefit from an income tax relief. Part of the following costs related to R&D works may be additionally deducted from the tax base:

- ▶ Gross wages and compulsory contributions of R&D employees
- ▶ Cost of materials and resources directly related to R&D activities
- ▶ Cost of expertise, opinions, advisory and other equivalent services as well as costs associated with the acquisition of R&D results provided or performed by scientific institutions
- ▶ Costs of use of R&D equipment dedicated exclusively to R&D activities

- ▶ Tangible and intangible assets' depreciation write-offs for the assets used within R&D activities

Small and medium entrepreneurs may additionally deduct the costs of obtaining a patent for an invention.

The additional write-off from the tax base in the year 2016 amounted to:

- ▶ 30% of the wages and compulsory contributions of R&D employees;
- ▶ 20% for micro, small and medium entrepreneurs and 10% for large entrepreneurs of all the other costs.

However, from 1st January 2017 the amount of tax credit is increased to:

- ▶ 50% of all the costs for SMEs;
- ▶ 50% of the wages and compulsory contributions of R&D employees for large entrepreneurs;
- ▶ 30% of all the other costs for large entrepreneurs.

Please note that the government currently considers increasing the additional write-off to 100% of eligible costs starting from the beginning of 2018.

Additionally, if the amount of the entrepreneur's taxable revenue for the specific year is lower than the amount of R&D tax credit write-off, the eligible costs may be deducted during the following six years (tax credit carry-forward).

Entrepreneurs may, if their taxable revenue in the first year of business activity is lower than a possible write-off, obtain a cash refund of the R&D expenditures described above, limited to the amount of potential tax benefit (write-off x tax rate).

As the R&D tax relief is not considered as state aid under EU regulations, the definitions of micro, small and medium entrepreneurs outlined in those regulations do not apply. Thus, while establishing the entrepreneur's size, relations to other entities are not verified.

## Other types of support

As already mentioned, there are many other sources of support available in Poland. Please find below some examples.

### CIT and other incentives (not state aid)

The following R&D incentives are also available under Polish tax law:

- ▶ Costs of finished R&D work can be deducted from the tax base regardless of the result (unless they can be classified as an intangible asset and depreciated)
- ▶ 12-month depreciation period for finished R&D work (shortened from 36 months).

### Research & Development Centres

The status of an R&D centre may be granted to entities with income generated on sales of goods and products and on financial operations worth at least EUR 1,200,000, where min. 20% is generated on sales of own R&D activity results (in the year prior to the year of filing the application). Additionally, there is a requirement of no outstanding tax and social security liabilities.

These conditions must be fulfilled each consecutive year of holding the R&D center status. The centers may create the so



called “innovativeness funds” - up to 20% of their monthly income can be allocated to the fund and recognized as tax deductible costs for CIT purposes. The requirement necessary to create the fund is that its resources must cover expenses linked with own R&D activity.

### **Real-Estate Tax (RETAX) exemption for new investment projects**

It is possible to benefit from support in the form of real estate tax exemption. This source of support is available based on resolutions of City or Commune Councils where the investment is to be located. As a rule, the resolutions are issued based on a general regulation. The RETAX exemption applies to land and buildings and structures erected in relation to a new investment within the area of the City or Commune.

RETAX exemption may be available in the form of either regional aid or de minimis aid.

In order to benefit from the RETAX exemption the following conditions need to be met:

- ▶ A resolution of a relevant municipal council establishing RETAX exemption within its jurisdiction has to be in place,
- ▶ Planned new investment should meet the conditions set in the resolution (i.e. minimum value of eligible costs, number of new jobs and/or other conditions.

Conditions of RETAX exemption depend on particular city council in each location and therefore may differ. However, the maximum value of potential RETAX exemption:

- ▶ Cannot be higher than it results from the map of regional aid intensities (in case of regional aid), or
- ▶ Cannot be higher than EUR 200.000 over the period of 3 fiscal years (in case of de minimis aid).

### **Individual application**

In some circumstances, the taxpayer may also apply to the tax authorities for an individual decision which may result in:

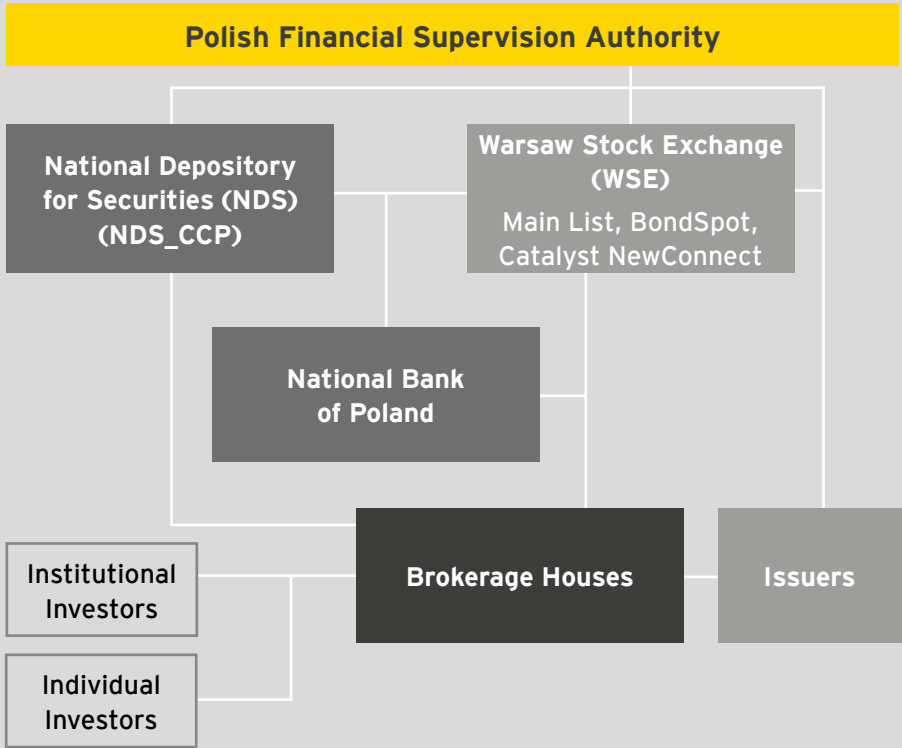
- ▶ deferred tax payment
- ▶ tax liability spread into instalments
- ▶ partial or full waiver of tax arrears.

The application is based on various EU state aid regulations. The decision is made entirely at the tax authorities' discretion.

## 1.3. Capital markets

Over recent years, the Polish capital market has experienced a period of continuous development. This is particularly visible in the increased size of the Warsaw Stock Exchange, the growing number of listed companies, and the rise in the number of domestic investment funds available. Structure of the Polish capital market is presented in the below graph (source: the Warsaw Stock Exchange):





## Regulatory environment

The basic principles governing the Polish capital market are set out in the following regulations:

- ▶ Financial Market Supervision Act
- ▶ Capital Market Supervision Act
- ▶ Trading in Financial Instruments Act
- ▶ Public offering, Conditions Governing Introduction of Financial Instruments to Organised Trading and on Public Companies
- ▶ Investment Funds Act
- ▶ Bonds Act
- ▶ Commodity Exchange Act.

These Acts implement European Parliament and Council Directives on capital markets, harmonising Polish law with European Community standards. The manner in which prospectuses are prepared is in line with the EU Prospectus Regulation and securities admitted by other EU regulators can under Polish provisions also be admitted to trading in Poland. In 2009, Polish regulations were adjusted in line with the provisions of the Transparency Directive, making the market more favorable for foreign investors and foreign public companies.

Increasing attention is paid to market communication, protection of minority investors, counteracting fraud and insider trading.

## Financial Supervision Authority

The Polish capital market is supervised by the Financial Supervision Authority (Komisja Nadzoru Finansowego - FSA), [www.knf.gov.pl](http://www.knf.gov.pl), which is the only regulatory authority supervising the financial market, including banking supervision, supervision of the capital market, supervision of the insurance market, supervision of the pension market, supplementary supervision of financial conglomerates, supervision of electronic money institutions, as well as supervision of cooperative savings and credit unions. One of the FSA's main functions is to protect investors' interests.

The FSA also supervises brokerage houses, collective investment institutions and public companies operating or offering shares for sale in Poland. The FSA's powers cover both initial control and subsequent supervision of the operations of the aforementioned entities and of brokers and investment advisors. The FSA may impose fines on and apply other administrative measures to market participants that fail to comply with Polish regulations.

In the case of entities that are also subject to supervision in other EU jurisdictions, the FSA cooperates with local market regulators in exercising supervision.

## Warsaw Stock Exchange

The Warsaw Stock Exchange (Giełda Papierów Wartościowych w Warszawie – WSE) is the principal institution in Poland where stocks, bonds, derivatives and other financial instruments are traded. WSE operates based on the Act on Trading in Financial Instruments of 29 July 2005 under the supervision of the Financial Supervision Authority. Trading is carried out on the regulated market and in the alternative trading system, including trading in shares on the Main Market and on the NewConnect market, trading in derivatives on the Main Market, and trading in debt instruments on the Catalyst platform (regulated market and alternative trading system). Details of these markets are given below. The capitalization of companies listed on the Main Market was about EUR 250 at the end of 2016. In this respect, WSE is second only to the Turkish and Russian markets in CEE (Central and Eastern Europe) and EME (Europe & Middle East) while being three times bigger than the Greek stock exchange and more than six times the size of the Prague stock exchange. The value of trading in equities on the Main Market was about EUR 50 bn in 2016. The Main Market listed 487 issuers and NewConnect listed 408 issuers at the end of 2016.

WSE Group operates a financial market as well as a commodity market including one of the most liquid electricity markets in Europe. In addition to trade in electricity, the commodity market also offers trade in natural gas, property rights in certificates of origin, as well as CO2 emission allowances.

## Main Market

The Main Market has been in operation since 16 April 1991. This market is supervised by the Financial Supervision Authority and notified to the European Commission as a regulated market. The following securities and financial instruments are traded here: equities, bonds, warrants, pre-emptive rights, rights to shares, investment certificates, structured instruments, ETFs and derivatives, i.e. futures contracts, options and index participation units. To be admitted to the main floor, shares must have an aggregate minimum value of EUR 15mn. Furthermore, shares held by small shareholders (holding 5% or less) should represent no less than 25% of all company's shares. Alternatively, admission to the main floor may be sought where at least 500,000 shares of an aggregate value of EUR 17mn are held by shareholders who hold shares entitling them to less than 5% of votes each. The issuer must have published audited annual financial statements for the previous three financial years included in approved Prospectus or Memorandum.

## NewConnect

In August 2007, a new alternative multilateral trading system was opened by the Warsaw Stock Exchange. NewConnect is intended for smaller, innovative companies wishing to attract financing through private placement with less stringent reporting and compliance requirements. It was designed for start-ups and developing companies, especially from the sector of new technologies. Instruments which may be traded under this alternative

trading system include equities, rights to shares, pre-emptive rights, depository receipts, as well as other equity based instruments.

## Catalyst Market

The Catalyst is a debt instruments market for municipal, corporate and mortgage bonds founded on 30 September 2009. Catalyst consists of two trading platforms organized by the WSE as a regulated market and as an alternative trading system and two analogous markets operated by BondSpot. Such a structure allows issuers of any size to raise financing and offers investors, both retail and institutional, the possibility to efficiently trade in debt instruments.

## Investment funds

In recent years Polish investors have shown a growing interest in investment funds. Polish investment funds are separate legal entities managed by fund management companies operating in the form of joint-stock companies. Depending on the structure, investors may be allowed to participate in the decision-making process regarding assets.

## Open-end investment funds

The majority of Polish investment funds are open-end funds. Investors may join and leave virtually at any time during the fund's life. The participation units offered by these funds are not deemed securities for the purpose of Polish regulations.

The investment limits applicable to open-end investment funds are generally quite stringent, but are less so for specific types of fund, i.e. specialised investment funds.

## Closed-end investment funds

Closed-end investment funds are divided into a specified number of investment certificates - this limits entry to and departure from such funds. The investment certificates issued by these funds are deemed securities under Polish regulations and may be admitted to trading on a regulated market.

New types of closed-end funds, e.g. securitisation funds, real estate funds and non-public asset funds, have been introduced to the Polish legal system and have contributed to the growth of the Polish investment fund market.



# Establishing a business presence

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## 2.1. Overview

“Doing business” in Poland from the legal perspective is regulated in the Business Freedom Act (2004 ). This act defines business activity as a “profit-making activity consisting in manufacturing, construction, trade, and provision of services, prospecting, exploration, and mining of minerals from deposits, as well as a professional activity pursued in an organised and continuous manner”. The Act states that every person has equal opportunities, i.e. the right to take up, pursue and terminate his/ her business activity under the conditions laid down in the law.

The freedom of “doing business” also applies to foreign investors undertaking their business activity in Poland. However, there are differences between investors from the EU and EFTA member states and those from third countries.

Investors from the EU and EFTA member states or from countries that have entered into specific international agreements with the EU may take up and pursue their business activity under the same terms as Polish citizens.



The legal forms of doing business in Poland available to Polish and foreign investors are as follows:

- ▶ a limited liability company (*spółka z ograniczoną odpowiedzialnością - sp. z o.o.*)
- ▶ a joint-stock company (*spółka akcyjna - S.A.*)
- ▶ a European Company (Societas Europea) (*Spółka Europejska - SE*)
- ▶ a general partnership (*spółka jawna - sp.j.*)
- ▶ a limited liability partnership (*spółka partnerska - sp.p.*)
- ▶ a limited partnership (*spółka komandytowa - sp.k.*)
- ▶ a partnership limited by shares (*spółka komandytowo-akcyjna - S.K.A.*)
- ▶ a sole proprietorship (*indywidualna działalność gospodarcza*)
- ▶ a civil law partnership (*spółka cywilna*)
- ▶ a Branch of a foreign enterprise (*oddział zagranicznego przedsiębiorcy*)

Other investors (from third countries) may conduct their business under the same terms as Polish citizens provided that they hold specific permits to legalize their residence in Poland and allow them to conduct a business activity. Such investors may carry on their business exclusively by:

- ▶ Establishing limited partnerships, partnerships limited by shares, limited liability companies and joint-stock companies;
- ▶ Purchasing and acquiring shares in such companies and partnerships;

unless international agreements provide otherwise.

## 2.2. Commercial companies

### Limited liability company

A limited liability company is the most common form of conducting business in Poland.

A limited liability company may have only one shareholder, though it must not be formed solely by another single-member limited liability company.

An LLC is incorporated before a Polish notary and the Articles of Association must be notarized. An LLC requires registration in the National Court Register which usually takes around 4 - 6 weeks.

The Articles of Association of an LLC should specify:

- ▶ The company's business name and registered office;
- ▶ The company's business objects;
- ▶ The amount of share capital;
- ▶ A statement as to whether a shareholder may hold one or more shares;
- ▶ The number and nominal value of shares taken up by individual shareholders; and
- ▶ The company's duration, if it was incorporated for a limited time.

### Share capital requirements

The minimum share capital in a limited liability company is PLN 5,000 and it must be paid up in full before registration. The nominal value of one share cannot be less than PLN 50.

A shareholder can hold either one share (when shares are divisible and unequal) or more than one share (when they are indivisible and equal). Preference shares may be issued. Such preferential treatment may affect, in particular, the voting right, the right to dividends or participation in the distribution of assets if the company is liquidated. Preferential treatment in respect of voting rights may apply exclusively to shares of equal nominal value.

Transferring a share or establishing a pledge on a share or part thereof should be documented in written form with the signatures certified by a notary public.

### Reserve capital

Establishing a reserve fund is not mandatory for a limited liability company. However, in practice many companies of that type do have a reserve fund.

### Corporate bodies

The authorities of a limited liability company are the shareholders' meeting, the management board and, optionally, the supervisory board or an audit committee. Appointing the supervisory board or audit committee is not mandatory unless the company has share capital of more than PLN 500,000 and more than 25 shareholders.

The management board is a body which deals with the affairs of the company and represents the company before third

parties. The management board may consist of one or more members who can be appointed from among the shareholders or third parties. Unless the Articles of Association state otherwise, management board members are appointed and dismissed by way of a resolution passed by a shareholders' meeting.

The shareholders' meeting is the supreme authority at a limited liability company which makes decisions on the most important matters concerning the company's affairs. The Code of Commercial Companies distinguishes between ordinary general meetings, held once a year, and extraordinary general meetings held when needed. An ordinary general meeting should adopt resolutions approving a management board report and the financial report for the previous financial year; the distribution of profits or the financing of losses; the performance of duties by members of the company's governing bodies.

Additionally, the following matters require resolutions passed by a general meeting:

- ▶ a decision concerning claims for redressing damage inflicted at the point of establishing the company or exercising management or supervision
- ▶ transfer or lease of the business or an organised part thereof, or establishment of a proprietary interest thereon
- ▶ Acquisition and transfer of real property, a perpetual usufruct right or an interest therein unless the Articles of Association provide otherwise
- ▶ A reimbursement of additional payments
- ▶ an agreement made between a parent and a subsidiary which provides for

the management of the subsidiary or a transfer of profits by the subsidiary.

The Articles of Association may add other matters to this list.

The supervisory body (a supervisory board or an audit committee) of a limited liability company, if appointed, must be composed of at least three persons. The powers of the supervisory board at a limited liability company are similar to those of the supervisory board at a joint-stock company. An audit committee is a body with limited powers compared to those of the supervisory board.

### Liability

A LLC's shareholders are not personally responsible for the company's liabilities.

Management board members are liable jointly and severally up to all their assets for any tax arrears the company may have if enforcement against the company proves ineffective, unless board members can prove that a petition for bankruptcy was submitted or arrangement proceedings were initiated in due course, or that failure to file a petition or enter into arrangement proceedings was not due to a fault on their part, or if they indicate the assets against which the enforcement can be effected.

The Code of Commercial Companies and the Criminal Code sets out cases in which members of the management board, the company's founder members, supervisory board members and shareholders hold civil and/or criminal liability for certain activities carried out in violation of the law.

### Joint-stock company

A joint-stock company is very similar to a limited liability company with respect to the

liability of shareholders, corporate bodies and taxation; however, the provisions of the Code of Commercial Companies are much more formalistic. This legal form is mainly applied for business planning or when it is required by Polish law (banks, financial institutions, etc.).

### Company formation

Incorporation of a joint-stock company generally involves the same procedure as the incorporation of a limited liability company. A joint-stock company can be established by one or more founders. However, a limited liability company with one shareholder cannot be the sole founder of a joint-stock company.

