

Doing business in Poland

Advicero Tax Nexia



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Foreword

Advicero Nexia is a consulting company providing comprehensive advice covering tax advisory, accounting and payroll outsourcing services, VAT compliance and corporate services. Through cooperating entities we offer as well legal services and financial audit.

Advicero Nexia has been created by consultants having extensive experience in advising Polish and international clients. Our goal is to apply the highest quality and standards of services on the level known from international advisory firms, offering them at the fee level tailored to meet the specific needs of our Clients. Having the background of working in the strongest advisory practices in Poland, we know not only how to provide the Clients with the highest quality advice, but also how our Clients' business works. Thanks to that we are able to address and match our Clients' needs and we can flexibly adapt to changing demands the Clients' business may bring.

Our experience determines the scope of our advice, which covers in particular, but is not limited to:

- strategic tax advisory for real estate and construction, retail and FMCG, e-commerce, renewable energy, technology, manufacturing, trade, energy sectors,
- tax advisory and compliance for investment and private equity funds,
- transactional advisory and restructurings,
- management remuneration schemes,
- tax reviews, transfer pricing studies,
- accounting and payroll outsourcing.



We provide our services in Polish, English, German and Italian.

Our mission is to support the business of our Clients and to provide them with necessary advice, allowing them to run their business activities in an optimal and safe way.

Our approach is to render our services to our Clients with the highest professional care, providing to you the right people and the right mix of services.

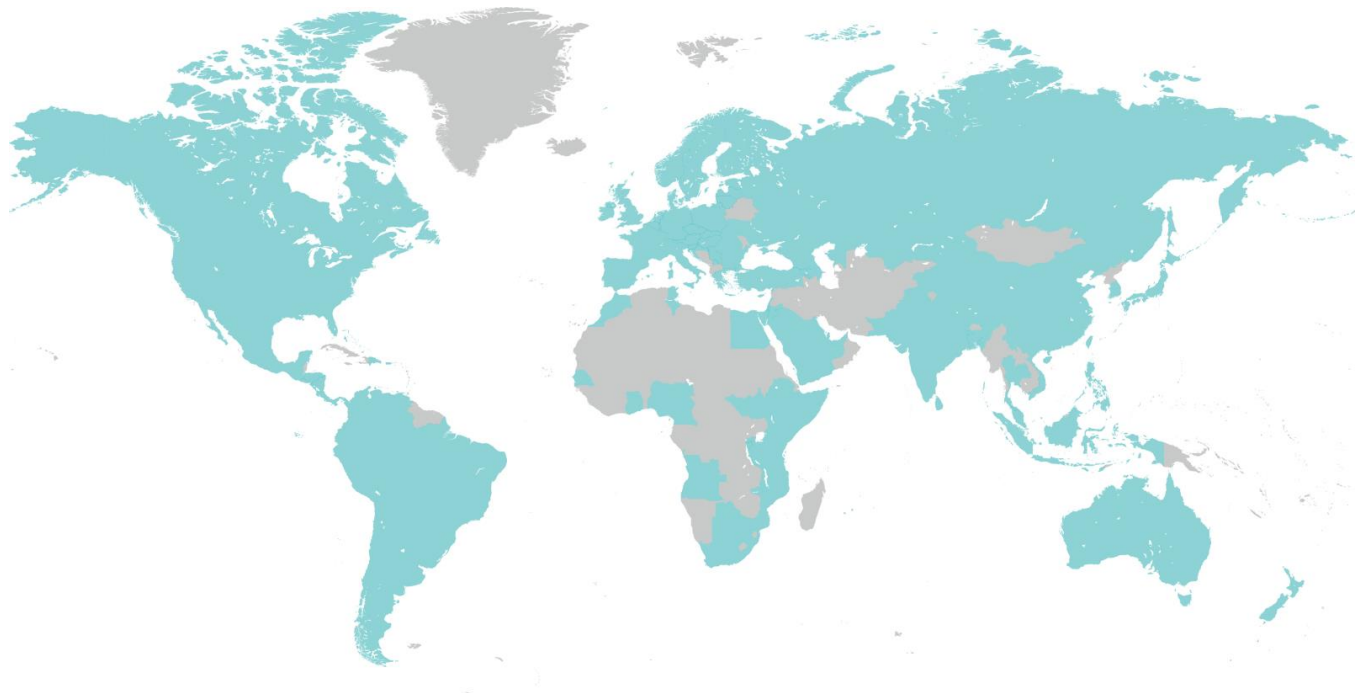
This brochure provides general information on the Polish business environment and the Polish tax and legal system.

This brochure does not constitute legal or tax advice and shall not be considered as such. Unless Advicero Nexia advisers are consulted before using the information presented in this publication, Advicero Nexia shall not be held responsible in case of use nor for the results of decisions taken on the base of this publication.

Professional advice should be obtained before acting or refraining from acting based on the contents of this publication.

Nexia International

Advicero Nexia is associated with Nexia International, a leading worldwide network of independent, high quality accounting and consulting firms (www.nexia.com).



Firms associated with Nexia International have more than 580 offices in over 100 countries. Nexia member firms provide clients with national and international audit, accounting, tax and advisory services in a cohesive, personal and customized manner.

An active network: Nexia International is a highly active network that drives quality and facilitates collaboration to enable its member firms to provide effective local and global solutions.

Partner-led service: Nexia member firms deliver a partner-led service to clients which ensures continuity, expertise and a deep understanding of the client's business.

Business minded: Nexia member firms are characterised by people who have an entrepreneurial spirit and who can relate closely to the SME and owner-managed businesses.

Supporting international growth: Nexia firms are focused on supporting local businesses as they grow and through the Nexia International network, they can also help their clients confidently venture into new international markets.

Key personnel

Katarzyna Klimkiewicz-Deplano, Partner, Tax & Accounting



- Real Estate, Renewable Energy, Retail, E-Commerce, Manufacturing
- Strategic transactional advisory, tax structuring, accounting advisory

Sławomir Patejuk, Partner, Tax



- Manufacturing, Renewable Energy, Automotive
- Intra-community VAT transactions, VAT planning and compliance, tax structuring

Aleksandra Woś, Director, Tax



- Retail, E-Commerce, new technologies
- Strategic tax planning, tax schemes, tax safety procedures planning and compliance, tax structuring

Aneta Bugalska, Senior Manager, Accounting & Payroll



- Accounting of international companies, payroll, reporting
- Tax compliance, accounting and reporting both in accordance with Polish law as well as IAS and US GAAP