The articles of the joint-stock company should include:

- ▶ The company's business name including an additional description "spółka akcyjna" or an abbreviation, i.e. "S.A."
- ▶ The company's registered office
- ▶ The scope of its business activity
- ▶ The company's duration, if it has been incorporated for a limited period of time
- ▶ The amount of share capital and the amount of capital paid up prior to the date of registration
- ▶ The number and nominal value of shares, and the indication as to whether the shares are registered shares or bearer shares
- ▶ The number of shares of a particular class and the rights attaching thereto if different classes of shares are to be issued
- ▶ Full names or business names of the founders

- ▶ The number of management board and supervisory board members or, alternatively, at least the minimum or maximum number of members thereof and the entity authorised to appoint management/ supervisory board members
- ▶ The journal for the company's announcements, if the company intends to publish its announcements in journals other than the Court and Commercial Gazette.

### Share capital requirements

The minimum statutory share capital requirement is PLN 100,000. The value of each share must be not less than PLN 0.01 (*1 grosz*). Shares are equal and indivisible. Shares acquired in exchange for a contribution in kind should be fully paid up no later than one year after the day of a company's registration. Shares acquired in exchange for cash should be paid up to 25% before the date of registration. If shares are acquired exclusively in return for a contribution in kind, or a contribution in kind and a cash contribution, 25% of the nominal share capital should be paid up prior to the date of registration.

If shares are covered by a contribution in kind, the founders are obliged to prepare a special valuation report to be examined during the registration process by auditors appointed by the registry court.

As in the case of a limited liability company, preference shares may be issued.

### Reserve capital

There is no requirement for a limited liability company to have a reserve fund.

### Corporate bodies

The corporate bodies of a joint-stock company are the general shareholders' meeting, the management board and the supervisory board.

The general shareholder's meeting is the supreme authority at a joint-stock company. The shareholders' meeting has rights similar to those at a limited liability company, although some of its powers and the majority thresholds required for passing resolutions on certain issues may differ.

The members of the management board are appointed and dismissed by the supervisory board, unless the Articles of Association state otherwise. A member of the management board may also be dismissed or suspended from his duties by the shareholders' meeting. The powers of the management board are similar to those at a limited liability company. However, the term of office of management board members cannot exceed five years. Reappointment as a member of the management board is permitted for terms of office not exceeding five years each time.

A joint-stock company is required to have a supervisory board consisting of no fewer than three persons, appointed by the shareholders' meeting. The supervisory board permanently supervises the company's operations in all areas of its business. In order to perform their duties, the supervisory board may inspect all documents of the company, request reports and explanations from the management board and employees, and review the company's assets and liabilities.

## Liability

The rules are the same as those given above for a limited liability company.

## European Company

A European Company is an entity intended to conduct large, Community-wide businesses. It is not bound by the legal and practical constraints arising from the domestic company laws of each EU member state. The main advantage of a European Company is that it can change its registered office from one EU member state to another without losing the status of a body corporate.

Establishment and management of a European Company are governed by Regulation No 2157/2001 on the Statute for a European Company, the European Company's articles of association, the laws of EU member states adopted in the implementation of EU measures relating to European Companies and the laws of EU member states which would apply to a joint-stock company established in accordance with the law of the relevant member state. This means that to the extent not regulated in EU law, European Companies with registered offices in Poland will be subject to the Polish law governing joint-stock companies established under Polish laws.

## Formation

A European Company may be established by means of:

- ▶ A merger of two joint-stock companies from different EU member states
- ▶ Establishment of a holding company by two joint-stock companies or limited liability companies from different EU member states

- ▶ Formation of a joint subsidiary by two entities from different EU member states, or
- ▶ Transformation of a joint-stock company previously established in accordance with the domestic provisions which has had a subsidiary in another EU member state for two years.

An existing European Company can move its registered office to Poland.

## Capital requirements

The subscribed capital shall not be less than EUR 120,000.

However, the laws of a member state requiring a higher subscribed capital for companies carrying on certain types of activity apply to a European company with registered offices in that member states.

## Management

The founders of a European Company may choose between two systems of management: a two-tier system (i.e. involving a management board and a supervisory board, which is similar to the Polish joint-stock company set out above) or a single-tier system (where the European Company is managed by an administrative body). Under the one-tier system, the European Company's administrative body conducts its affairs, represents it and supervises its business.

The administrative body may appoint managing directors with the restriction that at least half the number of administrative board members should not be managing directors.



## 2.3. Partnerships

The Code of Commercial Companies provides for four types of partnerships. The types of partnerships differ with respect to the level of responsibility of the partner, the decision-making process and certain other issues.

As a rule, the rights and obligations of a partner in a partnership may be transferred to another party, who becomes a partner in the partnerships once the rights are effectively transferred.

### General partnership

This type of partnership is a model for other types of partnerships listed in the Code of Commercial Companies. The general partnership is not a separate entity, it is a legal organization with the capacity to acquire rights, incur debts, sue and be sued.

Each partner has the right to represent the partnership. The rights and obligations of the partners are set forth in the partnership agreement. The general partnership agreement must be drawn up in writing, otherwise will be null and void.

In a general partnership, all partners are jointly and severally liable for the partnership's obligations. However, the partnership's creditors are obliged to seek



satisfaction out of the partnership's assets prior to directing enforcement to the partners. The partners' liability towards third parties cannot be excluded.

## Limited partnership

In a limited partnership, at least one partner (general partner) bears unlimited liability towards the creditors for the partnership's obligations, and at least one partner (limited partner) bears limited liability.

The personal liability of limited partners is limited to a declared amount of money stated in the commercial register. Such partners are free from any liability above the amount of their contribution to the partnership unless his/her name is incorporated into the business name of the partnership.

As a rule, the limited partner does not represent the partnership. A limited partner can only represent the partnership to a limited extent set out in the power of attorney granted to him by the partnership.

General partners bear liability similar to that of the partners in a general partnership.

The limited partnership deed must be drawn up by a notary in the form of a notarial deed, otherwise will be null and void.

## Limited liability partnership

This partnership is available for individuals pursuing the so-called "freelance professions", such as attorneys, notaries, dentists, pharmacists, architects etc. A list of these professions is provided in the Code of Commercial Companies and may be extended under the provisions of other

acts.

The partners in this partnership are liable for the partnership's obligations up to all their personal assets, which is similar to the liability of a general partnership's partners.

However, as a rule, the liability of a partner is excluded in respect of obligations arising from any actions or omissions on the part of the individuals working for the partnership under the supervision of the other partner.

In general, each partner is entitled to represent the partnership independently unless the agreement states otherwise. A partner may be deprived of this right by means of a resolution taken by the other partners. The partnership deed must be drawn up in writing; otherwise it will be null and void.

## Partnership limited by shares

This type of partnership combines certain solutions of a joint-stock company and a limited partnership. This type of partnership is rather uncommon, and is used in investments / business structuring.

A partnership limited by shares has two types of partners:

- ▶ The general partner whose liability for all of the partnership's obligations is regulated in the same manner as that at a limited partnership
- ▶ The shareholder who is not liable in any way for the partnership's obligations towards third parties but is obliged to acquire and pay up shares like the shareholder in a joint-stock partnership.

The general partner represents the



partnership and conducts its activity. Shareholders, as a rule, are not empowered to do so, unless a separate power of attorney provides otherwise. Under certain circumstances, some general partners may be deprived of the right of management and representation of the partnership limited by shares.

The partnership deed must be drawn up by a notary, otherwise will be null and void.

The minimum share capital in this type of partnership is PLN 50,000.

The partnership limited by shares has the following corporate bodies: the supervisory board and the general meeting. Setting up the supervisory board is mandatory if there are more than 25 shareholders. The members of the supervisory board are appointed by the general meeting.

The general meeting is an authority which is distinct from the shareholders' meeting at a joint-stock or limited liability company. Every shareholder or general partner, even if he/she is not a shareholder of the limited partnership limited by shares, has the right to participate in the general meeting.

According to the Code of Commercial Companies, the general meeting has the sole power to decide on the following matters:

- ▶ Consideration and approval of the general partners' report on the partnership's business and financial statements for the preceding financial year
- ▶ Discharging the general partners conducting the partnership's affairs from their duties

- ▶ Acknowledgement of the fulfilment of duties by members of the supervisory board
- ▶ Appointment of a certified auditor unless the partnership agreement vests this right in the supervisory board, and
- ▶ Winding up the partnership.

## Sole proprietorship

A sole proprietorship (or self-employment) is a form of conducting a business activity by an individual.

A sole proprietorship is not governed by any special provisions other than the Business Freedom Act or the laws governing certain activities (e.g. regarding permits and licenses). A person using this form of business activity is fully liable for all obligations arising from it up to all his/ her personal assets. However, the Bankruptcy and Rehabilitation allows individuals conducting a business activity to declare personal bankruptcy.

## Civil law partnership

This type of partnership is governed by the Civil Code and is used for small types of businesses. It does not have any legal personality and is considered by civil law as an agreement between individuals jointly pursuing a business activity. Therefore, such a partnership is not a separate business entity, though it could be useful for joint investment projects or consortia.

The partners of a civil law partnership are jointly and separately liable for any debts incurred by the partnership.

## 2.4. Branches and representative offices

### Branches

Alternatively, foreign investors may conduct a business activity in Poland through a branch of a foreign entity. A branch can conduct operations limited to the scope of the foreign investor's business activity. A branch of a foreign enterprise is not a separate entity and does not have its own legal personality, as it uses the legal capacity of the foreign entity.

A branch of a foreign enterprise is entered in the commercial register under the name of the foreign investor's enterprise and the words "Branch in Poland".

### Representative offices

Foreign investors may also establish a representative office in Poland. However, a representative office can only be established for the purpose of promoting and advertising the foreign investor's enterprise. No other business activity may be conducted in this form. A representative office must be registered in a special register of representative offices kept by the Ministry of the Economy.



# Taxation

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## 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

	<b>Dividends (%)</b>	<b>Interest (%)</b>	<b>Royalties (%)</b>
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

	<b>Dividends (%)</b>	<b>Interest (%)</b>	<b>Royalties (%)</b>
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	
<b>Total in 2017</b>	<b>30.64-33.57</b>	<b>16.93-19.86</b>	<b>13.71</b>

## 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. The possible deduction is based on the scale of a company. Smaller companies are eligible to lower rates of deductions, restricted to 30% of employment costs and 10% 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-resident 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 arises 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](http://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 AEOC 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 AEOC 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 AEOC 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.





# Human Capital

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## 4.1. Residence of foreigners in Poland

The basic legal act governing the principles of entry to and residence of foreign nationals in Poland is the Foreigners Act of 12 December 2013.

A foreigner can cross the border and stay in Poland if he/she holds:

- ▶ A valid travel document
- ▶ A valid visa or other valid document giving entitlement to enter and stay on Polish territory, where required
- ▶ Authorization to enter a different country or residence permit in another country, if required in the case of transit.

Thus, in principle, in order to legalize their stay in Poland, foreigners must obtain a visa. This obligation does not apply to, inter alia, nationals of EU Member States, EFTA Member States - parties to the Agreement on the European Economic Area, the Swiss Confederation and citizens of countries that are parties to a visa-free travel agreement signed with Poland.

## Visa

Visa is issued as a Schengen visa (residence or transit) or a national visa:

- ▶ A Schengen residence visa entitles to one or more entries provided that neither the length of a continuous visit nor the total length of successive visits to the territory of Schengen area countries does not exceed 90 days in each period of 180 days following the date of first entry into that territory
- ▶ Schengen residence visa with limited territorial validity entitles to enter to territory of one or more Member States but not all Member States
- ▶ Schengen transit visa entitles to:
  - 1) passing through Polish territory or other Schengen countries on the way to the territory of a country other than the Schengen countries
  - 2) stay in the transit area of international airports (Airport Transit Visa)
- ▶ A national visa entitles to entry and continuous residence in the Polish territory or to several consecutive stays, lasting a total of more than 90 days and not exceeding a total of one year during the period of validity.

A Schengen residence visa or a national visa may be issued, *inter alia*, for the following purposes: tourism, family visit, business, work, scientific, training, joining a national of an EU Member State, an EFTA Member State - party to the European Economic Area treaty or the Swiss Confederation, or being with him/her.

A work visa may be issued to a foreigner who submits a work permit or a written statement of the employer of his intention to employ the foreigner if a work permit is not required. This visa is issued for a period of residence indicated in the work permit or the employer's statement, but not longer than the period for which the visa may be issued.

The authority responsible for issuing visas is a consul competent for the foreigner's country of citizenship or permanent residence.

## Other permits

The Foreigners Act provides other permits as the basis for a foreigner's stay in Poland. The main information is presented below.

### A temporary residence permit

A temporary residence permit is granted to a foreigner if the circumstances giving rise to apply for the permit justify his/her residence in Poland for a period exceeding 3 months. Such circumstances are, *inter alia*:

- ▶ Holding a work permit or an employer's written statement of the intention to give work to a foreigner if the work permit is not required
- ▶ Conducting business activity under Polish law
- ▶ Participation in vocational trainings
- ▶ Intention to live as a family member of a Polish citizen or citizen of EU or EFTA Member Country residing in Poland

- ▶ Marriage with a Polish citizen.

As a rule, a foreigner applying for a temporary residence permit is required to have a health insurance, a stable and regular source of income, sufficient financial resources to cover maintenance costs. These requirements vary depending on the situation giving rise to apply for the permit.

Permit is issued in each case for the time needed to achieve the purpose of the foreigner's stay in Poland, no longer than for 3 years. A foreigner who obtained a temporary residence permit receives a residence card, which confirms his/her identity and entitles, along with the travel document, to cross the border numerous times without a visa.

The authority responsible for issuing temporary residence permits is the voivode competent for the foreigner's place of residence or intended place of residence.

## A permanent residence permit

A permanent residence permit is granted to a foreigner who, inter alia:

- ▶ Is a minor child of a foreigner, who holds a permanent residence permit, born on Polish territory
- ▶ Has been married to a Polish citizen for at least 3 years before the application is filed and - immediately before the application - has been residing on Polish territory for at least 2 years on the basis of a temporary residence permit

A permanent residence permit is issued for an indefinite period. A foreigner

authorized to settle receives a residence card, which confirms his/her identity and entitles, along with the travel document, to cross the border numerous times without a visa.

The authority responsible for issuing a permanent residence permit is the voivode competent for the foreigner's place of residence.

## A residence permit for a long-term EC resident

A residence permit for a long-term EC resident is granted to a foreigner who has been residing on Polish territory, immediately before filing the application, legally and continuously for at least 5 years, and who has:

- ▶ A stable and regular source of income sufficient to cover his/her maintenance costs and those of family members depending on him/her
- ▶ Health insurance or an insurer's confirmation to cover the cost of treatment on Polish territory.

A residence permit for a long-term EC resident is granted for an indefinite period. A foreigner who obtained it receives a residence card, which confirms his/her identity and entitles, along with the travel document, to cross the border numerous times without a visa.

The authority competent to issue a residence permit for a long-term EC resident is the voivode competent for the foreigner's place of residence.

## Residence of EU citizens in Poland

An EU citizen may reside in Poland for a period of up to 3 months without registering his/her stay. During this period he/she should hold a valid travel document or other evidence of his/her identity and nationality.

### 1. An EU citizen's residence permit

An EU citizen planning to extend his/her stay in Poland over 3 months must register it. Residence permit for this period is granted if either of the following conditions is met:

- ▶ He/she is an employee or a self-employed person in Poland
- ▶ He/she is covered by health insurance and has sufficient financial resources to maintain himself/herself and family members in Poland, so as not to rely on social security
- ▶ He/she studies or takes vocational training in Poland and is covered by health insurance and has sufficient funds to maintain himself/herself and family members so as not to rely on social security
- ▶ He/she is married to a Polish citizen.

A stay is registered following an application filed by an EU citizen personally. The registration is made and the certificate is issued immediately.

The authority responsible for registration of an EU citizen's residence is the voivode competent for the EU citizen's place of residence.

### 2. An EU citizen's permanent residence

An EU citizen acquires permanent residence right after 5 years of continuous residence in Poland.

A residence is considered continuous if any interruptions throughout did not exceed a total of 6 months in a year.

An EU citizen who acquired the right of permanent residence receives a document confirming it. This document is issued at the EU citizen's request filed personally.

The authority responsible for issuing the document confirming the EU citizen's right of permanent residence is the voivode competent for the EU citizen's place of permanent residence.

## Foreigners working in Poland

Work performed by foreigners on Polish territory is governed by the Promotion of employment and labour market institutions Act of 20 April 2004.

The rule is that foreigners who want to work in Poland (e.g. under an employment contract or a different type of contract, or be board members of legal persons) are required to obtain a work permit.

This obligation does not apply to, among others, citizens of EU Member States and of the European Economic Area Member States.

A work permit is required if a foreigner:

- ▶ Performs work in Poland under a contract with an entity whose registered seat or place of residence or branch, or establishment, or other form of

organized activity is located in Poland (permit type A)

- ▶ In connection with the duties of a board member of a legal person entered in the register of companies or a company in organization is staying in Poland for a period exceeding 6 months within consecutive 12 months (permit type B)
- ▶ Performs work for a foreign employer and is assigned to Poland for a period exceeding 30 days in a calendar year to a branch or establishment of a foreign entity or a related entity in the light of the Personal Income Tax Act of 26 July 1991 (permit type C)
- ▶ Performs work for a foreign employer who does not have a branch, establishment or other form of organized activity in Poland and is assigned to Poland to provide a temporary and occasional service (an export service) (permit type D)
- ▶ Performs work for a foreign employer and is assigned to Poland for a period exceeding 30 days within consecutive 6 months for purposes other than those listed above (permit type E).

An application for a work permit is filed by the entity that entrusts work to a foreigner. Work permit is issued by the voivode for a definite period of time, not longer than for 3 years (however, it may be extended), and when the foreigner acts as a board member of a legal person for a period not longer than 5 years under certain circumstances.

It is possible to obtain temporary residence permit and work permit during one procedure. Such procedure is possible if the following conditions are met:

- ▶ A foreigner is legally present (and working) in Poland
- ▶ A foreigner possesses a have health insurance, stable and regular source of income, and secured place of residence
- ▶ An employer is not able to fulfil the need of employment using local human resources
- ▶ The foreigner's remuneration included in the contract is not lower than a remuneration of an employee performing comparable work.

The procedure may not be applied if:

- ▶ A foreigner is assigned to work in Poland by a foreign employer
- ▶ A foreigner entered Poland based on provisions of the international agreements on enabling entry and residence for some categories of persons, engaged in trade or investment
- ▶ A foreigner performs business activity in Poland.