Chapter 1 Introducing Poland

Poland in figures

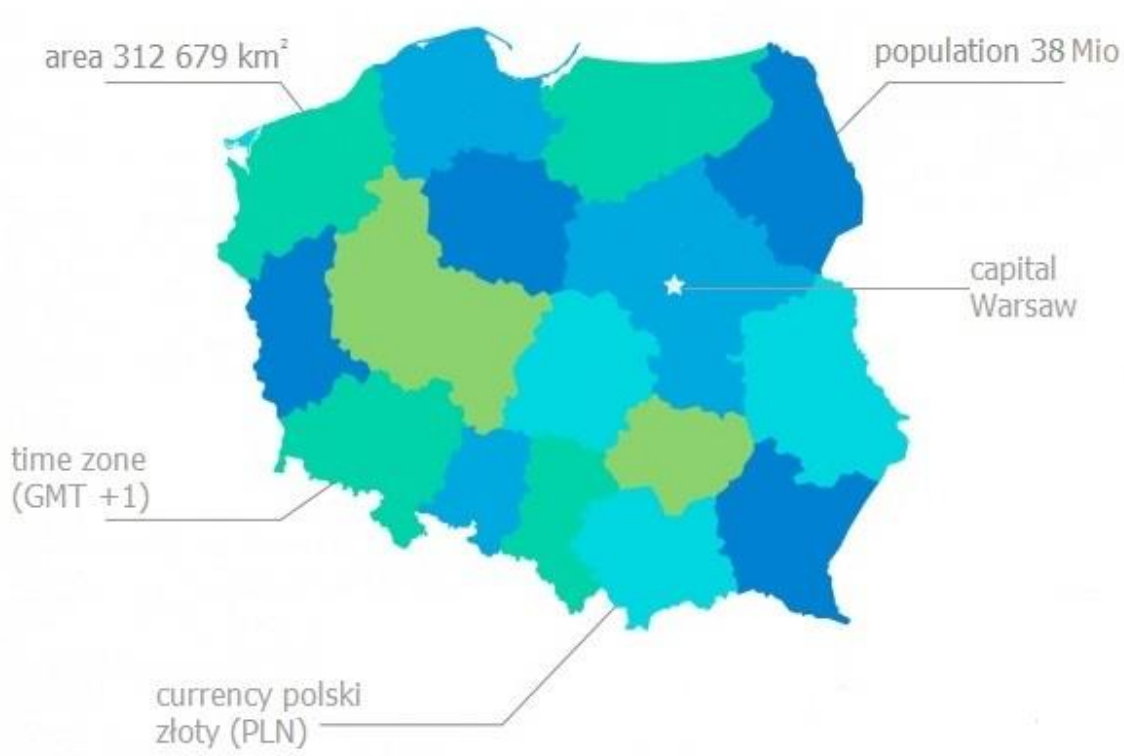


Figure 1. Poland in figures; source: http://www.paih.gov.pl/poland_in_figures

Political system

Political system of Poland is parliamentary representative democratic republic. There is multi-party system where Prime Minister is the head of government and President is the head of state. Executive power is exercised by the President and the government, which consists of a council of ministers led by the Prime Minister. Members of government are chosen by the majority formed in a parliament (Sejm). However it is not the rule and many exceptions are known by history. Formally government is announced by the President and must obtain 'motion of confidence' in Sejm within two weeks.

Legislative power is vested in two chambers of parliament (Sejm and Senate). Members of Sejm are elected by proportional representation. As a rule, parliamentary elections occur every four years.

Legal system

The Polish law is composed of private and public law which are codified. Supreme law is Constitution of Poland. Polish law is created by Polish parliament (Sejm and Senat).

Polish public and private laws are divided into various areas, including, for example:

constitutional law
copyright law
family law criminal law
civil law media law
labour law
commercial law
administrative law
private international law
water law tax laws

Language

Official language of Poland is Polish, although there are other regional languages like Kashubian strongly similar to Polish.

Economy



Poland is the eighth-largest economy in the UE and the largest economy among the ex-communist members of the European Union. Before the late 2000s global crisis, Polish economy growth was 6% per year.

Exports in Poland increased to PLN 461,645 million in June 2018 from PLN 438,009 million in June 2017. Exports in Poland is reported by the Central Statistical Office of Poland (GUS).

From the beginning of the past decade, Poland's foreign trade turnover increased almost ten-fold. Poland is a net exporter of food and manufactured goods. Poland is also an exporter of electromechanical products (almost 38% of total export): machines, devices and transport equipment. Main export partners are Germany, UK, Czech Republic, France and Italy.



Business hours

The usual business working day in Poland is an 8-hour day, which results of 40 hours per week. These general rules are provided by Polish Labour Law.

Chapter 2 Business entities

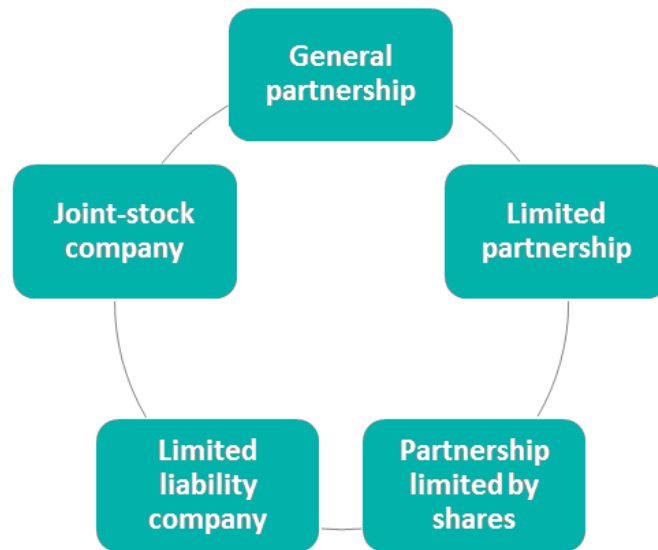
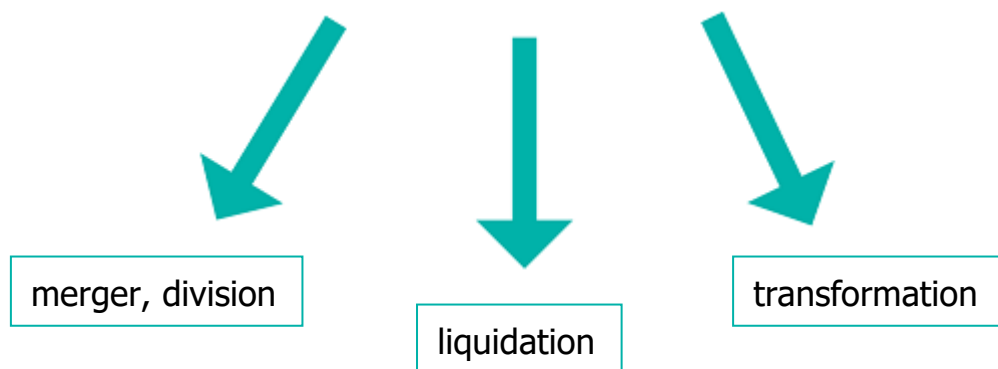


Figure 2. Entities carrying business activity in Poland

According to the Polish Law (Polish Code of Commercial Companies) the pursuit of an economic activity by entrepreneurs can be performed in form of entities, which in most cases can be identified as one of the following categories:

- **General partnership:** two or more partners, unlimited liability of partners,
- **Limited partnership:** two categories of partners – a limited partner, responsible for liabilities up to the amount stated in the partnership agreement, and a general partner with unlimited liability,
- **Partnership limited by shares:** two categories of partners – a shareholder and a general partner (unlimited liability), share capital of at least PLN 50,000,
- **Limited liability company:** share capital of at least PLN 5,000,
- **Joint-stock company:** share capital of at least PLN 100,000.