The following foreigners may be exempted from the work permit requirement, inter alia:

- ▶ The foreigner authorised to live and work in the EU, employed by an employer established in the EU and assigned to provide services within the territory of Poland

- ▶ Spouse of a Polish citizen or foreigner holding a temporary residency permit in Poland in conjunction with marriage
- ▶ Citizens of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldova, the
- ▶ Federation of Russia or the Ukraine who work during a period not exceeding 6 months in 12 consecutive months on the basis of employer's declaration on the intention to employ such nationals registered in the district employment agency competent for the place of residence or registered office of the entity submitting such declaration
- ▶ Foreigners authorised pursuant to the Agreement establishing an Association between the EC and Turkey
- ▶ Persons delegated into the territory of Poland by a foreign employer (provided that they have their permanent residence abroad) for a period not longer than 3 months in a calendar year for the purpose of:
  - a) installation and maintenance or repair of the delivered, technologically complete appliances, constructions, machines or other equipment if a foreign employer is their manufacturer,
  - b) collection of ordered appliances, machines, other equipment or parts manufactured by a Polish producer,
  - c) providing a training course for the workers of a Polish employer who is a user of appliances, constructions, machines or other equipment, referred to in letter a, in the scope of operation or use of such appliances, constructions, machines or other equipment,
  - d) assembly or disassembly of exhibition stands as well as supervision over such stands, if the exhibitor is a foreign employer who delegates foreigners for this purpose.

## 4.2. Polish labour law

In Poland the labour law is codified and regulated by the Labour Code. However, there are also additional legal acts applicable, in particular on collective redundancies, trade unions, employing temporary workers, informing and consulting the employees, etc.

Relations between employers and employees are regulated primarily by the Labour Code and in the employment contracts, but also in other internal documents, such as work and remuneration regulations and collective bargaining agreements. However, the Labour Code takes precedence in relation to any internal documents that must never provide less favorable employment conditions than the ones provided in the Labour Code.

In 2016 new labour control requirements were introduced in regard of employers posting their workers to Poland. The home companies should appoint a representative of the employer (home entity) based in Poland, who will act as a contact person for the Polish National Labor Inspectorate in case of any questions or audits. Such person should be available in Poland for the entire assignment period.







The home companies are obliged keep in a written and / or electronic form the following documents on the territory of Poland:

- a) copy of an employment contract of the assignee and / or any other relevant document confirming the conditions of employment;
- b) documents concerning a working time of the assignee in scope of commencement and ending work and the number of hours worked in a particular day or their copies
- c) documents specifying the amount of remuneration of the assignee together with the amounts of relevant deductions made pursuant to the applicable law and the confirmations of payment of remuneration to the assignee or their copies.

## 4.3. Employment contracts

An employment contract can be concluded for:

- ▶ An indefinite period - the most common and desirable type from the employees' point of view,
- ▶ A definite period - may be concluded only three times between the same employer and the employee; the fourth employment contract is considered to be concluded for an indefinite period.

The maximum period of concluding the employment contracts for a definite period between the same employer and employee amounts to 33 months.

The above restrictions regarding employment contracts for a definite period do not apply to employment contracts:

- ▶ For replacement of another employee during his/her justified absence from work,
- ▶ For performance of occasional or seasonal work,
- ▶ For performance of work for a term of office,
- ▶ If the employer indicates objective reasons attributable to the employer.

Each of the contracts mentioned above may be preceded by an employment contract for a trial period concluded for no longer than three months in order to verify qualifications of the employee.





The employee can be employed on a full or a part time basis.

An employment contract should be concluded in writing and, as a rule, in the Polish language. Such contract must specify its parties, type of contract, execution date and work and remuneration conditions, in particular:

- ▶ Type of work, place of performance of work and start date,
- ▶ Remuneration corresponding to the type of work with an indication of its components,
- ▶ Working hours.

In addition to the employment contract, written information about basic employment conditions, such as: standard working hours, frequency of payments of remuneration, length of the holiday leave, length of notice period and the applicable collective bargaining agreements should be provided to the employee within seven days from conclusion of the contract.

## 4.4. Termination of an employment contract

An employment contract can be terminated:

- ▶ On the basis of a mutual agreement,
- ▶ By one party with notice,
- ▶ By one party without notice (possible exclusively only in the cases specified in the Labour Code, e.g. disciplinary dismissal or the employer's fault).

Additionally, an employment contract for a definite period expires upon the lapse of the time period for which it has been concluded.

Termination notices of both parties on terminating an employment contract (with or without notice) must be made in writing in Polish language.

Additionally, employers are obliged to provide grounds justifying the termination when terminating any employment contract without notice and also any employment contract for an indefinite period with notice.



## Termination of an employment contract with notice

An employment contract is terminated with notice when either the employer or the employee notifies the other party of his/her intention to terminate employment relationship. The employment contract is terminated at the end of the notice period. To effectively terminate the employment contract, the employer is obliged to fulfil all the conditions provided by the Labour Code, in particular to provide specific, justified reason for the termination.

The length of the notice period depends on the type of contract and the length of the employment relationship with the employer. During the notice period, the employee is entitled to receive his/her normal remuneration. The employee may be released from the obligation to perform work during the notice period while still being paid full remuneration (“garden leave”).

The notice period for an employment contract for a trial period is:

- ▶ Three working days if the trial period does not exceed two weeks,
- ▶ One week if the trial period exceeds two weeks,
- ▶ Two weeks if the trial period amounts to three months.

The notice period for an employment contract concluded for an indefinite period and employment contract for a definite period depends on the length of the employment relationship with the employer and amounts to:

- ▶ Two weeks if the employee has been employed for less than six months,
- ▶ One month if the employee has been employed for at least six months but not longer than three years,
- ▶ Three months if the employee has been employed for at least three years.

## Termination of an employment contract without notice

The employer may terminate an employment contract without notice by fault of the employee if the employee:

- ▶ Seriously violates his/her basic duties,
- ▶ Commits an offence during employment which prevents the further employment of the employee on the occupied job position, if the crime is obvious or has been declared by a court’s binding ruling,
- ▶ Through his/her fault loses a license required to perform work on the occupied job position.

The employer can also terminate an employment contract without notice if, for example, the employee is incapable of working due to illness:

- ▶ For more than three months if the employee has worked for the employer for less than six months,
- ▶ For a period longer than the period for which he/she receives sick pay, sick benefit and rehabilitation benefit for the first three months if the employee has worked for the employer for at least six months or

- ▶ If the employee has any justifiable absence from work for reasons other than above, lasting for more than one month.

The employee can also terminate his/her employment contract without notice in the cases strictly defined in the Labour Code (mostly in cases related to the fault of the employer).

As a rule, if an employment contract is unlawfully or unjustifiably terminated by the employer, the employee is entitled within 21 days from the termination of the employment contract to bring a claim to a labour court for:

- ▶ Reinstatement to work on former conditions, or
- ▶ Pecuniary compensation (usually amounting to the remuneration for the period of being unemployed, but not exceeding the limits specified under the Labour Code).

In case of an unjustified termination of an employment contract by an employer without notice, the employer only has the right to claim compensation.



## 4.5. Remuneration for work

The minimum remuneration for work for full-time employees, irrespective of the branch of economy, is specified in the Minimum Wage Act and Council of Ministers regulations. An employee cannot be offered remuneration lower than specified in the law. The minimum monthly wage in 2017 has been set at PLN 2,000 gross (ca. EUR 455).

As a rule, wages in Poland are determined in the employment contract in a gross amount, i.e. before payment of any taxes, social security contributions or other mandatory payments.

Remuneration for work is paid at least once a month, on a fixed date agreed in advance (not later than within the first 10 days of the following calendar month). Variable components may be paid in a different manner.

Remuneration for work is subject to a special protection against, e.g., attachment of earnings.

According to the Labour Code, conditions on remuneration for work and the granting of other benefits connected with work, such as awards and bonuses are determined in employment contracts, collective bargaining agreements and/or in remuneration/bonus regulations.

Any employer employing at least fifty persons who are not covered by a collective bargaining agreement is obliged to determine the conditions of remuneration for work in written remuneration regulations (internal by-laws).

## 4.6. Work regulations

The employer employing at least fifty persons is obliged to introduce work regulations. Work regulations are internal by-laws specifying the organization and order in the work process along with the related rights and duties of the employer and the employees.

## 4.7. Working time

According to the general principle, working time cannot exceed 8 hours per day and an average of 40 hours per week in a five-day working week within a reference period of usually not more than four months (the reference period may be extended up to 12 months if it is justified by objective, technical or work organization reasons).

The Labour Code contains provisions modifying the general rules depending on the working hour system or schedule adopted by the employer in order to provide flexibility for the employer and the employees.







## 4.8. Overtime work

Work performed in an excess of the employee's working time constitutes overtime.

Overtime is only permissible in the event of:

- ▶ Rescue operations needed for the protection of human life or health, or for the protection of property, or the environment or
- ▶ Special needs of the employer - this is the most common purpose.

Overtime cannot exceed 150 hours per calendar year for each employee, unless a collective bargaining agreement, the employer's work regulations or the employment contract provide otherwise. Weekly working hours and overtime cannot exceed an average of 48 hours in total per reference period applied by the employer. This limitation generally does not apply to employees managing workplace in the name of the employer.

Apart from their regular remuneration, the employees working overtime are entitled to additional overtime allowance amounting to:

- ▶ 100% of remuneration for working at night, on Sundays or during holidays that are not the employee's usual working days for the employee according to the adopted work schedule and also for overtime on a day off granted in consideration for working on Sundays or during holidays that are not working days for the employee according to the applicable work schedule

- ▶ 50% of remuneration for overtime on any other days.

In exchange for overtime work, the employer, at the written request of the employee, may grant the employee time off equal to the number of overtime hours.

In this case, the employee is not entitled to overtime allowance. Under certain circumstances, time off may be given without being requested by the employee.

## 4.9. Holiday entitlement

All employees are entitled to an annual paid holiday.

Holiday entitlement is as follows:

- ▶ 20 working days per year - for the first ten years of employment,
- ▶ 26 working days per year - after ten years of employment.

When determining the number of days of holiday entitlement, the entire period of employment and periods of education (on the rules specified in the Labour Code) are taken into account.

The employee may not waive his/her right to the holiday leave.

The employee during his first year of employment acquires the right to holiday leave after each month of employment in the prorated amount of 1/12 of the statutory holiday to which he/she is entitled to after one year of employment according to the Labour Code.

The length of a holiday leave of an employee employed on a part-time basis is determined in a prorated manner based on the working time amount of that employee.

The unused holiday is transferred to a subsequent calendar year and should be used by the employee before 30th September of such year.

## 4.10. Protection of women at work and employment of minors

Conditions of women's work and the employment of minors under the age of 18 are specifically regulated by the Labour Code and the executive regulations.

The protection of women and minors is generally stronger than the protection of other employees. This applies, example

given, to the inadmissibility of termination of the employment contract during the time of pregnancy, prohibition of performing particular works by the pregnant women or minors and stricter regulations regarding the working time and overtime work.

## 4.11. Health and safety regulations

The Labour Code and the executive determine in details the employer's obligations regarding the health and safety at work, such as the admissible norms of factors harmful to health or the procedures of occupational medicine examinations. The employer is also obliged to provide to the employees initial and periodical trainings

concerning health and safety on the occupied job position.

Non-observance of the provisions or principles of health and safety at work, is subject to a fine amounting from PLN 1,000 to PLN 30,000. The fine is imposed on the responsible person (e.g. Management Board member).

## 4.12. Collective redundancies

Collective redundancies are specifically regulated by the Act on Special Rules for Terminating Employment for Reasons not Attributable to Employees.

The Act applies to employers employing 20 persons that simultaneously terminate, or terminate within a period of 30 days, employment contracts with a group of employees comprising at least:

- ▶ 10 employees, if the employer employs less than 100 persons,
- ▶ 10% of employees, if the employer employs at least 100 but less than 300 persons,
- ▶ 30 employees, if the employer employs 300 or more persons.

The provisions of the Act apply in cases of bankruptcy or liquidation of an employer's enterprise as well.

When conducting the collective redundancies, the employer must observe several obligations imposed by the Act, such as notifying the local Labour Office about the redundancies, consulting the

redundancies with the trade unions and obligation of payment of severance payments.

The employee subject to the collective redundancies is entitled to a severance payment in the amount of:

- ▶ One month's remuneration if the employee has been employed for less than 2 years,
- ▶ Two months' remuneration if the employee has been employed between 2 and 8 years,
- ▶ Three months' remuneration if the employee has been employed for more than 8 years.

The maximum amount of severance payment may not exceed 15-times of a minimum remuneration for work (i.e. PLN 30,000 in 2017).

Selection of the employees being subject to the collective redundancies should not be discriminating. Such selection and the criteria applied thereto may be assessed by the labour court.

## 4.13. Trade unions

According to the Labour Code, all employees have the right to freely join trade unions. A minimum of 10 persons is necessary to establish a trade union. The employer cannot limit this right in any way.

Rules on establishing and functioning of the trade unions are regulated in details in the separate Act on trade unions.

Trade unions should be consulted in both individual and collective employment matters, example given, while terminating

employment contracts or adopting internal regulations. In certain situations, such as the transfer of employees, it may be required to conclude an agreement with the trade union on work and remuneration conditions.

In case of, example given, violation of the employees' rights or a conflict with the employer, the trade union is entitled to commence a collective dispute and, under certain circumstances, commence a strike.





## 4.14. Social Benefit Fund

According to the provisions of the Act on Social Benefit Funds, employers employing a minimum of fifty persons calculated as full-time employees are obliged to set up a social benefit fund and introduce appropriate regulations on the rules of disbursing and collecting money for that fund.

Money can be spent on the social activity, that is services provided by employers to employees relating to various forms of relaxation, cultural and educational activity, sports and leisure activities and a child care.

The benefits from the social benefit fund may be exempted from social security burdens. However, the Social Security Institution may correctness of disbursement of money from the fund.

The employer and the employees may agree that no social benefit fund is established in a collective bargaining agreement or, if their employees are not covered by such an agreement, in remuneration regulations (by an agreement with the employee elected by the staff).

## 4.15. Works councils

The Employee Information and Consultation Act and the European Works Council Act specify certain informational obligations of the employer relating to works councils and European Works Councils.

### Employee councils

The Employee Information and Consultation Act determines the rules on which the employees are informed and consulted with and the rules of electing a works council. The act applies to employers employing at least 50 persons. The costs related to the election of a works councils and their activities are borne by the employer.

### European Works Councils

Regardless of works councils, European Works Councils may also operate at the employers. The European Works Council Act stipulates the principles of establishing European Works Councils and the rights and obligations of these bodies and the employers where such councils operate.

The Act applies only to community-scale undertakings and community-scale groups of undertakings which employ at least 1,000 employees in EU member states, including at least 150 employees in a minimum of two European Union Member States if there are connections between Poland and this undertaking, i.e.:

- ▶ The central management of the undertaking is based in Poland, or
- ▶ The central management has appointed a representative in Poland, or
- ▶ The working establishment of the undertaking that employs the greatest number of employees among those employed in the EU is placed in Poland.

The European Works Councils have a right to gain information and carry out consultations covering the whole community-scale undertaking or group of undertakings or at least two establishments or two undertakings located in different member states.

## 4.16. Transfer of a work establishment

M&A transactions often involve not only a transfer of undertaking but also the transfer of employees from one company to another. In such a case, if a work establishment is being transferred to another employer, the new employer becomes a party of existing employment relationship by operation of law.

Such transfer is related to certain informational obligations towards the employees or a trade union. In addition, it may be required to negotiate with the trade union on the employment conditions of the employees.

The transfer is related to specific rules of division of liability. Both current and new

employer are jointly and severally liable for obligations from employment contracts which arose before the date of the transfer.

The employer may not use a transfer of a work establishment as a justified reason for termination of employment contract.

Irrespective of the transfer itself, post-merger integration may also impact employment relationship in the company, example given, in the event of unifying remuneration structures or introducing new internal policies.

## 4.17. Contingent workforce

The contingent workforce in Poland is useful in various sectors of the economy mostly due to flexibility it provides as well as possibility of significant reduction of HR - related costs. In practice, a contingent worker is any person that is not employed on a basis of employment contract directly by the company he/she performs work for.

The most common types of legal relationships with contingent workers are civil-law contracts such as: contract for providing services, contract for performance of a specific task or a contract of agency. A proper form for a legal relationship with an independent manager or a consultant is a management contract or self-employment (sole proprietorship).

The companies hiring contingent workers on a basis of civil-law contracts must, however, observe the prohibition of inadmissibility of concluding a civil-law

contract in cases an employment contract should be concluded.

On 1 January 2017 the amendment of the Act on Minimum Remuneration for Work came into force. The new laws established statutory minimal hourly rate applicable to civil-law contracts. In 2017 such minimal hourly rate is PLN 13 per hour. The parties of a civil law contract should specify the manner of confirmation of number of hours of provision of services under the contract.

Another important type of contingent workers are temporary workers, i.e. persons employed by a temporary work agency, performing work for the employer-user. As a rule, such employees should not be treated in a less advantageous manner than the regular employees. The provisions of employment of temporary employees establish time limits for employment of a particular employee at one employer-user.

## 4.18. Specific forms of engaging personnel -taxation/social security

As mentioned in the section 4.17 there are some flexible forms of employment in Poland that are associated with certain characteristic for them conditions of taxation or social security contribution.

These forms of hiring can be more flexible than employment contract in specific conditions. There are following exemplary forms of hiring in Poland:

- a) Civil law contracts - based on Polish Civil Code regulations, there are specific contracts used as more flexible forms of employment. As mentioned in section 4.17 these can be for example: contract of providing services, contract for performance of a specific task and management contract. Revenue from these contracts is not qualified as labour income, but as income derived from contractual employment, however it is taxed similarly to employment contract.
- b) Civil law contract with self-employed contractor - taxed similarly to civil law contracts, however, such contractor is eligible for much higher tax deductible costs, whose should be incurred to earn revenue, or maintain or secure the source of revenue, though.
- c) Appointment of board member via resolution of company's supervisory board or general meeting of shareholders - income of board members paid in such form is exempted from social security contributions and taxed similarly to employment contracts, however, if such a board member is a Polish non-resident, it could be taxed based on unified 20% withholding tax rate (however potentially alternated by regulations of Double tax treaty).

Please note that in general students (up to age of 26) who are working under the contract of providing services are exempted from social security contributions.

Contract for performance of a specific task is exempted from social security contributions. However civil law contracts should not be used as employment contract substitute - as the authorities may challenge such set ups.





# Public Procurement

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## 5.1. Facts and Figures

### Stable market

At the end of the year 2015, the Polish Public Procurement market was worth PLN 116.3 billion accounting for 6.50% of Poland's Gross Domestic Product. Given that every year the value of the market exceeds PLN 100 billion, experts view the sector as a stable one with a positive outlook for the future. According to the overall statistics, around 142,000 public procurement orders were placed in Poland in 2015.