The Polish Code of Commercial Companies regulates in detail such restructuring operations as:



Main types of business activity in Poland



Polish law provides for free business activity for every entrepreneur which means that everyone has equal right to choose relevant type of business activity that suits to his/her business.

The most common types of business activity are commercial companies, in particular the limited liability company (about 84% of all entities) and general partnership.

General partnership

Preferred form for micro- and small businesses conducted by at least two entities. Basic form of business activity in Poland, type of commercial partnership.

It has no legal personality, although it has legal capacity (which means a right to acquire rights and incur obligations on its own behalf) and judicial and procedural capacity. What is important, general partnership has no minimal capital required. Partnership shall be founded by at least two: (i) natural persons, (ii) legal persons, (iii) organizations without legal personality to which the applicable laws have granted legal capacity.



These partners may contribute property, rights or services to partnership as its own capital. Each partner may represent the partnership individually (unless the articles of association provide different rules of representation). The main disadvantage of a general partnership is liability of partners – if the partnership is unable to pay its

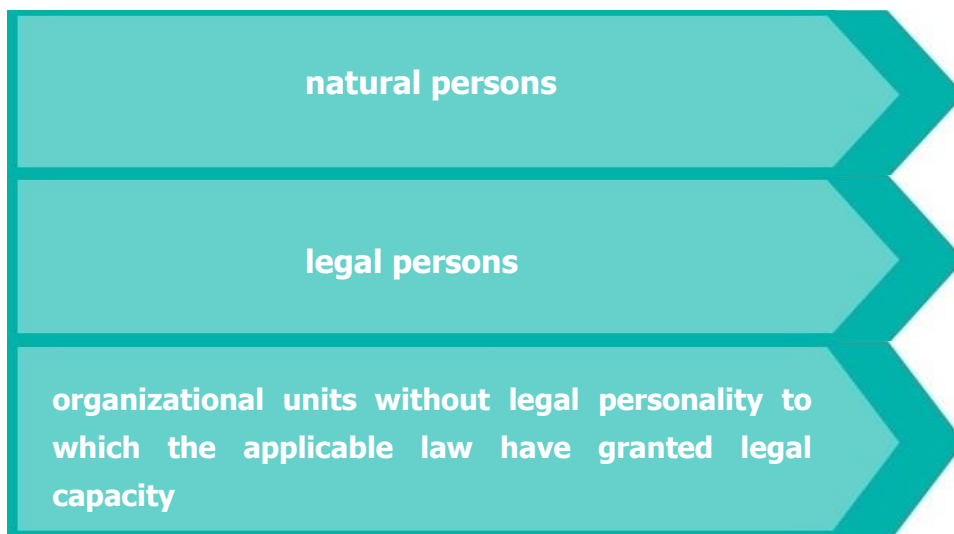
obligations, the partners bear unlimited liability (i.e. including private assets) for these liabilities.

Partnership does not pay income tax, income tax is calculated on the level of the partners.

Limited liability company (LLC)

A commercial company preferred for entities or individuals who want to exclude their liability for company's obligations. One of the most popular forms of business activity in Poland.

It has legal personality, may be established by one or more entities among:



LLC articles of associations must be prepared in form of a notarial deed. The minimal share capital of a Polish LLC is PLN 5,000, and cannot be contributed by non-transferable right to perform work or services.

LLC shall be obliged to establish a management board and optionally a supervision body (obligatory only if the number of shareholders exceeds 25 and the share capital exceeds PLN 500,000).

Shareholders do not bear any liability for company's obligations. Their risk is limited to assets contributed in the company.

The company is a taxpayer of corporate income tax (19% or 9% for so-called small taxpayers or some taxpayers starting their activity).

Joint-stock company

Preferred type of business activity for companies with many shareholders, suitable for large scale businesses. Obligatory form for banks, insurance companies and general pension societies.

It has legal personality, may be established by one or more entities among: (i) natural persons, (ii) legal persons, (iii) organizational units without legal personality to which the applicable law have granted legal capacity.

Joint-stock company's articles of associations must be prepared in form of a notarial deed. The minimal share capital is PLN 100,000 and cannot be contributed by non-transferable right to performance of work or services.



There are two types of shares: registered shares and bearer shares. The bearer shares certificates may not be issued before full payment is made, registered shares may be issued before full payment. There are differences in ability to dispose each type of the shares.

Joint-stock company is obliged to establish both a management board and a supervision body.



Shareholders do not bear any liability of company's obligations – their risk is limited to assets contributed in the company.

The company is taxpayer of corporate income tax (19% or 9% for so-called small taxpayers or some taxpayers starting their activity).

Chapter 3 Company formation and administration

Forming a company

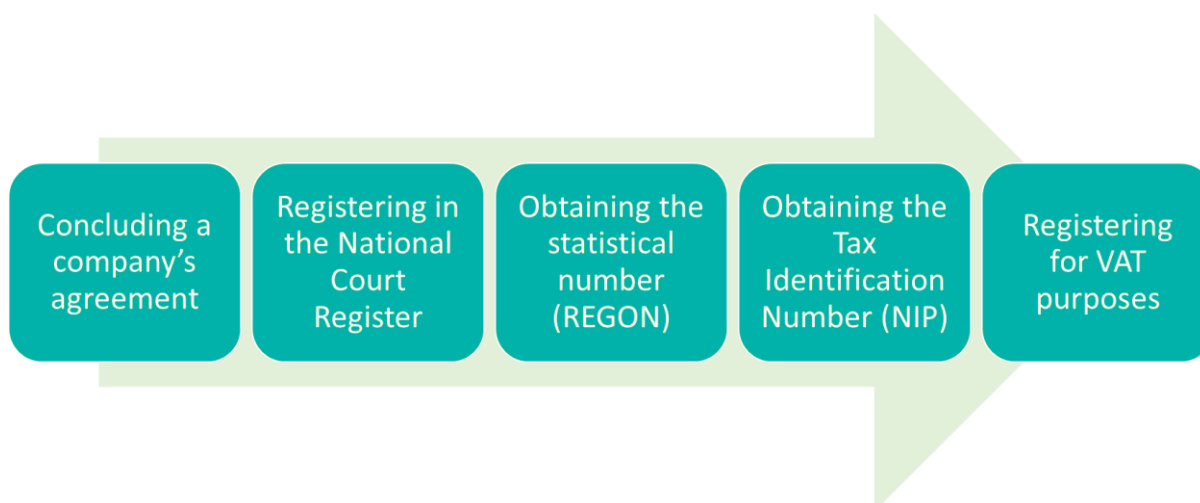


Figure 3. Steps of forming a company

To form a company, businesses need to face some bureaucratic and legal steps. Two alternative procedures are available for registering a company in Poland:

A. Standard procedure

First, an entrepreneur shall conclude company's articles of association and then sign it before a notary. The next step in the company's formation is registration in the National Court Register (NCR), which follows after submitting relevant forms to the court.

B. 24-hour procedure

The company is registered online, using standardized Articles of Association. Within 24 hours NCR is supposed to confirm registration of a company, indicating its registration number.