### New opportunities

The Polish Public Procurement market is closely linked with EU funds. Per the financial framework for the years 2014-2020, that Poland will have obtained around EUR 82 billion from the Cohesion Fund. Around EUR 27 billion has been assigned to the Infrastructure and Environment Programme to support the development of infrastructure, transport networks, the energy sector and the environmental protection measures. Nearly 40% of the funds have been put at the disposal of the local governments. The Polish Public Procurement market is expected to experience rapid growth in the years to come.

### Price as the deciding criterion

A long criticized feature of the Polish public procurement market is that in most cases the lowest price offer is the winning bid, which often poses problems once a project is launched. Under a recent amendment (2016) to the Public Procurement Act, the "lowest price" criterion cannot account for more than 60% of the weight. Therefore "the most advantageous bid" must be judged by the criteria other than the price. Reducing the weight of the price criterion eliminates bidders that offer an abnormally low price. It is expected that underlining the importance of quality in the Polish public procurement market is a good direction which will contribute to the development of the market.



## 5.2. Main actors

The main actors of the Polish Public Procurement system can be divided into four main groups: **the legislators, the contracting authorities, the bidders / contractors and the supervisory bodies.**

### Legislators

The legislative power in the Polish legal system is vested in Parliament, which is divided into two houses - the Sejm (the lower house) and the Senat (the upper house). Parliament has the exclusive competence to pass generally applicable acts (*ustawy*), yet minor and technical issues may be governed by regulations (*rozporządzenia*), issued by the Council of Ministers, the Prime Minister or Ministers. As Polish law must be compatible with the law of the European Union (Treaties, Directives, EU Regulations and other laws), it is very important to recognize the role of the EU legislator in the process of making laws in Poland.

### Contracting authorities

The contracting authorities are mainly public authorities, such as:

- a) **the Government** and its subordinate bodies- this group includes almost all central administration bodies;
- b) **local government units** and their subordinate bodies as well as associations of those bodies. This

group accounts for almost 2/3 of all contracting authorities in Poland. Local governments are divided into:

- i. **16 voivodeships** (*województwa*), responsible for, e.g.: education, environmental protection and transport infrastructure of supralocal importance;
  - ii. **380 poviats** (*powiaty*), responsible for, e.g.: managing certain hospitals, theatres, libraries and some types of public roads;
  - iii. **2478 municipalities** (*gminy*), responsible for all the tasks not within the exclusive competence of the two types of local government units set out above, i.e. most schools, public roads, basic sports infrastructure etc.
- c) **other entities**, such as courts, universities, the Social Security Institution, the National Healthcare Fund (the entity responsible for financing the public healthcare system) and other bodies and agencies classified in the broad public sector category. As a rule, commercial companies controlled by the State Treasury are also obliged to comply with the public procurement procedures.

## Bidders

**Any individual, corporation or an entity not having a legal personality can submit bids** and apply for a public sector contract in the contract award procedure, provided that it has the capacity to perform the contract. This also applies to foreign investors.

Some bidders may be excluded from the bidding process by law. This applies e.g. to entities whose liquidation is pending or those insolvent, having overdue tax payments or managed by persons sentenced for certain offences (bribery, tax offence).

Bidders may jointly bid for a public contract, e.g. as a consortium or civil-law partnership. It is also possible to rely on subcontractors for the purpose of carrying out the contract; the law provides for some specific rules on subcontracting.

## Supervisory bodies

The main public body responsible for supervising the Public Procurement market in Poland is the **Governor of the Public Procurement Office** (the “**Governor**”). The Governor drafts regulatory instruments relating to public procurement, ensures compliance with the rules of the procurement system, in particular supervises the contract award process and audits the procurement procedures.

The other relevant body is the **National Chamber of Appeal** (the “**NCA**”), competent to review appeals filed in the contract award procedure.



## 5.3. Public procurement procedure

### Application

The public procurement procedures, governed by the Public Procurement Act of 29th January 2004 - (the “PPA”), apply to a vast majority of public sector orders. However, some contracts are excluded from public procurement. This applies mainly to:

- a) contracts whose value **does not exceed the PLN equivalent of EUR 30,000 net**;
- b) contracts for delivery or services solely for the purpose of research or experiments;
- c) certain contracts of the National Bank of Poland and the National Development Bank (*Bank Gospodarstwa Krajowego*);
- d) contracts labelled as “confidential” or “strictly confidential”.

### Basic differences

Public procurement services are divided into priority and non-priority services. This division is of importance due to some less formalized process of contracting non-priority services.

The procedure **can be simplified** if the value of the contract does not exceed certain thresholds set in the EU directives. In the majority of cases the threshold is EUR 135,000 for a contract for goods or services and EUR 5,225,000 for construction works. For utilities contracts and contracts in the fields of defence and security the thresholds are EUR 418,000 and EUR 5,225,000 respectively.

## Main rules

The contracting party is required to conduct the process in **a non-discriminatory way** and to provide grounds for fair competition.

In general, the process is open to the public; the basic information is published in the Public Procurement Bulletin and for contracts worth in excess of the thresholds set in the EU Directives (see the section above) in the Official Journal of the European Union.

The contracting authority sets out a the goods/ services to be supplied under the contract in terms of their technical and quality features, in accordance with the relevant Polish or European standards and if the contract involves construction works, provides the design documentation and the technical specification of the execution and handover of the project. **The value of a contract is set based on the contractor's total estimated fee**, net of VAT.

The contracting **authority** is obliged to **prepare the Terms of Reference** (the "**ToR**", Pol. *Specyfikacja Istotnych Warunków Zamówienia, SIWZ*), with the most important information about the contract, i.e. the name and address of the

contracting authority, the specific contract award procedure, the goods/ services to be supplied, the eligibility conditions etc. In general, any bid must be comply with the ToR. The bidder **must set out gross prices in the bid**, i.e. prices including VAT and excise tax, if applicable.

In most cases, the contracting authority is entitled (and sometimes obliged) to demand that the bidders pay a special deposit (Pol. *wadium*) to ensure the proper participation of the bidders in the process. The deposit is calculated by reference to the value of the contract. Furthermore, the contracting authority may request certain documents and certificates confirming that a given bidder is eligible to take part in the process.

Bidders and other parties who have an interest in winning a given contract or have suffered a loss as a result of the contracting authority's violation of the PPA are entitled to legal remedies. The available legal remedies are an appeal filed with the National Chamber of Appeal and a court appeal.

## Types of procedures

The two main types of public procurement procedures are:

- a) **an open tender** - a procedure whereby any bidder may submit a tender in response to a public contract notice; open tenders accounted for 76% of the overall number of tenders in 2015;
- b) **a restricted tender** - a procedure in which a bidder may submit a request to participate in response to

the publication of a contract notice and only the bidders invited by the contracting authority may submit their bids.

The other types of procedures apply only provided that certain requirements are met. These procedures are:

- a) **negotiated procedure with publication of a contract notice** - a procedure whereby, following the publication of a contract notice, the contracting authority invites bidders admitted to the procedure to submit preliminary tenders without quotations, holds negotiations with them, and finally invites them to submit tenders;
- b) **competitive dialogue** - a contract award procedure whereby, following publication of a contract notice, the contracting authority conducts a dialogue with the bidders of its choice and then invites them to submit tenders;
- c) **negotiated procedure without prior publication of a contract notice** - a contract award procedure whereby the contracting authority negotiates the terms and conditions of a public contract with the bidders of its choice and then invites them to submit tenders;
- d) **single-source procurement** - a procedure whereby the contracting authority awards a contract following negotiations with only one bidder;
- e) **request for quotations** - a procedure

whereby the contracting authority addresses a request for quotations to the bidders of its choice and invites them to submit tenders;

- f) **electronic auction** - a contract award procedure whereby bidders use an online form to supply the required data through direct connection with the website to offer new prices that have been revised downwards (bids) which are then automatically ranked.
- g) **Innovative partnership** - a procedure whereby in response to a public invitation to tender, the contracting authority invites bidders to submit preliminary offers, negotiates the terms and conditions and then invites bidders to submit offers for the development of innovative products, services or works which are not available on the market.

## Defence and Utilities

There are several differences regarding the public procurement in the fields of defence and security. Apart from different contract value thresholds, contracts in these fields may be applied for by economic operators established in one of the EU or the European Economic Area member states, or a state with which the European Union or the Republic of Poland has entered into an international agreement concerning these contracts. However, the contracting authority may decide in the contract notice that such contracts may also be awarded to economic operators from other countries. There are also several restrictions

regarding, e.g. offences committed by individuals in their management capacity at the bidders and the protection of confidential information.

Different procedures also apply to the "utility contracts". Utility contracts are contracts awarded to carry on one of the following activities:

- a) exploration for or extraction of natural gas, oil and their natural derivatives, brown coal, hard coal and other solid fuels;
- b) operation of airports or maritime or inland ports and their provision to carriers by air, sea or inland waterways;
- c) development of networks intended to provide services to the public in connection with the production, transport or distribution of electricity, gas or heat, or the supply of electricity, gas or heat to such networks, or the operation of such networks;
- d) development of networks intended to provide services to the public in connection with the production or distribution of drinking water, or the supply of drinking water to such networks, or the operation of such networks;
- e) operation of networks providing services to the public in the field of transport by railway, automated systems, tramway, trolley bus or cable (?);
- f) operation of networks providing services to the public in the field of transport by bus;
- g) provision of postal services.

Utility contracts are conducted in the areas of particular importance from the view of the state policy. Therefore, certain peculiarities compared to the general procedures apply. The main differences regard the choice of the type of procedures, a special eligibility system for bidders and certain other requirements such as, e.g. the confidentiality of the documents and information processed during the contract award procedure. Furthermore, in the case of a supply contract, the contracting authority may reject a bid if the proportion of products originating in the European Union member states or states with which the European Community has concluded agreements on equal treatment of entrepreneurs is less than 50%, if this condition is set forth in the ToR.





## 5.4. The legislative framework

### The EU laws and the Agreement on Government Procurement

As mentioned above, the Polish law must be compatible with the EU laws. The Public Procurement sector is regulated by several EU legal acts, and the most important ones are:

- a) **Directive 2014/24/EU** of the European Parliament and of the Council of 26th February 2014 on public procurement - a new general Public Procurement directive, more precise than the earlier directive;
- b) **Directive 2014/25/EU** of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors.

The EU Directives apply only to contracts whose value exceeds certain thresholds. The Polish system, however, is more restrictive and provides that the PPA also applies to a contract of lower value.

Furthermore, Poland is the party to the revised Agreement on Government Procurement (the "GPA"). The GPA constitutes a plurilateral agreement

concluded under the auspices of the World Trade Organization, which governs matters of public procurement involving goods and services in line with the principles of transparency, openness and non-discrimination.

## Polish laws

The most important Polish legal instrument governing almost the entire Public Procurement system is the PPA. There are several regulations of the Council of Ministers and the ministers regarding matters of lesser importance or matters that may change due to circumstances.

**The PPA is a rather faithful copy** of the measures and institutions set out in the above directives. The key difference lies in the contract value thresholds that determine the applicability of the Public Procurement procedures.

## Construction works and service concessions

Another legal act that is part of the Polish Public Procurement legal system is the act of 21st October 2016 on construction works and service concessions (the “**Concessions Act**”). This act lays down the rules and procedures for concluding a contract for construction works or services. Under a concession contract concluded with the contracting authority, the concessionaire undertakes to supply the specified works/ services for consideration, which are as follows:

- a) **a construction works concession** - either solely the right to exploit the work and to collect the profits, or such

right together with payment by the contracting authority;

- b) **a service concession** - exclusively either the right to perform the services and to collect the profits, or such right together with payment by the contracting authority.

The legal measures provided by the Concessions Act are seldom used in practice.

## Investments of highest importance

In Poland there is a legislative practice of passing statutory instruments concerning investments of the highest priority. Such instruments are (informally) referred to as special acts (Pol. *specustawy*). These acts establish rules and principles of proceedings regarding the investment process in areas that are of crucial importance to the state, such as nuclear power plants, the Świnoujście LNG terminal or anti-flood investments.

## Public priority investments

Investments with significant importance may be given the status of a public priority investment. Such investments benefit from preferential treatment, e.g. with regard to the necessary permits or zoning matters.



## 5.5. Public-Private Partnership

### Public-Private Partnership Act

The issues regarding Public-Private Partnership are regulated by the Public-Private Partnership Act of 19th December 2008 (the “PPP Act”). The PPP Act establishes the rules of cooperation in the joint implementation of an investment project based on the allocation of responsibilities and risks between the contracting authority and the private partner. The project may involve:

- a) construction or renovation of a building facility;
- b) provision of services;
- c) performance of a work, particularly equipping an asset with devices; increasing its value or usefulness; or
- d) other services; combined with maintenance or management of the asset that is used to carry out or is linked with a public-private project.

## 5.6. Cooperation

The public partners in the Public-Private Partnership sector are mainly the same entities that act as the contracting authorities in the Public Procurement system, and the private partners are domestic or foreign entrepreneurs.

In a Public-Private Partnership contract, the private partner undertakes to implement a project for consideration and to cover all or selected project implementation expenses, whereas the contracting authority undertakes to cooperate with a view to achieving the project goal, especially by making its own contribution. The private partner's fee depends primarily on the actual use or actual availability of the Public-Private Partnership project.

As the type of remuneration paid to the private partner may differ, the relevant provisions of the PPA or the Concessions Act apply to the choice of the private partner.

The Public-Private Partnership contract may provide that, for the purpose of performing it, the contracting authority and the private partner will set up a limited liability company, a joint-stock company, a limited partnership or a partnership limited by shares. The contracting authority must not be the general partner.

The Public-Private Partnership in Poland is considered to be an interesting opportunity for implementing infrastructure projects. The measures provided by the PPP Act can be particularly useful for large investments that require high capital expenditures. The market of Public-Private Partnership projects, particularly those implemented by local government units, is expected to grow fast.





# Real Estate

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## 6.1. Real Estate investment market in Poland

At the outset, development of Polish commercial investment market trailed behind the rest of the real estate market. Investors were few and yields were in the double digits. It was not until 2004 and the advent of EU membership that the situation improved. That year marked the beginning of an intensive four year period of foreign investment in the Polish market. Over this period, the volume of transactions averaged just under EUR 4 billion a year; with a record-breaking volume of over EUR 4.4 billion in 2006; a far cry from 2001 when foreign investments were more or less limited to the Warsaw office market. Furthermore, the early years saw the commercial investment market plagued with a lack of available investment schemes, or mismanaged and overrented properties with high vacancy rates. The increasing number of transactions has not only stabilized investments, but completely changed the structure of yields (downward) and prices (upward).

Year 2009 obviously marked a historical low as less than EUR 500 m of transactional volume has been recorded. However, from 2010 onwards the market has substantially improved and in 2011-2014 total investors' activity bounced back to an average under EUR 3 billion per year.

Thanks to low interest rates and stable macroeconomic situation in 2015 the total volume of investment transactions in Poland went up to EUR 4 billion - a 31% increase compared to 2014. In 2016 the total volume of investment transactions was even higher - amounted to EUR 4.5 billion and was the second best in transaction history following 2006.

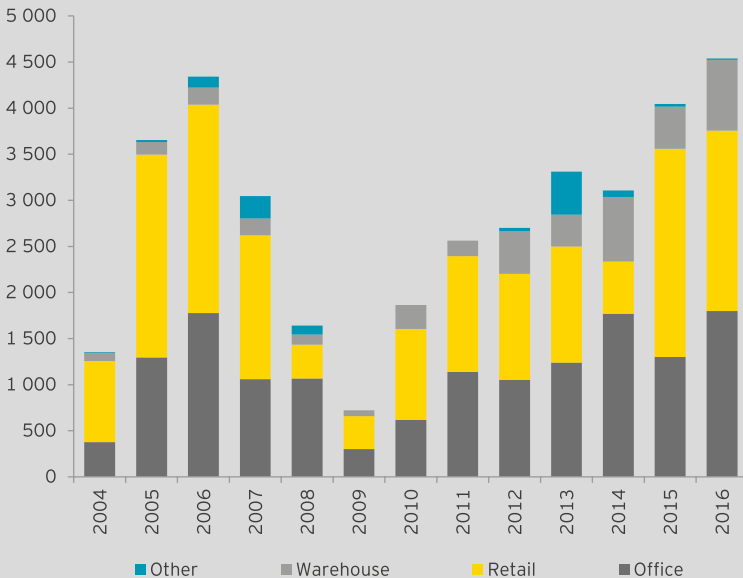
Warsaw remains a very important transaction market in Poland perceived by many investors as core, however, since 2015 this dominant position was overtaken by regional cities: Kraków, Wrocław, Poznań and Tricity have been targeted more and more frequently by international and domestic investors.

The second year in a row major investment activity was recorded in retail sector which outpaced office and logistics in terms of transaction volume.

Over the past several years, economic development has played a key role in the increase of transactions, noting such factors as: EU membership, falling PLN interest rates; population factors.

## Total investment volume in all sectors 2000-2016

(EUR '000)



## Major investors

The main players on the real estate investment market are foreign investment funds, and to a limited extent insurance companies, banks and wealthy foreign individuals.

Prior to 2005 the investment market was dominated by German, American, and Austrian players. After EU accession Poland witnessed an initial influx of Irish investors, later accompanied by Spanish and British investors. By 2009 the trend seemed to have reversed; German funds have

emerged well intact while the Irish, and even more so the Spanish investors, appear to be hampered by their own markets back home.

Currently, the majority of players on the Polish real estate investment market are foreign entities mostly from Germany, Austria, Netherlands and the UK, USA, Mauritius and South Africa. The main reason were good quality assets and still attractive yields in Poland.

Less than 10% of investment volume in Poland came from Polish capital, represented by dynamically developing investment fund Reino Partners and Polish asset manager PHN. Also the insurance company PZU TFI still holds the position of a major player in Poland, with a large prime properties' portfolio.

The minority share of Polish entities comes from the legal regulations as Polish law does not allow local pension funds with substantial accumulated capital to invest directly in the real estate. Instead, their portfolios are based on stocks and corporate bonds.

The ongoing plans concerning adjustment of tax regime to Real Estate Investment Trusts (REITs) structures might influence the structure of invested capital in the

future with more domestic individuals benefiting from returns on large-scale commercial real estate assets.

The most active real estate funds in Poland in 2016 were: Redefine Properties, Rockcastle Global RE, Invesco RE, Echo Polska Properties, CBRE Global Investors, Union Investment, EPF, Savills Investment Mgmt, Hines.

Newcomers in 2016 included Redefine Properties, HB Reavis, MVP Logistics and Bouwfonds European Residential Fund. Also Asian investors are interested in buying real estate assets in Poland.