At the time of registration in the NCR the company is granted a statistical number (REGON) and a tax identification number (NIP).

The company must register for VAT by the date when it carries out VAT-covered business activities for the first time. The registration is effected before the competent tax authorities.

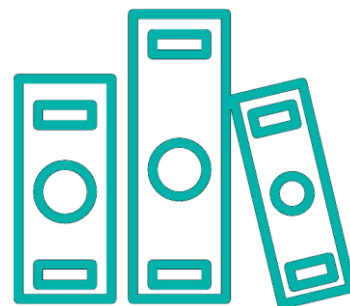
Chapter 4 Financial reporting and audit requirements

Reporting and audit requirements

Polish accounting principles are regulated by the Accounting Act dated 29 September 1994.

The Accounting Act regulates:

- principles of maintaining accounting books,
- timing and procedures related to stock taking,
- valuation of assets and liabilities and determination of a financial result,
- business combinations,
- consolidation procedures,
- auditing and publishing financial statements,
- protection requirements,
- financial statements formats.



Specific accounting areas such as financial instruments, consolidation of financial statements, accounting for banks, insurance companies, investment funds and pension funds are additionally regulated by regulations issued by the competent minister. Moreover, the Polish Accounting Standards Committee has been established to prepare and issue the National Accounting Standards.

The Accounting Act's rules are binding for the following entities that have their registered office or place of management in Poland:

- commercial companies,
- natural persons, civil and general partnerships of natural persons as well as professional partnerships, if their net revenue from sale of goods, products and financial operations for the preceding financial year amounted to at least the Polish currency equivalent of EUR 2,000,000,
- entities operating under: Polish Banking Law, regulations on trading in securities, regulations on investment funds and management of alternative investment funds, regulations on insurance and reinsurance, regulations on credit unions

and/or regulations on the organization and operation of pension funds, regardless of their revenue,

- communes, districts, provinces and their associations, as well as state, communal, district and provincial entities such as public sector entities, auxiliary units of public sector entities or public sector organizations,
- unincorporated business units, with the exception of partnerships referred to above,
- branches and representative offices of foreign businesses as defined by the regulations on the freedom of enterprise,
- entities other than those specified above, if they receive subsidies or grants from the State budget, budgets of local authorities or special purpose funds for performing tasks assigned to them – from the beginning of a financial year in which those subsidies or grants were awarded.

Polish bookkeeping rules do not differ significantly from those commonly adopted worldwide (entries have to be documented, are made on a double entry basis, chronologically and mainly on a historic cost basis). Since 2002 the Accounting Act has been undergoing significant changes to bring Polish accounting practices closer to the International Financial Reporting Standards (IFRS). However, due to many changes in IFRS, differences continue to exist between the Accounting Act and IFRS. In areas unregulated by the Accounting Act or National Standards, reference may be made to IFRS.

Accounting books should be kept and financial statements prepared, as a rule, in the Polish language and expressed in the Polish currency. Each entity is obliged to maintain accounting books and other documentation which, in particular, contains a description of the entity's accounting principles and rules for keeping subsidiary ledgers and their link to general ledger accounts.

The management board is responsible for fulfilment of accounting obligations specified in the Accounting Act, including a supervisory obligation, even if certain accounting obligations have been delegated to another person.



All entities governed by the Accounting Act are obliged to prepare financial statements for each financial year (not necessary the calendar year). The annual financial statements comprise of a balance sheet, income statement, notes to financial statements (including an introduction to the financial statements and additional notes). Financial statements which are subject to an audit, include also a statement of changes in equity and a cash flow statement.

In addition to the financial statements, some entities (among others joint-stock companies, limited liability companies, insurance companies, co-operatives and state-owned companies) are obliged to prepare a management board report on the company's activities commenting on, inter alia, financial and economic situation of the company.

In Poland it is allowed, and in some cases required, that IFRS should be used as the reporting framework. The obligation to prepare consolidated financial statements in compliance with IFRS has been imposed on banks and entities allowed to trade in the regulated markets of EEA countries. The following entities, in turn, have the possibility of drawing up standards compliant with the IFRS: entities that applied for permission to list on a regulated market in Poland or other EEA country, entities that are part of a group where the parent entity prepares consolidated financial statements for statutory purposes in accordance with IFRS, subsidiaries of a foreign entity if this entity compiles financial statements based on IFRS.



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

- banks, insurance companies, investments and pension funds joint-stock companies,
- other entities that meet at least two of the following three thresholds in a financial year preceding the financial year for which the financial statements were drawn up:
 - average annual number of employees, by full-time equivalents, reached or exceeded 50 people,
 - total assets as at the end of the financial year reached or exceeded the Polish currency equivalent of EUR 2,500,000,
 - net sales of products and goods for resale, plus income on financial transactions for the financial year reached or exceeded the Polish currency equivalent of EUR 5,000,000.

Financial statements prepared in accordance with IFRS are subject to mandatory audit. The statutory audit requirements also apply to entities after merger for the year when the merger occurred.

The audit of statutory financial statements is conducted in compliance with the Chapter 7 of the Accounting Act, Auditors Act and the national auditing standards issued by the

Polish Assembly of Statutory Auditors (PIBR). In Poland, a list of statutory auditors authorized to sign auditor's opinions and reports, as well as subjects authorized to conduct audits, is kept by the PIBR.

Reporting deadlines



Figure 4. Statutory deadlines for a company with a fiscal year covering the calendar year

Annual financial statements shall be prepared within three months from the balance sheet date and approved by shareholders within six months following the end of the financial year.

The approved financial statements shall be filed in the relevant National Court Register within 15 days from the approval date.

Non-compliance with the above deadlines is penalised.

Chapter 5 Company taxation

Resident companies

Taxation of companies is regulated by the Act on Corporate Income Tax ("CIT"). CIT applies to all legal entities, including:



- companies (limited liability, joint stock companies),
- companies in organization,
- entities with no legal personality (with the exception of partnerships),
- foreign entities with no legal personality, provided that they are treated as companies and are subject to unlimited tax liability in their home countries,
- Polish limited joint-stock partnerships.

Residents vs. non-residents

As a general rule, Polish CIT must be calculated on:

- revenues gained anywhere in the world – for taxpayers who have their seat or management in Poland (tax residents),
- revenues gained on the Polish territory – for all other taxpayers (being non-residents).

Tax year and reporting

A tax year is equal to the calendar year, unless determined differently in the articles of association of a taxpayer and duly announced to the competent tax authority.

CIT is calculated in annual periods. The annual CIT return shall be filed until the end of a third month following the end of the tax year. In the course of the tax year CIT advances are due, monthly or quarterly.



Tax rate and taxable basis

There are two different CIT rates foreseen for CIT taxpayers: 19% and 9% (the latter applies since January 2019 and applies only to the so called 'small entities' or some entities beginning their activity). Penalty tax rate of 50% may be applied in certain

situations for profit adjustment in relation to transactions concluded with related parties (transfer pricing). Other rates may apply to non-residents or under double tax treaties.