Capitalization rates generally appear to be around 5,5% - 6% for prime office, 5.0% - 7% for retail schemes and 6.5% - 7% for modern warehouse properties.





## 6.2. Acquisition of real estate by foreigners

As a rule, under current regulations (the Act on the Acquisition of Real Estate by Foreigners), foreign nationals (individuals and entities) wishing to purchase real estate in Poland must obtain a permit from the Minister of Internal Affairs and Administration.

Under the pertinent act, foreign investors must also obtain a permit from the Minister of Internal Affairs and Administration if they wish to purchase shares in a commercial company that has its registered office in Poland or execute any other legal transaction involving such shares, if a company that is the owner or perpetual usufructuary of real estate in Poland becomes, as the result of the purchase or other transaction, a “controlled” company. A permit is also required to purchase or subscribe for shares in an already controlled commercial company with its registered office in Poland if the company is the owner or perpetual usufructuary of real estate in Poland and the shares are purchased/ subscribed for by a foreign investor that is not a shareholder in that company.

There are, however, numerous exceptions to the above rule, the most important one concerning citizens and entrepreneurs (including companies) of EEA countries (EU countries together with Iceland, Liechtenstein and Norway) and Switzerland.

These citizens and entrepreneurs do not have to obtain a permit to acquire real estate.

The citizens and entrepreneurs (including companies) of EEA countries and Switzerland do not have to obtain a permit to acquire shares in companies which are owners or perpetual usufructuaries of real estate.

Consequently, the requirement to obtain a Minister of Internal Affairs and Administration permit to acquire real estate or shares in a company that is the owner or perpetual usufructuary of real estate currently applies mainly to foreigners from outside the EEA and Switzerland.

Real estate is defined in the Polish Civil Code as “land which constitutes a separate object of ownership and buildings permanently attached to the land or their parts if under special provisions they constitute an object of ownership separate from the land”.

In the above act, a foreigner is defined as:

- ▶ A person who is not a Polish citizen, or
- ▶ A legal person with its registered office outside Poland, or
- ▶ A partnership with its registered office abroad, established in accordance with the law of the relevant foreign country, or

- ▶ A company or a legal person with its registered office in Poland controlled directly or indirectly by the companies or person(s) mentioned in the items above.

A commercial company is deemed to be “controlled” if a foreigner or foreigners have directly or indirectly over 50% of votes at the general meeting of shareholders, also as a pledge, usufructuary or on the basis of agreements with other parties, or if foreigners constitute “dominant entities” in this company as defined in Article 4 § 1 point 4 (b), (c) or (e) of the Code of Commercial Companies.

The definition of a “dominant entity” in Article 4 § 1 point 4 (b), (c) or (e) of the Code of Commercial Companies covers the following:

- ▶ The entity is entitled to appoint and remove the majority of the members of the management board or supervisory board of another entity (dependent entity), also on the basis of agreements with third parties
- ▶ The entity has directly or indirectly a majority of votes in a dependent partnership or at the general meeting of a dependent cooperative, also on the basis of agreements with third parties.

A permit is issued on a foreigner’s application if:

- ▶ The acquisition of real estate by the foreigner does not pose a threat to national defense, safety or public order, and does not contravene social and health policy

- ▶ The foreigner can prove that he/she has links with Poland (e.g. Polish nationality, Polish origin, marriage to a Polish national, has a permit to temporarily reside in Poland, a permanent residence permit or a EU long-term residence permit, is a member of a managing authority of a controlled company in Poland, or conducts business or agricultural activity in Poland).

The area of real estate acquired by a foreign citizen (outside the EEA and Switzerland) for residential purposes cannot exceed 0.5 ha. If real estate is acquired by a foreigner conducting business operations in Poland, the area should be sufficient to meet the needs of that business.

Applications are currently reviewed within 3-5 months (including the time needed for consultations with the Minister of National Defence and the Minister of Agriculture) but the procedure sometimes takes longer. It also takes a few weeks to compile all the documents required before an application can be filed.

If the foreign investor intends to acquire real estate in Poland, for the purpose of securing its interests, it can submit an application and obtain a permit promise. This promise is subject to the relevant regulations on such permits. A permit promise is valid for one year from the issue date. During this period, the Minister cannot refuse to grant a permit unless there is a change in the material facts of the case.

In addition to the general exemptions available to EEA and Swiss citizens and entrepreneurs, a permit is not required, *inter alia*, in the following cases:

- ▶ Purchase of a self-contained apartment
- ▶ Purchase of a self-contained garage if connected with meeting the housing needs of the purchaser/owner of real estate or a self-contained apartment
- ▶ Purchase of real estate by a foreign citizen that has resided in Poland for at least 5 years (from the date a permanent residence permit or an EU long-term residence permit was obtained)
- ▶ Acquisition by a foreign citizen whose spouse is a Polish citizen, provided that the foreign citizen has resided in Poland for at least 2 years since obtaining a permanent residence permit or an EU long-term residence permit, of real estate which will become part of the spouses' joint marital property
- ▶ Purchase of real estate by a foreign citizen if on the date of purchase the foreign citizen is the statutory heir of the real estate seller, and if the seller has been the owner or perpetual usufructuary thereof for at least 5 years
- ▶ Purchase for business purposes by legal persons and partnerships which are not legal entities controlled directly or indirectly by foreigners of undeveloped real estate located within city limits whose area, together with the area of other real estate already owned in Poland by the same foreigner, does not exceed 0.4 ha

- ▶ Acquisition of real estate by a bank holding a mortgage as a result of an unsuccessful auction sale
- ▶ Acquisition (by purchase or otherwise) by a bank controlled directly or indirectly by foreign investors of shares or interests in a company or partnership which is the owner or perpetual usufructuary of real estate, if the acquisition involves enforcement of bank claims arising from its banking business
- ▶ Acquisition of shares in companies that are listed on a stock exchange or an OTC (over-the-counter) market
- ▶ Acquisition of shares in companies that are owners/perpetual usufructuaries of real estate the acquisition of which is exempt from the permit requirement. The above exemptions do not apply if the real estate is located in a border zone or constitutes agricultural land of over 1 ha.

Stamp duty of PLN 1,570 is payable on a permit (PLN 98 with respect to the promise).





### 6.3. Perpetual usufruct

Perpetual usufruct is a right of a nature similar to ownership, although it is established for a limited time. It is governed by the provisions of the Civil Code and the Real Estate Management Act. A perpetual usufruct right may be established on land owned by the state or by local municipal authorities.

Perpetual usufruct right, as a rule, is established for 99 years. In rare cases for a shorter period, however not less than 40 years. When this term ends, the perpetual usufruct right may be extended for another period of up to 99 years (further extensions are also possible). Extension can only be refused if important public interests are at stake.

In principle, a perpetual usufruct right is established by way of a contract drawn up in the form of a notarial deed (it must also be entered in the land and mortgage register). This contract will also cover the transfer of ownership of buildings (or other constructions) to the usufructuary.

Charges for the transfer of land in perpetual usufruct comprise a one-off fee on hand-over and annual fees thereafter. The initial fee is payable in a lump sum not later than on the perpetual usufruct contract execution date.

Annual fees are paid throughout the contract term (by 31 March each year) starting from the year following that

in which the perpetual usufruct was established. The initial fee amounts to 15%-25% of the value of the land, while the annual fees, as a rule, vary from 0.3% to 3% of the value depending on the purpose for which the land is taken in perpetual usufruct.

Buildings (or other structures) erected by the usufructuary on the land held in perpetual usufruct constitute the property of the usufructuary, while the general rule is that any buildings standing on the owner's land usually are the property of the owner of the land. Accordingly, the ownership of existing buildings must be transferred together with transfer of the perpetual usufruct right.

A usufructuary can freely dispose of its right, meaning that it can encumber its right or sell it. In such case, the provisions governing transfer of ownership apply.

At the end of the perpetual usufruct term, the usufructuary is entitled to compensation for any buildings (and other constructions) erected unless they were erected in breach of the perpetual usufruct contract. The amount of the compensation constitutes the market value of the buildings (or other constructions) on the usufruct expiry date.

There are, however, possibilities provided under Polish law which, upon fulfilment of certain conditions, allow the perpetual usufructuary to transform its right into an ownership right. There are two legal acts that provide for such possibility.

Act on transformation of the right of perpetual usufruct into an ownership right provides for regulations that enable the perpetual usufructuaries meeting requirements determined under this act to make a claim to have its right of perpetual usufruct transformed into an ownership right. Consent of the current

owner of the real estate in question is in such case not required. This possibility was granted to, above all, individual persons, housing cooperatives and persons having privatisation claims. As of 2011, this right was also granted to companies and entrepreneurs. However, due to the judgment of the Polish Constitutional Tribunal (of 10 March 2015, effective as of 17 March 2015), companies and entrepreneurs have been excluded from the scope of entitled entities.

Another possibility of transforming the right of perpetual usufruct into an ownership right is granted under the Act on Real Estate Management, which allows for the land held in perpetual usufruct to be sold to the current perpetual usufructuary, including companies and entrepreneurs. In this case however, the consent of an owner is required.

At the end of 2016, Polish government published a draft of an act on the transformation of perpetual usufruct of developed land for residential purposes into the ownership right. The draft act envisages that the perpetual usufruct right to the land developed with residential buildings will be transformed automatically, without a necessity to file any applications, by virtue of law, into the ownership right. The owners of the premises in buildings developed on the land held under perpetual usufruct right will become a co-owners of the land, instead of holding shares in perpetual usufruct right. The owners of premises will pay, up to 20 years, a special fee for transformation, in the amount of the last annual fee for perpetual usufruct. According to the newest statements of the government, it is planned that this conversion of perpetual usufruct into ownership will become applicable on 1 July 2017.



## 6.4. Leases

Polish and foreign legal entities and individuals may lease real estate without having to obtain a permit from the Minister of Internal Affairs and Administration. Polish law recognises two types of lease contract: *umowa najmu* and *umowa dzierżawy*. Under *umowa najmu* the lessee may only use the property, while under *umowa dzierżawy* the lessee may use the property and collect benefits therefrom. Both types of contract may be executed for a fixed or non-fixed term.

An example of a standard lease agreement (*umowa najmu*) would be the short-term lease of an apartment or office. A lease agreement (*umowa dzierżawy*), on the other hand, would typically be used for the lease of farmland or a site for development. Such categorization is however, subject to exceptions. As a rule, foreign investors willing to establish windfarms within the territory of Poland tend to conclude lease agreements for this purpose. According to a judgment of the Supreme Court, since the wind cannot be considered as a natural benefit, land on which windfarms are to be located should be used under the agreement of unnamed type, concluded in accordance with freedom of contract principle, to which (to the extent not provided under the agreement), respective provisions of the Civil Code on the lease agreement (*umowa dzierżawy*) should apply.

Any lease for a period of more than one year should be executed in writing. Both Polish and foreign entities can also use real estate under various leasing schemes (particularly on the basis of so-called “sale and lease back” transactions).

However, not required for the validity of concluded standard lease or lease agreements, it is advisable to conclude such contracts with date certain (certification by a public notary or administrative body). This is particularly recommended if the

foreign entrepreneur intends to make substantial investments within the leased area and agrees with the landlord on very narrow scope of termination possibilities. If the leased area is purchased by a third party and the respective agreement was not concluded with date certain, the new owner will be entitled to terminate the lease agreement with statutory notice periods, also when the lease agreement did not allow for earlier termination.

## 6.5. Real estate purchase agreements

Real estate can be acquired under a sale, donation, exchange or alienation agreement, or by way of inheritance. According to the Civil Code, a real estate purchase contract must be executed in the form of a notarial deed before a Polish notary. A contract in any other form will be null and void.

In case of agreements concluded with foreign investors, where the permit of the Minister of Internal Affairs and Administration referred to above is required, prior to obtaining such permit, a preliminary

agreement can be executed in which the seller undertakes to sell a specific real estate to the purchaser and the purchaser undertakes to pay the price for the real estate to the seller on a specific date or under a specific condition, such as obtaining of a said permit. After the Minister issues the permit, the agreement to transfer the ownership title to the real estate or the perpetual usufruct right should be executed in the form of a notarial deed, otherwise considered null and void.

## 6.6. Land and mortgage register

Once the final agreement to transfer the ownership title to the real estate or the perpetual usufruct right has been executed, the new owner or usufructuary should be entered in the land and mortgage register maintained by the appropriate court.

According to Article 5 of the Land and Mortgage Register Act in case of discrepancy between the real estate's legal status disclosed in a land and mortgage register and

its actual legal status, the transfer of right to the real estate is effective, if the seller was disclosed in a land and mortgage register as the owner or perpetual usufructuary (principle of public warranty of a land and mortgage register) and the acquirer was acting in a good faith. The above principle protects the buyer of the land acting in good faith. The pertinent principle will however not be applicable in case of a share deal transaction.



## 6.7. Reprivatisation

After the Second World War, the Polish government nationalised considerable number of lands belonging to private owners. To date, Poland has not enacted any reprivatisation legislation. Thus, the only way to regain ownership is to prove in court or in the course of administrative proceedings that the land was nationalised in violation of the relevant provisions. There have been many cases where this was successfully achieved, however, in case there have already been irreversible legal consequences (usually meaning that the real estate has been disposed of in favour of third parties acting in good faith), the original owner will usually be entitled to compensation, instead of recovering the real estate itself.

Accordingly, before purchasing real estate (particularly from the state or a local government authority), care must be taken to ensure that no reprivatisation claims have been filed by former owners.

There are still ongoing disputes regarding the need to adopt an act, regulating in a comprehensive way the issues related to reprivatisation claims. However, until now

there are no draft regulations proposed within the aforementioned scope that could in fact be adopted.

Furthermore, after the judgement of the Constitutional Tribunal dated 19 July 2016, the so-called “Small Reprivatisation Act” came into force on 17 September 2016. This act provides limitations of restitution of ownership of real estate nationalized under the Warsaw Decree of 1945 or transferring claims for reestablishing the rights for such. According to the new act, in case when the real estate in Warsaw is e.g. assigned or used for public purposes, the Capital City of Warsaw may refuse to establish the right of perpetual usufruct to a previous owner of this real estate. A new provision is granting the State Treasury and the Capital City of Warsaw right of pre-emption in the event of the sale of rights and claims arising from the Warsaw decree and claims for the establishment of perpetual usufruct to the previous owner of real estate located in Warsaw. The pre-emption right also applies in case of sale of perpetual usufruct right established by the way of satisfying rights and claims arising from the Warsaw decree.



## 6.8. Investment process

Assuming that the land has been designated for a certain type of investment, a construction permit is required before the commencement of a building process.

The above can be issued:

- ▶ Directly based on the provisions of the local spatial development plan
- ▶ If there is no such plan for the respective area, a zoning decision (WZ) will be required. The investor, having obtained this decision and made other arrangements, can then apply for a construction permit.

At the end of the planning and construction process, the investor usually is required to obtain a use permit.

Unfortunately, on 1 January 2004 most of old local development plans (adopted before 1 January 1995) in Poland expired.

Therefore, until new plans are adopted (this process is time-consuming and requires substantial investments, which most municipalities cannot afford, therefore most areas are not covered by any plans), investors will have to apply for a land zoning decision. There are certain investments, that can be constructed solely based on the adopted local spatial development plan, including above all shopping malls and other large-scale commercial facilities, the trade area of which exceeds 2,000 m<sup>2</sup>.

From a legal perspective the development process is complicated and attempts to make local authorities adopt development plans have been ineffective. Thus in recent years, several reforms have been proposed to development regulations though none have to date been successfully passed.

## 6.9. Acquisition of agricultural land

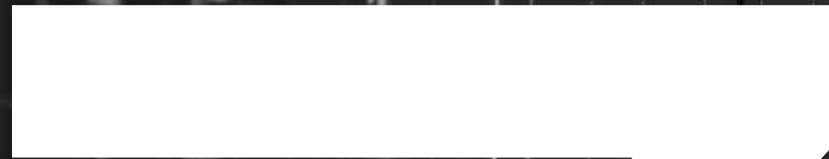
New legislation restricting trade of agricultural land came into force as of 30 April 2016. The new regulation restricts trade of agricultural land for both Polish and foreign (EU and non-EU) entities.

Agricultural land is the land used for agricultural purposes or land that may be used for such purposes, excluding land intended for other purposes in applicable local spatial development plans.

The new law provides for major restrictions in sale of agricultural land, such as:

- ▶ 5 years moratorium on sale of agricultural land owned by the State Treasury (Agricultural Property Agency); the moratorium does not pertain i.a. to agricultural land of the area below 2 ha or lands designated for other purposes in the zoning decision, local spatial development plan or study, lands in special economic zones; the land may also be sold upon obtaining Ministry of Agriculture permit
- ▶ Agricultural land may be acquired only by individual farmers having agricultural education and residing in the same municipality where the land is located for at least 5 years
- ▶ Obligation to obtain a permit of the Chairman of the Agricultural Property Agency for sale / acquisition of an agricultural land to / by persons other than individual farmers, including companies, under pain of invalidity
- ▶ General prohibition on sale or transferring possession (e.g. under lease agreement) of an agricultural land acquired under Chairman of the Agricultural Property Agency consent within 10 years from its purchase. In case a sale or transfer of possession is necessary due to misfortune reasons being beyond the buyer's control, a common court is entitled to allow for the conclusion of the relevant agreement
- ▶ Agricultural Property Agency possess a pre-emption right to agricultural land regardless of the area (previously this right applied only to areas of at least 5ha)
- ▶ Agricultural Property Agency possess a buyout right in case other acquisitions that acquisitions under sale agreement e.g. in-kind contribution, merger, division or transformation of a current owner (perpetual usufructuary) of the land
- ▶ Agricultural Property Agency's right to buy of an agricultural land in case of partners change in partnerships
- ▶ Agricultural Property Agency was given a pre-emption and buyout right to purchase shares in companies owning an agricultural land, e.g. in case of share swap (excluding shares in public listed companies).





# Accounting and auditing

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## 7.1. Introduction to the accounting framework in Poland

Polish accounting is regulated by the Accounting Act of 29 September 1994 (the Accounting Act). The Minister of Finance has also issued several regulations which cover specific accounting areas such as financial instruments, consolidation, accounting principles for banks, insurance companies, investment funds and pension funds. Since 1994, the Accounting Act has undergone significant changes to bring Polish accounting regulations closer to the International Financial Reporting Standards (IFRS). However, the differences between the Accounting Act and IFRS, mainly following IFRS developments in last decade, continue to exist as noted in Section 7.7 below. The following information applies to financial statements prepared for the periods beginning on or after 1 January 2017.

In order to help implement the Accounting Act, the Polish Accounting Standards Committee ('the Committee') prepares and issues National Accounting Standards (KSR). As at 1 January 2017, ten National Accounting Standards had been issued in regard to different topics including cash flow statement, leasing, impairment of assets, concession accounting, recognition and presentation of changes in accounting policy, estimates, and correction of errors and post balance sheet events.

The Committee has also issued several position papers (not referred to as standards) in regard to e.g. accounting for emission rights, inventory count, inventory valuation, green certificates, financial statements of housing cooperatives and some aspects of bookkeeping. In the areas not regulated by the Accounting Act or National Accounting Standards, reference may be made to IFRSs. National Accounting Standards and the Committee's position papers are available on the website of the Ministry of Finance.

The Accounting Act permits or requires some Polish entities to apply IFRS as adopted by the EU as their primary basis of accounting, rather than applying the

accounting principles of the Accounting Act. Those regulations are summarised in the following table:

	<b>Standalone financial statements</b>	<b>Consolidated financial statements</b>
1. Entities listed on a regulated market in Poland or other European Economic Area (EEA) country.	Choice	Required
2. Banks (other than those included in 1, 3, 4 and 5).	Not permitted	Required
3. Entities that applied for a permission to list on regulated market in Poland or other European Economic Area (EEA) country.	Choice	Choice
4. Entities that are part of a group where the parent prepares consolidated financial statements for statutory purposes in accordance with IFRS as adopted by EU.	Choice	Choice
5. Branches of a foreign entrepreneurs that prepare separate financial statements for statutory purposes in accordance with IFRS as adopted by EU.	Choice	n/a
6. Other entities.	Not permitted	Not permitted

## 7.2. Accounting records

The provisions of the Accounting Act and related regulations are applicable to, among others, companies and partnerships that have their registered office or place of management in Poland. For those entities that apply IFRS as the primary basis of accounting instead of Polish principles, the following sections of the Accounting Act still apply:

- ▶ Chapter 2 on bookkeeping
- ▶ Chapter 3 on inventory count
- ▶ Chapter 6A on report on payments made to government
- ▶ Chapter 7 on auditing, filing with the appropriate court register, providing access to and publication of financial statements
- ▶ Chapter 8 on data protection
- ▶ Chapter 9 on criminal liability
- ▶ Chapter 10 on special and interim provisions and
- ▶ Article 49 in regard to directors' report.





Each entity is obliged to maintain its accounting books and other documentation which, in particular, comprises:

- ▶ A description of the entity's accounting principles
- ▶ Rules for keeping subsidiary ledgers and their link to general ledger accounts.

Accounting records should be kept, and financial statements drawn up, in the Polish language and presented in the Polish currency.

It should be noted that the violation of the Accounting Act requirements by a person responsible for drawing up the financial statements (usually the Management Board and Supervisory Board) may be recognised as a criminal offence, which is punishable by imprisonment for a term not exceeding two years, by a fine, or both.

The regulations, summarised in Chapters 7.3.- 7.7 below, apply to all entities in general. Certain types of entities such as banks, insurers, or investments funds might be governed by specific regulations in relation to the measurement and impairment of assets (such as financial instruments) or financial statements. Furthermore, there are exemptions and simplifications provided for small and micro entities which are explained in Chapter 7.8.

### 7.3. Major principles in regard to recognition and measurement of assets and liabilities

The Accounting Act requires companies to recognise and present the transactions in the financial statements, in accordance with their economic substance.

Entities may elect to depart from a regulation of the Accounting Act, and adopt its own accounting policy, if that regulation results in presentation of the financial position and performance not being true and fair. The justification for such departure and its impact on the financial information should be disclosed.

An asset is recognised if it is probable that the future economic benefits that are attributable to the asset will flow to the company.

#### Intangible assets

Intangible assets are recorded initially at their purchase price and then are amortised over their useful lives or written down for impairment. The goodwill and development costs shall be amortized over their economic useful life or, when the economic life cannot be reliably determined, over the period not exceeding 5 years.



## Property, plant and equipment

Items of property, plant and equipment are measured at acquisition or production cost, less accumulated depreciation and impairment. Land is measured at acquisition cost less impairment.

Tangible assets may be revalued in accordance with separate regulations. However, the last revaluation was allowed on 1 January 1995, based on a decree issued by the Ministry of Finance.

The result of revaluation of a fixed asset is reflected in the revaluation reserve. After the fixed asset is disposed, the amount remaining in the revaluation reserve is transferred to the reserve capital. The costs incurred on an asset already in use, such as repairs, overhauls or operating fees, are expensed as incurred.

However, the costs that increase the expected future economic benefits of a given fixed asset beyond the original expected benefits, are capitalised and increase the carrying amount of the asset.

Tangible assets, except for land, are depreciated on a straight-line or other systematic basis over the assets' estimated useful lives, or if shorter over the term of right. Borrowing costs (interest) which relate to the construction, adaptation, assembly or improvement of a tangible asset or intangible asset are capitalised as part of the initial cost of the asset, where those borrowings were taken out for that purpose. Foreign exchange gains/losses on such borrowings are also capitalised.

## Investment properties

Investment properties are measured at purchase price decreased by depreciation and write-offs due to impairment, or at fair value – the policy to be selected. If the fair value model is selected, the changes are recognised in other operating costs or other operating income. Investment property includes properties which the entity does not use for its own purposes but which are held for the purpose of generating profits in the form of increasing value or revenues from rental.

## Financial instruments

Financial instruments are initially recognised at acquisition cost (price), being the fair value of the consideration given. The transaction costs are included in the initial value.

After initial recognition, financial instruments (including derivatives and embedded derivatives) are classified into one of the following four categories and measured as follows:

- ▶ Investments held to maturity – at amortised cost, calculated using the effective interest rate
- ▶ Originated loans and receivables – at amortised cost, calculated using the effective interest rate
- ▶ Held for trading investments – at fair value with any unrealised gains/ losses recorded in the profit and loss account
- ▶ Available for sale investments – measured at fair value with unrealised gains/ losses recognised in the profit and loss account or in the revaluation

reserve in equity until the investment is sold or impaired at which time the cumulative gain/ loss is included in the profit and loss account - the policy to be selected.

In separate financial statements of a parent entity, investments in subsidiaries, associates or joint ventures are carried at cost, equity accounted, or at fair value. If carried at fair value, all changes are recognised in the revaluation reserve in equity.

The fair value of financial instruments traded on an active market is measured based on that market's listed prices at

the balance sheet date. If there is no such a listed market price, the fair value is estimated based on the listed market price of similar instruments or on the expected cash flows.

## Hedge transactions

Transactions involving derivative instruments to hedge a financial risk are classified as three types of hedges - cash flow hedges, fair value hedges and a hedge of a net investment in a foreign subsidiary. Hedge accounting applies as presented in table.

	Cash Flow Hedges	Fair Value Hedges	Hedge of a net investments in a foreign subsidiary
Hedged item recognised	In accordance with other standards.	At fair value, with all changes recognised in the income statement.	In accordance with other standards.
Hedging instrument recognised	At fair value, with effective part of all changes in equity.	At fair value, with all changes recognised in the income statement.	At fair value, with effective part of all changes in equity.

## Inventories

Inventory is measured at lower of cost and net realisable value. Capitalisation of financial costs in the inventory is permitted if the production process requires a necessary lengthy period of preparations.

## Foreign currency transactions

Transactions denominated in a foreign currency (i.e. not Polish Zloty) are translated into Polish Zlotys at the actual exchange rate applicable at the date of the transaction or, if the actual rate is not known, at the rate published by the National Bank of Poland.

At the balance sheet date, assets and liabilities denominated in foreign currencies (other than shares in subsidiaries and associates carried using equity method) are re-translated at the exchange rate published by the National Bank of Poland.

Foreign exchange differences arising on revaluation are generally recognised as financial income or financial expense. For certain types of long-term investments denominated in foreign currencies gains are recognised in the revaluation reserve.

Foreign exchange differences relating to liabilities financing assets under construction form part of the cost of those assets.

## Equity

Issued instruments are classified as equity or liability based on the terms and the definitions of liability and equity. Additional capital contributions – regardless of the terms of redemption are classified as equity. The share capital presented in the balance sheet should be equal to the amount registered in the registration court and based on the shareholders' resolution.

## Deferred tax

Deferred tax is recognised, using the liability method, on all temporary differences at the balance sheet date between the tax bases of assets and liabilities and their carrying amounts for financial reporting purposes. Deferred tax liabilities are recognised for all taxable temporary differences. Deferred tax assets are recognised for all deductible temporary differences and unused tax losses, to the extent that it is probable that taxable profit will be available, against which the deductible temporary differences and unused tax losses can be utilised.

Deferred tax assets and liabilities are measured at the tax rates that, according to provisions enacted by the balance sheet date, will apply in the period when the asset is realised or the liability is settled. The Income Taxes Standard requires that additional tax credits given to companies operating in Special Economic Zones are recognised as government grants i.e. giving rise to a deferred income and deferred tax asset. Such deferred income is to be amortised over the useful life of the asset.

## Leases

A lease is classified as a finance lease if at least one of the following seven conditions is met:

- ▶ The legal title is transferred upon lease expiry
- ▶ The asset may be purchased by the lessee at a price lower than the market value upon lease expiry
- ▶ The lease term is longer than 75% of the economic useful life of the leased asset
- ▶ The sum of the discounted minimum lease payments is higher than 90% of the market value of the leased asset as at the lease inception
- ▶ The lease can be extended on more favourable terms
- ▶ If cancelled, the lessee bears all cancellation costs
- ▶ The asset is adapted to the specific needs of the lessee.

## Business combinations

Business combinations not under common control are accounted for using the purchase method. However, the pooling of interests' method might still be used for legal merger transactions under common control.





## 7.4. Financial statements

Financial statements must be prepared in the Polish language and expressed in the Polish currency. Financial statements consist of:

- ▶ A balance sheet
- ▶ An income statement
- ▶ A statement of cash flows
- ▶ A statement of changes in equity
- ▶ Notes to the financial statements (split into an introduction and additional notes).

A cash flow statement and a statement of changes in equity are only required by entities whose financial statements are subject to a statutory audit.

For some specialised types of entities additional exceptions or requirements might apply in relation to primary financial statements such as for example a summary of investments for the investment funds and alternative investment companies.

The format of the balance sheet, income statement, statement of cash flows, statement of changes in equity, and the contents of notes to the financial statements for entities preparing their financial statements in accordance with Polish GAAP are determined by the Accounting Act. Companies listed on the Warsaw Stock Exchange when preparing the financial statements in accordance with Polish GAAP are guided by specific regulations for public issuers. This includes reconciliation between the results reported in accordance with Polish accounting principles and those that would have been met if IFRS as adopted by the EU had been applied.







## 7.5. Financial reporting, publication and audit requirements

### Financial reporting

All entities governed by the Accounting Act are obliged to prepare their standalone and consolidated financial statements (the latter ones only if criteria apply) for each financial year. The financial year need not be the calendar year. Listed companies are additionally obliged to publish semi-annual and quarterly reports. An entity must also prepare financial statements as at the date of the close of accounting records and as a result of other events leading to the termination of the activities of an entity, for example, the close of business (liquidation date).

The standalone and consolidated financial statements should be prepared within three months after the balance sheet date and approved within six months after the balance sheet date.

## Directors' report

Specific entities, such as for example joint-stock companies, limited liability companies, selected partnerships, mutual insurance companies, co-operatives, state-owned companies, investment funds and investment companies prepare, in addition to the financial statements, a financial review by management - the management report (the Director's report). The scope of the report is defined in legal regulations and includes topics such as:

- ▶ Description of events that significantly impact upon the entity's performance and that occurred during the reported period and after its closing date till the date the financial statements are approved
- ▶ Predicted development of the entity
- ▶ Major achievements in the research and development area
- ▶ Actual and planned financial situation, including financial ratios
- ▶ Details about transactions in own shares
- ▶ Information on branches (business units)
- ▶ Financial risk management objectives and methods
- ▶ Key financial and nonfinancial efficiency metrics in relations to operations as well as information on employment and natural environment
- ▶ Information on the application of corporate governance rules (only public companies).

## The Report on Payments to the Public Administration

The enterprises operating in the mining industry or logging the virgin forests and satisfying the criteria provided in the Accounting Act have to prepare an additional report on payments to the government together with the financial statements. The report presents the total payments to the governments of a certain country analysed by the level of public administration, type of payment, and certain project, if applicable.

## Statement of non-financial information

The listed entities that exceed the given thresholds are also required to present a statement and a consolidated statement of non-financial information. This statement includes among others:

- ▶ Description of the business model;
- ▶ Key non-financial performance ratios;
- ▶ Description of social, environment, human rights and anti-corruption policies, the associated risks and the effects of application of those policies.

That statement may be published on the entity's web pages.

## Publication requirements

Management is required to file the annual financial statements to the registration court together with the following documents:

- ▶ Auditor's opinion, if the statements were subject to an audit

- ▶ Shareholders' resolution on the approval of the financial statements and distribution of profit or coverage of loss
- ▶ Directors' report (if applicable)
- ▶ The report on payments to the public administration (if applicable).

If not approved within 6 months after balance sheet date, additional filling is required from the entities which have not managed to approve their financial statements in the prescribed dates.

Listed companies are also required to file their financial statements with the Polish Financial Supervision Authority including interim (quarterly and semi-annual) reporting.

## Audit requirements

Polish statutory audit requirements apply to all annual consolidated financial statements and to the annual standalone financial statements of the following entities that operate as a going concern:

- ▶ Banks, insurance companies, reinsurance companies, pension funds, investment funds (including alternative, closed, open and specialised funds), investment fund management companies, joint-stock companies and public companies, payment institutions, brokerage houses and firms
- ▶ Other entities that meet at least two of the following three thresholds in the financial year preceding the financial year for which the financial statements were drawn up:

- ▶ Annual average employment (equivalent of 50 individuals employed full-time)
- ▶ Total assets as at the end of the financial year (the Polish Zloty equivalent of EUR 2,5 million or greater)
- ▶ Net sales including financial income for the financial year (the Polish Zloty equivalent of EUR 5 million or greater)

The statutory audit requirements also apply to entities after merger for the year when the merger occurred.

All statutory IFRS financial statements are subject to audit requirements.

There are also additional requirements in relation to audit or review of interim financial statements of public companies and investment funds.

Audits are governed by the relevant legal requirements in force which include:

- ▶ Chapter 7 of the Accounting Act
- ▶ Auditors Act
- ▶ National auditing standards issued by the National Council of Statutory Auditors
- ▶ Regulation (EU) No 537/2014 of the European Parliament on the council on specific requirements regarding statutory audit of public-interest entities





## 7.6. Consolidation

### Consolidation requirements

A capital group is a group which comprises a holding company and its subsidiaries.

According to the Accounting Act, a holding company is a company that controls another entity.

A capital group draws up its consolidated financial statements on the basis of standalone financial statements of entities that belong to the group. Groups which, in the preceding and current financial years, did not exceed at least two out of three of the following thresholds before intragroup eliminations:

- ▶ annual average employment - equivalent of 250 individuals employed in full time
- ▶ total assets of all group entities - PLN 38,4 million
- ▶ total sales and financial income of all group entities - PLN 76,8 million

Or after intragroup eliminations:

- ▶ annual average employment - equivalent of 250 individuals employed in full time
- ▶ total assets of all group entities - PLN 32 million
- ▶ total revenue of all group entities - PLN 64 million

are exempted from drawing up the consolidated financial statements.

A subsidiary is excluded from consolidation if:

- ▶ The shares in such entity were acquired, purchased or otherwise obtained for the sole purpose of subsequent resale within one year from the date of acquisition
- ▶ There are severe long term restrictions on the exercise of control over the entity which prevent free disposal of its assets, including net profit generated by this entity or which prevent exercise of control over the bodies managing the entity
- ▶ It is impossible to get the information necessary for preparation of a consolidated financial statement without delay incurring unreasonably high cost (applies in exceptional cases only).

A subsidiary need not be included in the consolidated financial statements if the amounts stated in that entity's financial statements are immaterial in relation to the holding company's financial statements.

## Consolidated financial statements

Consolidated financial statements comprise:

- ▶ A consolidated balance sheet
- ▶ A consolidated income statement
- ▶ A consolidated statement of cash flows
- ▶ A consolidated statement of changes in equity
- ▶ Notes to the consolidated financial statements (split into an introduction and additional notes).

Consolidated financial statements should be accompanied by a Group Directors' report

prepared by the Management Board of the holding company. Group Directors' report can be prepared together with a Directors' report of the holding entity as a single report.

Consolidated financial statements should be prepared at the same balance sheet date and for the same financial year as the financial statements of the holding company. If this date is not the same for all entities within the group, then consolidation may cover financial statements drawn up for a twelvemonth period different to the financial year, if the balance sheet date of those financial statements is earlier by no more than three months of the balance sheet date adopted by the group. Companies included in the consolidation should adopt consistent accounting policies and consistent methods of preparation of financial statements. If the accounting policies of consolidated entities differ from those applied for consolidation, then appropriate adjustments must be carried out at the consolidation level.

## Methods to include entities in consolidated financial statements

A subsidiary (see Consolidation requirements) is consolidated using the full consolidation method. Jointly controlled entities are consolidated using a proportional consolidation method or accounted for using an equity method. Associates are accounted for using the equity method. When the associate prepares its consolidated financial statements, the equity method applies to the net consolidated assets of the associate.



## 7.7. Principal differences between Polish Accounting Regulations and International Financial Reporting Standards

The main differences between Polish Accounting Regulations (PAR) and International Financial Reporting Standards (IFRS) effective as of 1 January 2017 are presented in the following table.

Description	PAR	IFRS
Functional currency	Functional currency concept does not underlie the preparation of the financial statements	Functional currency concept underlies the preparation of the financial statements.
Property Plant and Equipment	Components of property, plant and equipment are neither specifically mentioned nor defined. Consequently, overhauls give rise to a provision accounted for on a cumulative basis.	Component accounting is required. Moreover, accounting for overhauls follows component accounting and does not result in recognition of provisions.
Fixed assets	Fixed assets may be revalued only on the basis of separate regulations to a value not exceeding the fair value.	Fixed assets may be revalued to their fair value.
Non-current assets or disposal groups held for sale	There is a lack of requirements concerning the valuation of assets and disposal groups held for sale. Depreciation is required for assets and disposal groups held for sale. Separate presentation and specific disclosures are not required.	Measurement at the lower of carrying amount and fair value less costs to sell. Non-current assets or disposal groups that are classified as held for sale are not depreciated. Presentation in separate line of the statement of financial position.
Inventory	Companies may choose the LIFO formula for the determination of the value of sold inventory.	The use of LIFO formula is explicitly not permitted.
Capitalisation of borrowing costs	All borrowing costs, arising on financing of tangible and intangible assets, incurred in the period of construction, are capitalised as part of the assets' costs.  FX gains/losses on capex invoices are capitalised.  A choice is given to capitalise borrowing costs into inventory which takes considerable time to complete.	Capitalisation of borrowing costs required on specific and general borrowings to finance the construction of individual qualifying assets.  FX gains/losses are also included as part of the borrowing costs, to the extent they represent an adjustment to the interest charge.