Since January 2019 it is also possible to take advantage of a special regime, so-called "Innovation Box", where income from qualified rights is taxed with a preferential CIT rate of 5%. Qualified rights include intellectual property rights subject to legal protection on the basis of separate acts or ratified international agreements, such as: patent, copyright to a computer program. The taxable amount is a sum of qualified income calculated in accordance with an indicated formula, application of a reduced tax rate is conditioned by keeping accurate accounting records related to intellectual property.

Taxable incomes (calculated separately for capital gains and other income) are determined as a difference between taxable revenues and tax-deductible costs for each source. Expenses are tax-deductible if they are related to earning (securing, sustaining) taxable revenues, exceptions to this rule apply (e.g. there are restrictions on deductibility of expenses paid to related parties for intangible services and use of trademarks).

Capital gains and other income



Incomes are divided into two separate sources: capital gains and other (ordinary) incomes. This means, in particular, that if a taxpayer generates ordinary income as well as a capital gains loss, tax will need to be paid on the income, while the loss may be deducted in the future tax years from the capital gains incomes.

The CIT Act lists items that should be included in capital gains: dividends, dividend-like incomes, incomes from sale of shares/stock and a number of other, generally non-operating incomes.

Interest deduction

According to Polish income tax regulations only interest paid or capitalized can be deducted for tax purposes. Conversely accrued interest does not constitute tax deductible cost.

In the case where interest is related to acquisition or construction of fixed assets such interest accrued before the date of putting the fixed asset for use can be deducted through depreciation write-offs.

Pursuant to 'thin capitalization' restrictions interest (and other costs of external financing) should be treated as non-deductible in the part in which the excess of financing costs exceeds 30% of the difference between the sum of revenues from all sources (decreased by interest revenues) and sum of tax deductible costs (decreased by depreciation and interest expenses). The thin capitalisation rules cover financial costs paid to related- as well as un-related parties.

The restriction does not apply to excess of financial costs that is equal / lower than PLN 3,000,000 in a tax year. It also does not apply to financial institutions. Costs non-deductible under the above rules in a given tax year may be deducted in any of the following 5 tax years (provided that the above rules are met in these future years).

Capital assets

Costs related to acquisition or construction of any fixed asset are to be capitalized into the initial value of a fixed asset and to be deducted through depreciation write-offs.

A "fixed asset" is an asset with initial value over PLN 10,000 and expected useful life of 1 year or more. Applicable depreciation rates depend on the type of assets. In the table below we indicate some examples of depreciation rates.

Type of asset	Depreciation rate p.a. (%)	Depreciation period
buildings	2.5	40 years
office equipment	14	86 months
computers	30	40 months
motor vehicles	20	5 years
plant and machinery	7 to 20	5 to 14 years
intangibles	20	5 years

Double taxation relief

Poland concluded Conventions on Avoidance of Double Taxation (so called Double Taxation Treaties, DTT) with approx. 90 countries over the world.

DTT provide for rules for determination of the extent of taxation in the case of income sourced in on state, received by a resident of the other state. In particular, DTT are applicable to income taxes (Polish Corporate Income Tax and Personal Income Tax).

For example, the DTT concluded between Poland and Germany provides for the following withholding tax rules with respect to dividends, interest and royalties:

- 5% on dividends paid to companies, with at least 10% of participation,
- 15% on dividend paid to other entities,
- 5% on interest,
- WHT exemption exemplary on interest paid by or for benefit of a government, also on interest paid with regard to a credit granted by banks,
- 5% on royalties.

In addition, Poland is a party to Multilateral Instrument to Modify Bilateral Tax Treaties (MLI). MLI were created in order to act against tax base erosion and profit shifting, by implementing the tax treaty-related measures in existing bilateral tax treaties in a synchronized and efficient manner. These measures prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of permanent establishment status and neutralize the effect of hybrid mismatch arrangements.

Many OECD countries, including Poland, have signed the MLI, which as a result has a significant impact on the worldwide network of tax treaties. MLI modifies tax treaties concluded between parties of MLI and for which both parties have made a notification that they wish to modify the agreement using the MLI, so called "Covered Tax Agreement".

MLI may modify such areas as withholding taxes (e.g. dividend payment), real estate clause, Principal Purpose Test, Mutual Agreement Procedure, limitation of benefits, restrictions on use of hybrid structures, switch-over clause.

Starting from 1 January 2019 some conventions concluded by Poland have been already changed (in whole or only to some extent) and there are still changes to follow during the year and in the future when more countries will participate in MLI.

Withholding tax

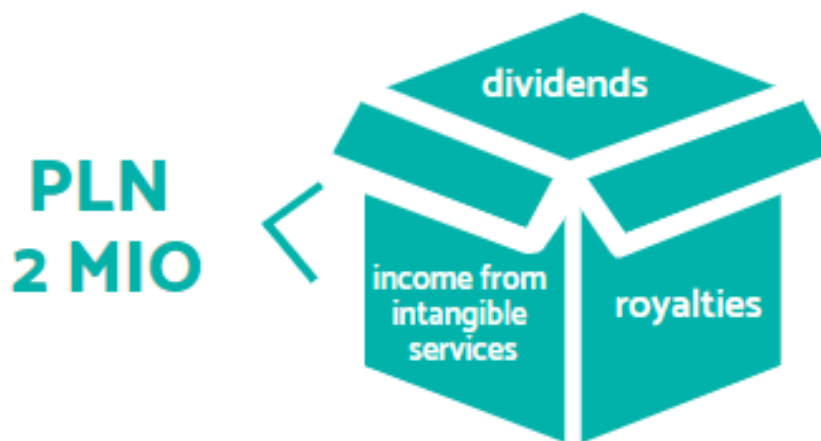
Dividend distributions are generally subject to 19% withholding tax levied on the gross distribution amount, unless a DTT provides otherwise or exemption resulting from the EU Parent-Subsidiary Directive is applicable.

Payments of interest and royalties to foreign companies are subject to 20% withholding tax unless a DTT provides otherwise or exemption resulting from EU Interest-Royalty Directive is applicable.

Also the 20% withholding tax rate applies to fees paid for certain intangible services (e.g. advisory, accounting, market research, legal assistance, advertising, management

and control, data processing, employees recruitment and personnel obtaining services, guarantees and suretyships and other similar services), unless the relevant DTT 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.

Starting from July 2019 modified rules of collecting WHT apply. In case of payments exceeding PLN million given tax year (to a given contractor) application of WHT exemption or reduced rates is either not possible at all, or is conditioned upon meeting additional specific requirements.



Inbound dividends

Dividends received from a foreign subsidiary are generally subject to 19% CIT. Dividends received from a subsidiary located in another EU (European Union) or EEA (European Economic Area) Member State can be exempt from income tax in Poland, if some requirements are met, in particular if the Polish parent has been holding a minimum 10% capital participation in the subsidiary for an uninterrupted period of at least two years (this period may be completed after the payment). This also applies to permanent establishments of non-resident EU/EEA companies located in Poland when they receive dividends from another EU/EEA resident company. In the case of a Swiss subsidiary the required minimum participation is 25%.



In other cases of inbound dividends, exemption or lower withholding tax rates may result from DTT. Tax credit (both direct and underlying) may also be applicable, depending on a number of requirements under both domestic rules and DTT.