Description	PAR	IFRS
Investment properties	Assets held under an operating lease cannot be classified as investment property. No specific measurement formulas are mentioned/allowed.	Assets held under an operating lease can be classified as investment property and accounted for as a finance lease. The fair value model must be applied in such cases. LIFO formula is not allowed.
Intangible assets	Revaluation to fair value is not permitted. All intangible assets are amortised.	Revaluation to fair value is permitted only if there is an active market in which it is possible to reliably determine fair value. Intangible assets are split into those with a finite life - amortised - and those with an indefinite life - not amortised and subject to an annual impairment test.
Impairment of assets	Assessed annually if there are indicators that the assets (including goodwill and intangibles) may be impaired. Assets write down to selling value or, if that is not available, to fair value.	Assessed annually if there are indicators that assets may be impaired (including goodwill and intangibles). If indications exist, write assets down to the higher of fair value less costs to sell and value in use. Even if there are no indicators, goodwill, indefinite life intangible assets and intangible assets not yet in use are subject to an annual test.
Hyperinflation	No adjustments for hyperinflation are required.	During the period of hyperinflation, assets and liabilities are restated to reflect the changes in the general price index.
Business Combinations	Accounted for as an acquisition in transactions that are not legal mergers under common control. Legal mergers among entities under common control might be accounted for using the 'pooling of interests' method.  Transaction costs increase the consideration paid for business combination.  Any result on decrease or increase of minority interests is recognised as finance income or costs.	Accounted for as an acquisition in all cases. Combinations and legal mergers among entities under common control require developing accounting policy in accordance with IAS 8.  Transaction costs are recognised in profit or loss.  Decrease or increase in non-controlling interests is accounted for within equity with no impact on profit or loss.

Description	PAR	IFRS
<p>Goodwill and adjustments to fair value on acquisition of subsidiary</p>	<p>Goodwill on acquisition is the difference between the purchase price and the fair value of all assets and liabilities acquired. Changes in the initial fair values of acquired assets and liabilities which are identified during the financial year in which the acquisition took place should adjust goodwill.</p> <p>Goodwill is amortised over the economic useful life or, if the economic useful life is not reliably determinable, then over a period not exceeding 5 years.</p> <p>Negative goodwill:</p> <ul style="list-style-type: none"> <li>▶ Relating to future losses acquired as deferred and amortised over the period of the loss</li> <li>▶ Otherwise, up to the value of the depreciable assets is deferred and amortised over the depreciable life</li> <li>▶ Balance is recognised as income</li> <li>▶ Not allowed in regard to measurement of intangibles.</li> </ul>	<p>Goodwill on acquisition is the excess of (a) over (b) below:</p> <p>(a) the aggregate of:</p> <p>(i) the consideration transferred, which generally requires acquisition-date fair value;</p> <p>(ii) the amount of any non-controlling interest in the acquiree; and</p> <p>(iii) in a business combination achieved in stages, the acquisition date fair value of the acquirer's previously held equity interests in the acquiree</p> <p>(b) the net of the acquisition-date amounts of the identifiable assets acquired and the liabilities assumed.</p> <p>Changes in the initial fair values of acquired assets and liabilities if only provisionally assessed at the date of acquisition, which are identified within 12 months of the acquisition, are adjusted against goodwill. Goodwill is not amortised, but subject to a yearly impairment test. Gain on bargain purchase is recognised as income.</p>
<p>Investments in subsidiaries, associates and joint ventures in separate standalone accounts of the parent</p>	<p>Choice of policy between:</p> <ul style="list-style-type: none"> <li>▶ Cost</li> <li>▶ Equity accounting</li> <li>▶ Fair value with all changes recognized directly in equity</li> </ul>	<p>Choice of policy between:</p> <ul style="list-style-type: none"> <li>▶ Cost</li> <li>▶ Equity accounting</li> <li>▶ Fair value with all changes recognised directly in other comprehensive income</li> </ul>

Description	PAR	IFRS
Financial instruments	<p>The following categories of financial instruments are available:</p> <ul style="list-style-type: none"> <li>▶ Loans and receivables restricted to those arising from providing funds to another entity</li> <li>▶ Available for sale financial assets are measured at fair value with a choice of policy to recognise changes in the income statement or equity. Any impairment recognised in the income statement may be reversed in the income statement at a later date</li> <li>▶ Held for trading instruments are those acquired for the purpose of generating profits from sale in a short period of time</li> <li>▶ Held for maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturity that an entity has the positive intention and ability to hold to maturity</li> <li>▶ Other financial liabilities.</li> </ul>	<p>The following categories of financial instruments are available:</p> <ul style="list-style-type: none"> <li>▶ Loans and receivables include those arising from sale of goods and may include balances acquired in some cases</li> <li>▶ Available for sale financial assets are valued at fair value with changes recognised in equity. Any impairment below cost is recognised in the income statement and for equity instruments may not be reversed through the income statement</li> <li>▶ Financial assets or financial liabilities at fair value through profit and loss consist of: <ul style="list-style-type: none"> <li>▶ Held for trading</li> <li>▶ Other assets or liabilities designated at inception and meeting specific conditions</li> </ul> </li> <li>▶ Held for maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturity that an entity has the positive intention and ability to hold to maturity</li> <li>▶ Other financial liabilities.</li> </ul>
Hedging	<p>Cash flow hedges include all firm commitments. The balance in equity is included in the carrying value of the acquired asset/liability.</p>	<p>Cash flow hedges include firm commitments only relating to foreign exchange risk - all other commitments are fair value hedges.</p> <p>The balance in equity remains in equity until the underlying transaction effects the income statement.</p> <p>If the firm commitment was for a non-financial asset or liability, there is a choice of policy to adjust the carrying value of the asset/liability or to keep the balance.</p>

Description	PAR	IFRS
Investment tax credits	Investment tax credits used give rise to a deferred tax asset and at the same time are recognised as a government grant to be amortised over the useful life of the asset (per standard issued by Accounting Standards Committee).	Unused investment tax credits give rise to a deferred tax asset and affect the tax charge in the year granted.
Share - based payments	There is a lack of requirements concerning share-based payments accounting. The practice is not to account for equity-settled' transactions and to recognise a provision for cash-settled transactions.	Share-based payments transactions including transactions with employees or other parties to be settled in cash, other assets or equity instruments of the entity are recognised generally giving rise to expenses in the entities financial statements.

In any matters not regulated by the Accounting Law or the Decrees an entity may apply National Accounting Standards issued by the Accounting Standards Committee. In the absence of relevant national regulations, the entity may apply International Financial Reporting Standards.



## 7.8. Exemptions and simplifications applicable for small and micro entities

### Definitions

In 2015, a new definition of a small enterprise was introduced to the Accounting Act in addition to the definition of a micro enterprise. Micro and small enterprises are legal entities and the branches of foreign companies (except for organisational units operating in accordance with the Banking Law Act and the regulations on trading in securities, on investment funds, on insurance and reinsurance activities, on credit unions, on the organisation and operation of pension funds or on public benefit organisations) which, in the preceding and current financial years, did not exceed at least two of the following thresholds, provided that respective resolution has been taken by the entity's body responsible for approving the financial statements:

	Micro	Small
total assets	PLN 1,5 million	PLN 17 million
total revenues	PLN 3 million	PLN 34 million
annual average employment level (individuals in full time equivalent)	10	50

Moreover, trade unions, employers' organisations, chambers of commerce, and representative offices of foreign companies are considered micro entities on a condition they do not conduct business activities.

If the statutory audit requirement is a consequence of company's size rather than other factors then it should be noted that some of small entities or entities that enjoy exemptions in measurement of assets and liabilities as described below might be subject to statutory audit as thresholds to qualify for such simplifications and exemptions are higher than these for the statutory audit requirement.

Micro entities are prohibited from measuring assets and liabilities at fair value and at amortised cost.

Irrespective from the decision of whether the company is a small, or a micro, entity and applies the respective simplified financial statements template, the companies that, in the preceding financial years, did not exceed at least two of the above-mentioned thresholds, may apply the following exemptions.

However, if such an entity did not take a respective resolution to apply the financial statements templates applicable to small and micro entities, it should apply the normal financial statements templates.

## Financial instruments

Companies that satisfy those criteria may elect to measure the financial instruments in a simplified way as follows:

- ▶ Short-term investments - at the lower of cost or market value, at fair value or

at amortised cost (if a maturity date is known) with gains/losses recognised in the profit and loss account

- ▶ Long-term investments - at acquisition cost less impairment or at fair value with gains/losses recognised in the revaluation reserve in equity or in the profit and loss account (if the current valuation is lower than original). If a maturity date is known, long term investments might be stated at amortised cost.

## Deferred tax

Those companies may elect not to recognise deferred tax.

## Leases

Those companies are allowed to apply tax regulations in order to recognise and classify leases.


## Financial statements

Small and micro entities prepare simplified financial statements in accordance to the relevant template provided as an attachment to the Accounting Act.

## Revenues and profits

Micro entities are required to increase respectively the revenues or expenses in the subsequent financial year after the approval of financial statements, by the difference between the revenues and expenses determined in the current financial year's income statement.

A positive difference may be accounted for as an equity increase.



## Cash-flow statement and statement of changes in equity

Micro and small enterprises are exempted from preparation statement of changes in equity and cash flow statement.

## Directors' report

Small entities are required to prepare a simplified Directors' report, or at least disclose the minimum additional information required by the Accounting Act.

Micro entities are not required to prepare a Directors' report if they present supplementary information to the balance sheet, as required by the Accounting Act.







# Sectors

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## Agriculture

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Agriculture continues to be a significant sector of the Polish economy. With a share of 11.6%<sup>1</sup> in the total number of employees, it contributes ca. 3%<sup>2</sup> to Poland's GDP. In terms of the contribution to GDP, agriculture is the fourth biggest sector in the country and it is significantly higher compared with the Community's average level. It places Poland as the sixth food producer in the EU.

Poland ranks first in the production of fruit such as apples, raspberries, cherries and blackcurrant. Poland also has extensive potatoes (1<sup>st</sup> place) and sugar beet (3<sup>rd</sup> place) production in the EU. As for cereals, Polish farmers are leading producers of rye and wheat. Poland is also a very important exporter of milk and meat, especially in the poultry segment, which is the biggest and most cost-effective in the EU.

The Ukrainian crisis and consequently Russia's embargo on imports from countries (inter alia Poland) which had implemented economic sanctions against it affects Poland's export directions. At the beginning of 2014 Polish farmers were substantially impacted, as general exports to Russia dropped by 14%<sup>3</sup> with apple

supplies slumping by ca. 20% as a result of the embargo.<sup>4</sup> However, according to the available data 2015 was the first year for 25 years with a positive foreign trade balance, mainly as a consequence of more effort to acquire new export markets in Asia, America and Africa.

Compared with the EU average, Polish agriculture is highly fragmented with 73% of small, traditional farms (1-10 ha) covering over 30% of land<sup>5</sup>. This poses a challenge as such structure results in a relatively low harvest output per 1ha. The increasing average size of farms and the introduction of innovative technologies are seen as primary measures designed to boost productivity. The implementation of those measures will be partially driven by EU's financial support. Poland, as the largest beneficiary of EU subsidies in the 2014-2020 financial framework, is planned to receive EUR 32b under the Common Agricultural Policy. The optimistic outlook is also supported by farmers, as 40% of them view state-of-the-art agricultural machinery as a key success factor for the upturn.<sup>6</sup>

<sup>1</sup> <http://rynekpracy.org/x/989321>.

<sup>2</sup> Business Monitor.

<sup>3</sup> <http://www.bankier.pl/wiadomosc/Eksport-do-Rosji-spadl-o-14-7236936.html>.

<sup>4</sup> Związek Sadowników RP.

<sup>5</sup> National Statistical Office data

<sup>6</sup> Raport „25 Lat Polskiego Rolnictwa. Bezpieczeństwo żywnościowe w Europie”.



## Automotive

The Automotive sector is one of the key branches of the Polish economy. Its significance is reflected in the labor market. Around 180,000 people<sup>1</sup> work in the automotive manufacturing industry, making it the fourth largest industrial employer in the country.

In 2016 there were 677,000 vehicles produced in Poland, which is a 3.2% increase from 656,000 cars produced in the previous year.<sup>2</sup> In 2015 Poland ranked the eighth largest car manufacturer in the EU and the fourth in the CEE region<sup>3</sup>.

During the last decade the Polish market has attracted numerous Original Equipment Manufacturers (OEMs). Car production in Poland concentrates in two industrial hubs: Upper Silesia (Fiat and Opel facilities), and the Greater Poland region (VW).

This increase in vehicles production is partially driven by the number of OEMs, which have recently made investments in Poland. The most notable ones include:

- ▶ Production of the fifth-generation Astra started in GM's Gliwice facility in 2015;
- ▶ In 2016 a new Volkswagen facility in Września started the manufacturing of Crafter. Its expected capacity is 100,000 vehicles annually

In the coming years the Polish vehicle output is expected to increase with a 6% growth rate for 2017 and 2018<sup>4</sup>.

Domestic car sales are also on the rise. The number of new cars (passenger and LCV) sold in 2016 was ca. 476,000, which is 17% more compared with the previous year. Vehicle sales in 2016 were dominated by the VW Group's brands, with Skoda and VW in the first positions and Toyota claiming the third place<sup>5</sup>.

The number of vehicle sold is forecasted to grow in the coming years at an annual rate of 3.0% in 2017 and 2.3% in 2018<sup>6</sup>.

<sup>1</sup> GUS Data

<sup>2</sup> PZPM (includes commercial vehicles)

<sup>3</sup> ACEA.

<sup>4</sup> BMI Research

<sup>5</sup> PZPM

<sup>6</sup> BMI Research



## Business Services

Business Services Sector, consisting of BPO, IT, SSC and R&D companies, is one of the fastest developing industry in Poland. It benefits from global trend of centralization of back office functions, where availability of skilled and dedicated employees together with labor costs arbitrage are the most important factors when deciding about future locations of business.

During the last 5 years, Business Service Sector has become one of the largest employers in the country, with employment in year 2016 exceeding 212 thousand people working in over 930 companies with both Polish and foreign capital. The increase in the number of jobs in the last year exceeded 25%, which is more than in previous years.

Current dynamic development of the industry is happening thanks to both new centres being set-up, as well as the consistent employment growth within already established ones. Currently, there are 37 centres employing over

1,000 people each. The sector is on the rise from the perspective of its size, measured by the growing quantity of different types of centres, and the increase in new job openings. Industry is also evolving, rapidly increasing the complexity and quality of provided services.

Business Services Sector operates mainly (with 90% of workforce deployed there) in seven cities and metropolitan areas (MAs): Kraków, Warsaw, Wrocław, Katowice MA, Tri-city MA, Łódź and Poznań. In each of those, the sector employs over 10,000 people, with Kraków being the most saturated city, with over 50,000 people working there in that industry.

Forecasts for the following years are still very good. In the near future, Poland will remain a first choice location for centres for companies operating in the European market in general. It is estimated, that the total number of jobs in the sector will grow to 300,000 in 2020.



## Defense and aerospace

Poland has embarked on an ambitious plan of investment in and modernization of the Polish armed forces. Combined with the statutory target of military spend at 2% of the GDP (one of the highest among NATO countries, and intended to be raised in not-so-distant future), the outlook for the Polish Defense sector looks auspicious. In 2017 alone, Poland plans to spend USD9.3bn<sup>1</sup> on defense, 1.3% more than in record 2016. The budget for asset-related spending, such as armaments, military equipment, and investments in the NATO infrastructure, is USD2.6bn. The Defense sector is one of the growth drivers behind the government's key strategic program: Plan for Responsible Development. A regular expenditure on Defense of around USD10bn per annum is expected in the years to come.

Poland's military budget has a number of crucial components, including key priority areas and the Technical Modernization Plan (of the Polish armed forces). The former focus on development of an anti-missile defense system (Program "Wisla"), cyber security, investment in the Navy (acquisition of submarines; Program "Orka"), purchase of utility and attack helicopters (Program "Kruk"), build-up of the Territorial Defense (new military force), and enhancement of the command system and structure. The TMP, while dovetailing with the overall key objectives (e.g. the AMD), additionally

prioritizes investment in and technological advancement of air defense systems and armored and mechanized forces. Plans also include an increase in the number of troops up to 130 thousand (currently Poland has 49 thousand troops in the land forces; 16 thousand in the Air Force; 7 thousand in the Navy, and 30 thousand in other segments). Specific programs are designed to address all the key priorities.

The huge budgetary effort is very much aimed at modernization of the Polish defense industry. Poland has lately consolidated the sector under the umbrella of a holding company - Polska Grupa Zbrojeniowa (Polish Armaments Group). PGZ holds over 60 companies and has revenues of over USD1.25bn. Owned by the State (the Ministry of National Defense), the Group partners with foreign defense contractors for the large military programs and will be the main beneficiary of the Offset commitments that by law need to accompany any major military contract with foreign suppliers. The objective is to develop PGZ into an internationally competitive defense contractor embedded into global supply chains of the largest players in the industry who cooperate in modernization of the Polish army. Privately-owned defense companies will also have an important role to play, particularly in those niches where they can offer technologically advanced solutions and specialized components (e.g. Unmanned Aerial Vehicles or drones, and communications systems).

<sup>1</sup> The exchange rate: USD1 = PLN4.0

## Defense and aerospace

Major opportunities are available to foreign defense contractors as well as those indirectly supplying to the industry. They are primarily connected with the key priority areas and programs outlined above (AMD, the Navy, helicopters, NATO infrastructure, tanks and armored vehicles, medium- and long-range UAV's). They are most likely to involve those offerings that will support development of sovereign defense industrial and technological capabilities. Offset proposals that are part and parcel of large military contracts will be required to have a strong local industrial component. Other most desired elements include: transfer of technologies and know-how, co-production of armaments and/or military equipment, integration into supply chains / growth of exports. In awarding contracts Polish authorities stress that price and local content are the most important factors. Each major contract should be combined with an offset proposal, including:

1. Transfer of technology or know-how, along with economic rights or licensed rights, which ensures Poland's independence from foreign suppliers;
2. Maintaining or establishing in Poland capabilities to produce, maintain, service & repair arms, munitions and war material, which are critical to the national security of Poland.