Use of tax losses

Tax losses can be carried forward and deducted from income of the source in which the loss arose within five consecutive tax years. In a given tax year, as a rule, no more than 50% of a tax loss of a given year can be used, although it is also allowed to deduct in one year, at once, up to PLN million of a tax loss. No carry back of losses is possible. Tax losses get forfeited in case an entity is taken over or divided, also if an entity is transformed (apart from transformation of an LLC into a joint-stock company or vice versa).

General anti-avoidance provision

The Polish tax regulations provide for a general anti-avoidance clause. According to these rules GAAR applies in case of an activity performed in an artificial way or for the purpose of achieving tax benefit, which was inconsistent with the subject or purpose of applicable tax law. In addition, tax advantage is defined as:

- avoidance, postponement or decrease in tax liability,
- creation or over-declaration of tax loss,
- creation or over-declaration of tax overpayment or right to tax deduction,
- no obligation to collect tax by the tax remitter (since 2019).

Some amendments to GAAR regulations have been introduced as of January 1, 2019, which generally increase the impact of the anti-avoidance rules.



To determine if a given activity is artificial it should be considered if – basing on existing circumstances – one could assume that it would not have been performed by a person/entity acting reasonably and being guided by lawful objectives other than deriving a tax benefit at variance with the subject matter and purpose of a given rule of a tax act. The following elements should be taken into consideration for purpose of assessing artificiality of a given action:

- unjustified division of transactions;
- engaging of intermediary entities despite lack of either economic or business grounds;
- elements resulting in state identical (or similar) to the state existing before performing a given act;
- elements mutually ineffective or compensating each other; or
- economic risk exceeding the expected benefits other than the tax benefits to such a degree that it shall be deemed that a person/entity acting reasonably would not choose this way of action,

- occurrence of an economic risk exceeding the expected non-taxable benefits, to the extent that the reasonably acting entity would not choose that method of action,
- occurrence of a situation in which the achieved tax advantage is not reflected in the economic risk or cash flows incurred by the entity,
- pre-tax profit that is insignificant compared to a tax benefit which is not directly attributable to the actual economic loss,
- engaging an entity that does not conduct a real economic activity or does not have a significant economic function.

There are also situations foreseen when the general anti-avoidance clause should not apply, i.e.:

- to an entity which obtained a securing opinion (or the opinion was not issued within the regulation period) – to the extent covered by the opinion, until the day of serving either revocation or amendment of the securing opinion (cost of such an opinion amounts to PLN 20,000 and such an opinion should be issued within 6 months),
- to VAT, as well as fees and non-tax budgetary dues.



As a result of applying the clause the tax authorities are entitled to determine tax consequences as if the appropriate activity was performed, i.e. an activity that could be performed by a person/entity acting reasonably and with lawful purpose in mind other than obtaining tax benefit at variance with the aim and subject matter of a tax rule.

Similar regulations provide also for anti-avoidance rules related to specific transactions e.g. for mergers, divisions or exchange of shares, which are included directly in income tax regulations – so called “small GAAR”. Both GAARs starting from January 1, 2019 may be applied jointly.

Transfer pricing

Poland has implemented transfer pricing rules based on arm’s length principle (market level of prices applicable). Poland generally follows the OECD’s Transfer Pricing Guidelines with respect to the methods to assess profits. The requirements for documentation in the case of transactions with related companies and the penalty regime for transfer pricing adjustments are relatively restrictive.



Additional income assessed as a result of a TP adjustment may be subject to a penalty rate of up to 30%.

From January 2019 new thresholds obliging to preparation of so-called local files apply, i.e. PLN 10 million for transactions concerning tangible assets or financing, and PLN 2 million concerning services or other transactions. However, in the case of transactions carried out with entities located in the so-called tax havens a lower threshold of PLN 100,000 applies.

Exceptions to the obligation to prepare transfer pricing documentation are also introduced. The following transactions, among others, are exempt from this obligation:

- transactions concluded by related entities having their domicile, registered office or being managed in Poland in a given tax year, in which each of these related entities does not benefit from tax exemptions and did not generate tax loss,
- transactions covered by an obtained advance pricing arrangement (APA),
- transactions, which are permanently recognized neither as taxable revenues nor tax deductible costs,
- transactions concluded between companies forming a tax group in Poland.



The obligation to prepare so-called group documentation applies to entities that fulfill following three conditions cumulatively: (i) they are obliged to prepare local files, (ii) they belong to a capital group with an obligation to prepare a consolidated financial statement, and (iii) they belong to a capital group with consolidated revenues of above PLN 200 million in the previous financial year.

The deadline for preparation of transfer pricing documentation is 9 months from the end of a tax year for local file and 12 months from the end of a tax year for group documentation.

In addition, some safe harbours are applicable, i.a. simplified solutions for some transactions with related parties, like:

- low value added services and
- loans.

Their application under certain conditions results in tax authorities accepting the applied price as price determined on arm's length principle.

Tax Rulings

Under the existing regulations of the Polish Tax Code taxpayers are entitled to confirm – by a written interpretation of tax law issued by the Director of a National Revenue Information – a proper understanding of specific provisions of tax law. Individual tax rulings are issued upon written application containing description of the facts of the case or planned transactions, the question and own opinion on the issue. The interpretation remains valid until changed by tax authorities or when the underlying provision of law is changed.



It is also possible to apply for a joint tax ruling by the persons/entities engaged in the same event.

From the mid-2019 taxpayers shall also have an option to apply for a Binding VAT Rate Information. It will provide taxpayers with certainty as to the correctness of VAT taxation of transactions. Binding VAT Rate Information will be issued at the request of a taxpayer in the form of a decision.

Controlled Foreign Entities (CFC)

CFC legislation is in force in Poland. According to these regulations, incomes of a foreign entity (including trusts or foundations) are subject to 19% income tax in Poland – at the level of the Polish resident having specific connections with this company – in particular if:

- the company's registered office or a place of management is located in a "black list" country and the Polish resident holds directly or indirectly shares in its capital (or voting rights in a controlling- or decision making body, or shares linked with right to participation in profits), or
- the company jointly fulfills the following conditions:
 - ✓ level of control: a Polish taxpayer holds in it directly or indirectly more than 50% shares in the capital (or more than 50% voting rights in a controlling- or decision making body, or more than 50% shares linked with right to participation in profits),
 - ✓ passive income: minimum 33% of revenues of the company are generated in the given tax year from passive income (such income is defined in the regulations),
 - ✓ the amount of actual income tax paid by the company is lower than the difference between (1) the amount of CIT that would be due if the entity was

the Polish tax resident, and (2) the amount of income tax actually paid in the country of the company's seat.



An entity/company is not regarded as CFC if it is subject to income tax on its world-wide income in an EU/EEA country, and it carries in this country a real business activity of significance.

In case of a trust or a foundation, the founder's right to participate in profits is determined as a proportion in which the market value of assets transferred by him remains, as of the date of the transfer, in the entire estate of the trust, foundation or other entity or legal custody.

Chapter 6 Personal taxation

Residents and non-residents

Individuals considered as Polish tax residents are subject to Polish taxation with regard to their world-wide income, irrespective where the income source is located (unlimited tax liability).

An individual is classified as a Polish tax resident when:

- he/she has in Poland his/her center of vital or economic interests, or
- resides on the Polish territory for a period longer than 183 days in a given tax year.



Tax residence shall be determined with consideration of relevant DTT. In situations when one is considered a non-Polish resident, he/she underlies Polish taxation solely with regard to income sourced in Poland (limited tax liability). Polish non-residents (individuals with limited liability for Polish tax) are 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%. In such cases no deductions are available.

Income tax

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. As a rule, the annual tax returns shall be filed individually by the employees, however in certain cases they can opt for filing in the tax return by the tax authorities.

Self-employed individuals and those paid by a foreign entity are personally responsible for paying monthly tax advances, generally by the 20th day of the following month. An annual return disclosing all income sources and showing any additional tax payable must be filed (and the tax due paid) by 30 April of the following year. 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. Their tax liability is then calculated on half the total income and multiplied by two.

Personal tax rates

Generally, the income gained by individuals is subject to progressive scale, applicable rates are 18% and 32%.

Whenever income is gained in the course of business activity (i.e. self-employment or participation in partnerships), application of a 19% flat PIT rate may be opted for by filing an application to the competent tax authority within a due deadline.

Some types of income – capital gains, interest, dividends, income from sale of real estate – are taxable with a flat rate 19%.

Polish non-residents can benefit from 20% flat rate on revenues gained from so called personally exercised activities as well as from management services.

Personal income tax rates:

Taxable basis in PLN	Tax rate
up to 85,528	18% of taxable basis minus amount decreasing due tax depending on the tax basis
over 85,528	PLN 15,395.04 + 32% of any amount exceeding PLN 85,528

Deductions

Available deductions depend on the income source. A deduction of PLN 111.25 per month is available in respect of expenses associated with employment income. Individuals working under certain civil law 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 they can prove that their actual expenses were higher than 20%. In the case of certain activities, e.g. exploiting a copyright, a deduction of 50% is allowed.

Shall an individual be self-employed, deduction of all income-related expenditures is allowed, based on rules similar to those applicable for corporations. The same applies for income gained from participation in a partnership.

Chapter 7 Types of employment and social security

Employment contracts

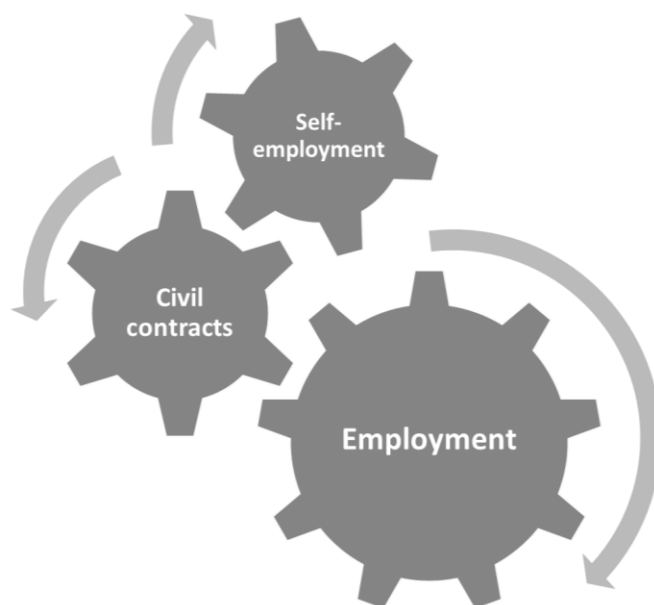


Figure 5. Types of employment contracts

Generally, there are following possible types of employment agreement in Poland:

1. Self-employment
2. Employment
3. Civil contracts: the contract of mandate (in Polish: *umowa zlecenie*) or contract for a specific task (in Polish: *umowa o dzieło*).

Self-employment



A person may perform his/her business activity on the basis of a cooperation agreement (so called self-employment). In this case all registration and tax settlement obligations are on the side of the self-employed person. Social Insurance Contributions should be remitted by the 10th day of each month for the previous month.






Individuals starting business activity can, during the period of the first 24 calendar months, pay social insurance contributions based on the individually declared amount not lower than 30% of minimum wage provided that certain conditions are fulfilled. Such decreased social insurance contributions for each month of 2019 are as follows:

The amount of monthly contribution	Rate of the social insurance contribution
PLN 131.76	i.e. 19.52% for retirement insurance
PLN 54.00	i.e. 8% for disability pension insurance
PLN 16.54	i.e. 2.45% for illness insurance
PLN 11.27	i.e. 1.67% for accident insurance - providing that an individual running business activity registers for accident insurance up to 9 people
PLN 342.32	i.e. 9.00% of the basis calculated separately for the health insurance

On the other hand, the standard monthly contributions in 2019 amount to:

The amount of monthly contribution	Rate of the social insurance contribution
PLN 558.08	i.e. 19.52% for retirement insurance
PLN 228.72	i.e. 8% for disability pension insurance
PLN 70.05	i.e. 2.45% for illness insurance
PLN 70,05	i.e. 2.45% for Labor Fund
PLN 47.75	i.e. 1.67% for accident insurance - providing that an individual running business activity registers for accident insurance up to 9 people
PLN 342,32	i.e. 9.00% of the basis calculated separately for the health Bridging Pension Fund insurance

From January 2019 smaller entrepreneurs enjoy a relief in payment of ZUS contributions. Based on the relief, the premium is counted on income, however within a limit of 30 times the minimum wage in the previous year. Additional conditions must be met in order to be able to use the above solution:

- 
- Social security contributions from income form the basis for social contributions and contributions to the Labor Fund only. The health contribution will still be paid according to the general rules applicable to all entrepreneurs.
- 
- The entrepreneur cannot benefit from the above solution, if they settled income tax in the form of a tax card in the previous calendar year and benefit from VAT exemption. These conditions must be met jointly.
- 
- This solution is intended for entrepreneurs who do not use preferential ZUS contributions.
- 
- The entrepreneur must run the company in the previous calendar year for at least 60 days.
- 
- An entrepreneur cannot conduct business activity for his former employer.



Standard employment

With regard to employment contracts social insurance contributions are collected by the employer, however they are divided in two parts: paid by the employer and the employee (the latter are withheld by an employer acting as a remitter). Social insurance contributions for employees should be paid by the 15th day of each month.



Social insurance payments consist of: retirement and disability pension insurance, illness and accident insurance, Labor Fund, Bridging Pension Fund, Employee Benefit Fund and health insurance. The basis of calculation is generally income, however in case of retirement and disability pension insurance the contributions are calculated on basis of income, but only up to the upper limit (for 2019 this is PLN 142,950).

Social contributions – employment contract

Contribution % of total monthly salary	Total	Employee	Employer
Retirement insurance	19.52%	9.76%	9.76%
Disability pension insurance	8.00%	1.50%	6.50%
Health insurance (basing on the basis calculated separately)	9%	9%	-
Illness insurance	2.45%	2.45%	-
Accident insurance	0.40-3.60%	-	0.40-3.60%
Bridging Pension Fund	1.5%	-	1.5%
Labor Fund	2.45%	-	2.45%
Employee Guaranteed Benefits Fund	0.10%	-	0.10%

Civil contracts

Generally, both tax and social insurance settlements with regard to civil contracts are analogous to employment contract. However, depending on the status of the individual, an employer may not be required to register an employee for all the titles of social security contributions.