Military contracts are subject to strict procurement rules, including specific

milestones and procedures, technical dialog, competitive basis, Offset laws. Decision-making process is impacted by complex procedures, defining priorities and political will, and has been proven time-consuming, with strong negotiation tactics.

Among the most successful domestic realizations carried out in the sector in cooperation with multinational contractors in the recent years are: the Anders tracked platform variant of the car combat infantry; the Krab self-propelled howitzer; the Rak mortar crawler, the Rosomak armored wheeled vehicle, and the modernization program of the Leopard 2 tank.

Prime foreign defense contractors investing in the industry include: Lockheed Martin (manufacture of the Black Hawk helicopter at Sikorsky / PZL Mielec), Finmeccanica / Leonardo / AgustaWestland (manufacture of the Gluzec helicopter, equipped with Spike rockets, at PZL Świdnik). In addition, PGZ has signed a number of letters of intent to support modernization programs and cooperation with the Polish defense sector, including with Raytheon, MEADS (Lockheed Martin), Thales, DCNS, Saab, Bell Helicopter (Textron), Boeing, Elbit, Leonardo-Finmeccanica, Kongsberg, Rheinmetall.

The largest annual event for the defense and security industry in Central and Eastern Europe is the International Defence Industry Exhibition (MSPO), and one of

## Defense and aerospace

Europe's largest trade shows dedicated to the defense sector. The MSPO is held annually in Kielce (southeast Poland) at the beginning of September.

### Aerospace

The Aerospace industry in Poland is one of the growing areas of the Polish economy. This growth is driven by (1) a global demand for products manufactured in Poland as well as (2) the local demand underpinning the increasing number of airline passengers and development of associated infrastructure.

Manufacturing in this industry is concentrated in the Polish Aviation Valley - a specialized industrial cluster in the South-East part of Poland with a concentration of aerospace manufacturers, scientific research centers and educational and training facilities, with over 100 operating companies and more than 23 thousand employees. The Aviation Valley generates ca. 90% of Polish aviation industry production. The production potential of the Aviation Valley has been dynamically increasing thanks to new direct investments by international corporations (almost USD 0.5bn since 2003). As a result, the total annual exports rose from USD 0.25bn in 2003 to USD 2.0 bn in 2014 (CAGR of +21%). Major Polish aviation manufacturers have been acquired by large multinational

companies, e.g. PZL Mielec (acquired by Sikorsky Aircraft Company), PZL Świdnik (acquired by AgustaWestland), etc. These companies tend to be located in the Aviation Valley and their portfolios include civil and military products.

Poland is also home to a number of aerospace component producers - PZL Rzeszów (United Technologies Corporation), Pratt & Whitney Kalisz (United Technologies Corporation), EADS PZL Warszawa-Okecie (Airbus Military). Due to the fact that the Polish domestic market is rather small and Polish aviation producers are owned by multinational players, the production and sales volumes are mainly driven by the global trends.

The growing number of airline passengers in Poland drives the development of airlines and companies servicing the air transport sector (e.g. handling, MRO). In 2016, Polish airports served over 34 million passengers and this number has been growing constantly since 2009. This growth was possible thanks to a significant development of infrastructure, with 15 airports currently operating in Poland. The Civil Aviation Authority forecasts that in 2030 the number of passengers will reach over 59 million (CAGR of +5.2%), which will further increase demand for associated aerospace products and services.



## Gas market in Poland

Consumption of natural gas in Poland amounts to ca. 15,5 bcm (billions of cubic meters) annually and has not changed significantly over the last ten years. Like most of the CEE region, Poland relies on a single gas supplier (Russia) for the majority of its natural gas import. However, this is about to change.

Past conditions have determined the mode of Polish transmission system construction in which its development was performed with the aim of facilitating the flow of Russian gas towards the western part of Poland. Major import points have been located on the eastern border (Drozdowicze, Wysokoje) as well as in the transit gas pipeline Yamal-Europe. These entry points have been used for the purpose of execution of a long-term import contract signed with Eastern gas suppliers. Over years, this led to a situation of a total dependence on gas supplies from one direction. In order to tackle this threat for security of gas supplies in the recent period Poland, and in particular the transmission system operator GAZ-SYSTEM, has undertaken a number of successful initiatives and ventures aimed at diversification of directions and sources of supplies. The major objective was to lower the dependence of Poland on Russian gas and foster the country's integration with other EU gas markets.

The success of these actions has been observed due to construction of cross-

border interconnection infrastructure (Lasów, Cieszyn, Mallnow - reverse flow) as well as launch of the LNG Terminal in Świnoujście, with the technical regasification capacity of 5 bcm/a which allows for satisfying approximately 1/3 of the total domestic demand by LNG sources from international markets.

While recent projects have played very important role, the reorientation and modernization of the Polish gas transmission system requires its further development, understood as completion of additional infrastructural investments that will completely change the gas landscape in Poland. In particular, these projects are:

- ▶ The Northern Gate
- ▶ Cross-border interconnectors
- ▶ Domestic infrastructure

### The Northern Gate

The so called Northern Gate, being by far the most important project, assumes development of the import infrastructure located at the Polish Baltic Sea shore, which is supposed to connect Poland with new, abundant gas markets. It can be achieved in two variants:

- (i) realization of the Baltic Pipe Project connecting Poland via Denmark with gas fields located at the Norwegian Continental Shelf,



## Gas market in Poland

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- (ii) increase in the LNG regasification capacity - applicable to both the existing LNG Terminal in Świnoujście and/or construction of a new Floating Storage Regasification Unit (FSRU) located in the Bay of Gdańsk.

### **Cross-border interconnectors**

In addition, Poland plans to continue actions aimed at integration of its gas system with neighbouring markets, allowing for both export and import of gas from these directions. The ongoing/planned investment projects include construction of the following infrastructure:

- (i) Poland - Lithuania interconnection,
- (ii) Poland - Ukraine interconnection,
- (iii) Poland - Slovakia interconnection,
- (iv) Poland - Czechia interconnection.

### **Domestic infrastructure**

Simultaneously with projects regarding the Northern Gate and cross-border interconnectors, Poland will continue the active development of the domestic infrastructure - particularly with respect to:

- ▶ major pipelines allowing for transmission of large gas volumes from any direction, and
- ▶ existing bottlenecks in the Polish transmission system.

Ambitious investment plans provide a unique opportunity for international firms who are involved in all areas of pipeline construction. Furthermore, realization of all the investments will secure that Poland will become not only fully independent from gas supplies from Russia, but it will offer very promising opportunities for large international companies active in gas trading and/or gas production.



## Information, communication and technology

Poland maintains its leading position as a near-shore destination for IT companies from Western and Northern Europe. Poland was also the 'number one' destination in the CEE region in terms of R&D projects, driven essentially by international software companies.

Additionally, the ICT industry influences growth of the outsourcing sector in Poland. The average year-on-year growth of this sector in Poland is estimated at around 20% and according to the Polish Information and Foreign Investment Agency more than 40% of all outsourcing centers in CEE are located in Poland. The key factor which makes the ICT sector one of the most innovative sectors in Poland is education. Well-skilled Polish programmers, investment in developing programming faculties at universities and promoting maths in the school education system are the features that put Poland at a noticeable advantage over other developing countries.

Based on the Global Competitiveness Index 2014-2015, Poland has already embarked on the task of shifting from the efficiency-driven to innovation-driven economy.

ICTs have evolved into the "general purpose technology" of our time, giving their critical spillovers to other economic sectors and their role as industry-wide enabling infrastructure. Therefore ICT access and usage are key enablers of the countries' overall technological readiness, and the ICT industry will play the most influential part of this transformation.

Growing financial support (EUR 82.5b from EU funds only) and the promotion of investment in new technologies will finally lead to Poland's success regarding innovations.

Currently the ICT sector in Poland seems inconsistent. On the one hand, the Polish e-commerce market is developing very rapidly - by 2018, the share of e-commerce in Poland should grow to 8% of the total retail trade. Poland holds the 10th position as the hub of the fastest growing companies on the EMEA technology market, and the video game market has 120+ game studios producing about 150+ games per year. Some of the most popular video games on mobile platforms are products designed by Polish developers.

On the other hand, Polish executives interviewed at the World Economic Forum pointed out low, firm-level technology absorption; the international competitive advantage based on low-cost labour or natural resources rather than unique products and processes; low R&D spend.

It seems that these contradictory opinions can be reconciled with one conclusion - the Polish ICT market is growing rapidly in the outsourcing area, delivering value to foreign investors, the SME sector is on the fast-track to growth, while traditional industries and the governmental sector have room for improvement by absorbing ICT technology to enhance their effectiveness, but when it comes it will be an additional booster for growth of the IT market in Poland.



## Infrastructure

Closing the infrastructure gap between the demands of modern society and the current capabilities are the main criteria of prosperity considered by key policy stakeholders in Poland. Investments in various types of infrastructure maintain the key role in convergence of Polish economy since the EU accession.

Pivotal role for the expansion of Polish infrastructure expenditures play EU cohesion and regional development funds as well as European Investment Bank & European Bank for Reconstruction and Development credit facilities. Since 2007 Poland is the single largest Member State - beneficiary of these support mechanisms. It is no exaggeration to say that virtually all significant investments in Poland are being implemented with direct or indirect EU co-finance.

According to current arrangements, for years 2014 - 2020 Poland will receive EUR 77.6 billion from EU structural funds, of which 27.4 billion will be spent through national Operational Programme Infrastructure & Environment. This facility will support most important national-level investments, such as construction of motorways and expressways, railways, public transport, seaports, waterways, as well as substantial investment in waste and water management systems or energy efficiency.

Reflecting devolution of Polish governance, great proportion of EU funds (more than 50%) are managed at regional level, through Regional Operational Programmes. Although their impact is visible at the local level, the aggregated amount of regional funds is as significant as those managed nationally.

Investments in road and rail infrastructure encompass the bulk of Polish government priorities in transportation and other public services. The worth of planned road infrastructure projects to be performed until 2023 amounts to EUR 35.7 billion, while rail infrastructure projects to be implemented in the same time period are worth EUR 15.2 billion.

### Rail infrastructure

Currently there are about 19 thousand km of railways in Poland. Over 90% of them belong to national infrastructure manager PKP PLK S.A. According to National Rail Programme for 2015 - 2023 timeframe, rail investment projects will be financed mainly from European Union Cohesion Fund (EUR 7.1 billion) and Connecting Europe Facility (EUR 4.2 billion), supplemented by European Regional Development Fund (EUR 1.6 billion) and governmental funds (PLN 2.3 billion). The main goal of investments is establishment of modern and consistent railway transport system.

# Infrastructure

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Particularly, investments aim at increasing transport effectiveness, security and quality. Programme encompasses implementing European Rail Traffic Management System, which will allow to increase capacity, international rail operations and increase the speed on selected lines to over 160 km/h. Around 8 500 km of railways will receive funding for various investments until 2023.

## Road infrastructure

Currently, there are 19 thousand km of national roads, including motorways and expressways. In the last 10 years length of expressways and motorways increased 3 times. Nevertheless, main disadvantages of national road network are lack of consistency, inability to carry load of 11.5 tonnes per axle on many road stretches and high traffic volumes going through built-up areas.

The sum devoted for road projects contains up to EUR 22.3 billion designated for the construction of motorways and expressways and EUR 2.2 billion for the construction of ring roads. Poland is obliged to complete construction of core TEN-T network, consisting of 3 890 km of roads, till the end of year 2030. Core and comprehensive network, 7 400 km long, is supposed to be finished by 2050.

## Airport infrastructure

Warsaw Chopin Airport is the main Polish international hub, supported by 14 regional airports which provide fine national and international connections.

All airports received substantial public and EU support (including greenfield projects) in years 2007 - 2013. In general, all facilities have modern land- and airside facilities and provide appropriate capacity.

Further investments shall be implemented basing on business case feasibility, except for improvement of airport security systems which will receive public support.

## Maritime and inland waterways infrastructure

Gdańsk and Gdynia are the main container hub in the Baltic Sea region with direct calls from Asia, whereas Szczecin and Świnoujście host new LNG terminal. However, the role of inland waterways is marginal.

Polish government plans to spend EUR 2.1 billion for development of inland waterways up to 2020. Seaports will receive public support for infrastructure projects amounting to EUR 2.7 billion. In particular, hinterland accessibility of seaports will be improved. These will be supplemented by private investments of terminal operators.



## Mining

The Polish mining industry is based on relatively big resources of 50 most important raw materials and produces substantial volumes of steam coal, coking coal and lignite, natural gas, copper, silver, zinc and lead, rock salt, sulfur, stone and ceramic raw materials. Deposits of these materials may be categorized into four groups: energy, metallic, chemical and stone raw materials. Although the economic importance of those groups varies, the energy raw materials continue to play a vital role in Poland's economy. Steam coal is still considered the strategic pillar of Poland's energy safety. Still, more than 80% of the country's electricity comes from coal and lignite. The location of the crucial deposits of power, metallic and chemical raw materials is determined by the geological structure of Poland. Most of them are located across the area of central and eastern Poland, along the line connecting Koszalin and Lublin.

Per World Mining Data 2016, Poland is classified in the top 20 largest countries in terms of production of mineral fuels, iron, ferroalloys, non-ferrous metals, precious metals and industrial minerals. In the previous decade, the production of nine minerals in Poland placed the country in the top ten of the world's producers of silver, brown coal, palladium, cadmium, coking coal, lead, sulfur, steam coal and copper.

Poland is one of Europe's top coal and copper producers.

### Coal

Poland is Europe's largest coal producer and a leading manufacturer on the global market. In 2011 coal production in Poland totalled 76.5m tons, compared to 79.8m tons in 2012, 76.5m tons in 2013 and 72.5m tons in 2014, accounting for 40 percent of total production in Europe (excluding Russia); with approximately 1 percent of the global share of coal output (applicable to steam and coking coal), Poland was the world's ninth largest producer (source: BP Statistical Review 2014 and World Mining Data 2016). The Upper Silesian, Lower Silesian and Lublin basins have estimated aggregate resources of 44b tons of coal, spread across approximately 128 deposits. The Upper Silesian basin represents a major portion of the Polish reserves, representing approximately 79 percent of total reserves across 110 deposits. Steam and coking coal are extracted in two regions of Poland: Upper Silesia (companies controlled by the State Treasury, i.e. Jastrzębska Spółka Węglowa S.A., Katowicki Holding Węglowy S.A., Polska Grupa Górnicza S.A.; and one company in the hands of a private investor, i.e. PG Silesia sp. z o.o.) and in South East Poland, near Lublin (company indirectly controlled by the State Treasury, i.e. LW Bogdanka S.A.). These two regions have the majority of the known coal deposits in Poland. Currently the state-owned companies operating in this sector are undergoing restructuring and significant organizational changes.

# Mining

## Copper and other metals

All of Poland's copper production comes from KGHM Polska Miedź S.A. KGHM extracts and processes copper and other valuable natural resources (including metals such as silver, molybdenum, palladium or nickel) with the largest European deposits of copper ore located in the south-western part of Poland. In Poland the production is sourced from three underground mines. Currently, the company boasts a geographically diversified portfolio of mining projects. KGHM has its facilities on three continents: Europe, the North and South America.

KGHM ranks among the world's largest producers of silver and copper. It is also the only company in Europe producing rhenium and ammonium perrhenate from its own resources.

In the last decades, Poland has experienced the strongest economic growth among the former Soviet bloc nations and has launched several economic initiatives, including the privatization of state-owned industries and the restructuring of the coal and heavy industry sectors.

The Polish mining sector continues to play a vital role in the Polish economy but faces several risks and challenges, including:

- ▶ ensuring the power energy safety (continuing the restructuring of hard coal mining and making a decision about developing 'clean' power energy based

on coal; seeking alternative sources of natural gas and crude oil importation and starting the exploration of unconventional sources of natural gas);

- ▶ the European Union's climate policy making it more expensive to produce energy from coal and pushing for the construction of new more efficient coal-fired plants that consume less fuel;
- ▶ margins are substantially dependent on market prices and production costs which are relatively fixed. Historically, the domestic and international markets for coal have at times experienced volatility, with periods of increased demand causing insufficient production capacity and higher prices and margins, as well as periods of excess supply, resulting in excess production and lower prices and margins (in recent years, with the global trends in coal prices, the Polish mining sector has faced many challenges in the area of financing its operations and restructuring).

Despite the risks and challenges, the Polish mining sector is still considered to be attractive for local and foreign investors who have recently invested or are considering their investments in copper and coal mining projects.



## Power and Utilities

The Polish electric power sector operates in line with all the EU regulations. The sector is subdivided into the following subsectors: power generation, transmission, distribution and sale to end clients. PSE which is wholly owned by the State Treasury is an independent transmission system operator. The market is dominated by four other entities which are controlled by the State Treasury: PGE, Tauron, ENEA and ENERGA. The four companies are integrated vertically and all of them are listed on the Warsaw Stock Exchange. Over the past few years, we have witnessed a change in the strategy of international energy corporations and sale of their assets in Poland - Vattenfall sold its CHP facilities to the gas incumbent - PGNiG. Vattenfall's distribution and sales companies were sold to Tauron. Engie is in the process of selling its power generation assets to ENEA; EDF will also most probably sell its power generation assets to entities controlled by the State Treasury. RWE (Innogy), Fortum and Veolia continue to expand their business operations in Poland.

Each of the integrated companies has its own distribution system operators; in addition, most of them (except for Energa) also have own lignite mines or hard coal mines.

The intensive development of renewable energy sources supported by a system of green certificates was slowed down in 2016 as a consequence of new regulations. That is particularly true about the wind energy but it should be also kept in mind that the installed capacity in windmills as at the end of 2016 exceeded the government figures by more than 40%. With a new support system based on auctions, the government is able to steer the development of the RES technologies, with biomass and biogas installations being the preferred ones at the moment.

A high market share of subsidised energy from renewable energy sources (RES-E) lowers the market prices and the use of the installed capacity of conventional units based on coal and gas. As a consequence, there is a revenue gap for conventional energy generation - a phenomenon that is observed in many EU countries. That, in turn, poses a threat that some power generation units will be liquidated prematurely for economic reasons; it also hinders decisions on launching investment projects in new conventional powers. PSE's forecasts expected capacity shortages already in the coming years which was an incentive for introducing capacity mechanisms and starting preparations for the introduction

## Power and Utilities

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of the capacity market. The Ministry of Energy is working on draft regulations on the capacity market which it intends to enact in 2017; nevertheless, before those regulations are enacted, they must be approved by the European Commission.

Works are also under way with regard to the method of implementing the EU goals for 2030 concerning energy, climate and the environment, including the role of nuclear energy. The legislative proposals of new EU regulations, presented in the so called Winter Package in November 2016, will also be a big challenge for the Polish electric power sector.



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