Chapter 8 Value Added Tax

General information

Value Added Tax was introduced in Poland in 1993 and then significantly changed in 2004, in connection with Poland's entry into the European Union. The currently binding VAT Act is in line with the relevant EU VAT regulations, including the EU VAT Directive.



VAT registration

All entities that perform activities subject to VAT in Poland are obliged to register before they undertake their first taxable activity. Upon VAT registration they gain the status of active VAT payers.



Taxpayers must notify the Polish tax authorities in advance if they intend to carry out intra-Community transactions. On the basis of this notification, 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 (with exception for some types of activity). Similarly, taxpayers that start to make 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 they notify the relevant tax office of their intention.

VAT rates

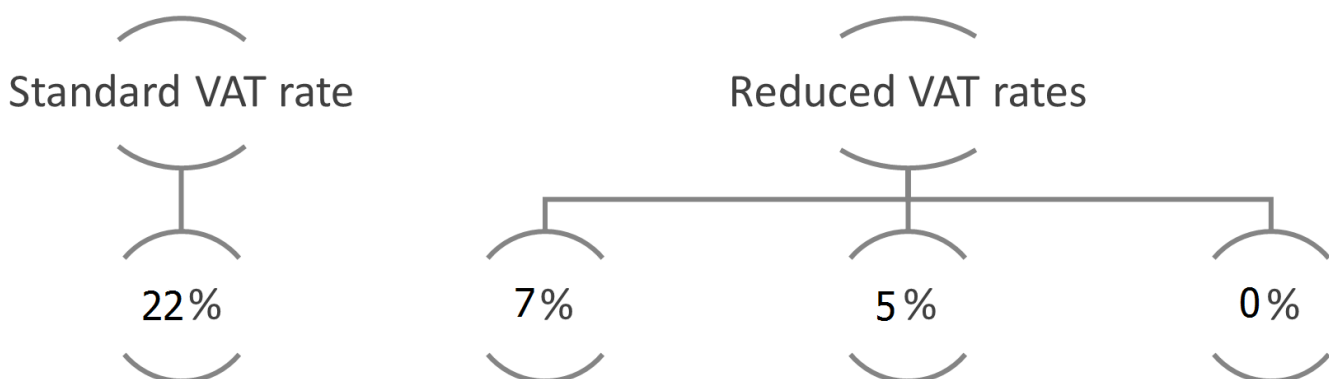


Figure 6. VAT rates used in Poland

In Poland, there are four VAT rates: the standard rate of 22% and reduced rates of 7%, 5% and 0%. However, the 22% and 7% rates have been temporarily changed, to the rates of 23% and 8% respectively. The standard rate applies to all supplies of goods or services, unless a specific provision allows a reduced rate or exemption. Statement of an outstanding VAT liability results, with some exceptions, in assessment of the additional tax liability by the tax authorities. The additional liability amounts to 30% (standard rate), but in certain situations may be lowered to 20%, or increased to 100% (fraudulent transactions).



In addition, there is also an obligation to provide Standard Audit File for Tax (hereinafter: SAF-T file), which is an IT solution introduced by the Polish Ministry of Finance in order to improve the work of tax authorities and fiscal control authorities. SAF-T file is specially prepared data sets generated directly from the accounting software of the company, having a fixed form, allowing fiscal control authorities to easily review and analyze them. SAF-T file is a set of information about economic operations for a given period. It can be transmitted only in electronic form directly from the company's IT system.



Under Polish law, taxpayers are required to transfer to the tax authority the SAF-T file:

- every month - by the 25th day of each month following the month for which the information is to be sent,
- at the request of the tax authority.

Failure to submit a file on time may expose the entrepreneur to the imposition of a fine.

Recovery of input VAT

Taxpayers may recover input tax, e.g. the VAT paid on purchased goods and services and used in the taxpayers' taxable activity, by deducting it from output tax, e.g. the VAT charged on supplies made.

Input tax on e.g. on accommodation and restaurant services and partly on purchase of fuel, diesel or gas used for passenger cars (in some cases) cannot be recovered. Also input tax directly related to exempt supplies is generally not recoverable (but it can, under certain conditions, be deducted as a cost for income tax purposes), with some exceptions.

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

VAT returns

As a rule VAT returns must be filed on a monthly or quarterly basis (in some cases). VAT returns and full payment of VAT due must be made by the 25th day of the month following the month (quarter) in which the tax point arose. In addition, every month or at the authority's request there is an obligation to submit the SAF-T file.



Bad debt corrections

Taxpayers who did not settle their liabilities towards other VAT-payers within 90 days as from the payment deadline are obliged to correct the deducted input VAT (if the deduction was taken). Taxpayers who fail to perform such a correction are imposed a penalty equaling 30% of the correction amount.

Invoicing

Polish VAT regulations allow taxpayers to issue and store invoices in an electronic form to save administrative costs and time. The standard deadline for issuing an invoice is the 15th day of a month following the month when goods were delivered or service provided, with exceptions.



Split payment

"Split payment" is a procedure under which payment for invoices is divided into two parts: one paid directly to the contractor, and the other part – equal to VAT charged on the invoice – paid to a separate bank account, with restrictions to use funds gathered thereon.



Currently split payment is voluntary for most taxpayers. However, according to the draft decision, which is awaiting the approval of the EU Economic and Financial Affairs Council (ECOFIN), an obligatory split payment mechanism can be applicable soon.

Chapter 9 Other Indirect Taxes

Tax on Civil Law Transactions

TCLT is applicable on certain transactions enumerated in the relevant Act. In the table below please find exemplary transactions and rates.

Examples of transactions subject to TCLT:

Transaction	TCLT rate	Taxable basis
articles of association of a company or partnership agreement	0.5%	share capital – in the case of companies, or property's value – in the case of partnerships
loan agreement	0.5%	loan value
sale of assets or property rights	2% or 1%	market value of the asset or property rights

Certain transactions are TCLT exempt/excluded, like loans granted by shareholders or changes of articles of association resulting from several restructuring activities (mergers, contribution in kind of an enterprise or of shares, divisions, transformation of corporations), or transactions underlying VAT taxation.

Real Estate Tax (RET)

Owners, persons/entities having right of perpetual usufruct of real estate (land, buildings, structures), and some other persons/entities using real estate are liable to Real Estate Tax. RET due on land and buildings is calculated per sqm. Rates are determined by local tax authorities, within the limits provided by law, and are higher in case of real estate used for purposes of running business activity and lower in case of real estate destined for non-commercial use.



Structures (understood as building objects connected permanently with the ground, other than buildings) are subject to RET if they are connected with business activity. The taxable basis for structures is determined according to their initial value for income tax purposes (not decreased by depreciation). The RET rate for structures is 2%.

Some RET exemptions are available, in the relevant Act or granted by the local authorities.

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