TAX MANAGEMENT
PORTFOLIOS™

FOREIGN INCOME

Business Operations in Poland

by

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Sławomir Boruc, is recommended by Legal 500. In 2019 he was awarded the "Hall of Fame" title. In addition, the firm's Tax Practice has constantly been recommended as a Tier 1 practice since 2007.

Since 2009 Mr. Boruc has been recommended as the best tax advisor in Poland (individually placed at Band 1) by Chambers. Furthermore, since 2007 Chambers Europe and Chambers Global classified the firm's Tax Advisory Group in the top tier in Poland.

In 2019, Sławomir Boruc is also recommended in the Tax Directors Handbook and the practice has been recommended as Tier 1 practice in Poland yearly since 2014.

This Portfolio revises and supersedes previous versions of 7300 T.M., *Business Operations in Poland*.

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PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Poland*, No. 7300, contains information enabling foreign businesses to determine the best method of conducting their operations in Poland from both the tax and general legal points of view. It describes the practical problems that confront foreign businesses operating in Poland, as well as many of the other legal details vital to the organization of a Polish company.

The Portfolio provides a detailed explanation of the Polish system of income taxation, analyzing the statutory and procedural framework of Polish income taxation as applied to individuals and corporations. In addition, the Portfolio discusses the value added tax and excise taxes, the stamp duty, real estate tax and the inheritance and gift tax.

The Worksheets in the Portfolio contain a number of tax-related forms, including income and value added tax monthly returns. A complete list of documents appears in the Table of Worksheets.

This Portfolio may be cited as Boruc, 7300 T.M., *Business Operations in Poland.*

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DETAILED ANALYSIS

I. Poland — An Overview

A. *Poland — The Country, People and Economy*

1. *Political Organization*

The Republic of Poland is a parliamentary republic. Under the rules of the Constitution of April 2, 1997,[1] the legislative power is vested in the bicameral Parliament, which consists of a lower (*Sejm*) and an upper (*Senat*) chamber. Members of Parliament are elected for terms of four years.

The head of the Republic is the President, who is elected by the electorate (every citizen over the age of 18 is entitled to vote) for a term of five years. The President, as a representative of the State, has mainly ceremonial functions, but does have the right to veto statutes enacted by the Parliament. The *Sejm* elects the Prime Minister and approves the Ministers, who constitute the Government. The Government and its program must be approved by a vote of confidence adopted by an absolute majority of the *Sejm.* The Government may be dismissed only if the *Sejm* passes a vote of no confidence by a majority of votes and elects a successor. The executive power is wielded by the Government.

Poland is divided into 16 self-governed *voivodeships* (provinces). The interests of the central government are represented by the local *voivodeship* governors.

B. *Sources of Law*

1. *Statutes*

Poland is a statutory law country. The main and fundamental sources of law are statutes enacted by Parliament. Bills may be introduced in Parliament by the President, the Government, a group of deputies or the *Senat,* as well as by a group of at least 100,000 citizens who are eligible to vote. The statutes must be signed by the President and published in the Journal of Laws.[2] Under the Constitution, a law may authorize the bodies exhaustively listed in the Constitution to promulgate ordinances to supplement a statute if the statute itself defines the purpose, scope and contents of such ordinances. The ordinances have the force of law and normally prescribe detailed rules for the implementation of specific statutory provisions. The power to promulgate ordinances cannot be delegated further.

In addition, ministries, as well as public authorities, issue administrative regulations/directives with respect to various matters that are intended to be of an internal character and that constitute instructions for subordinated officials. Regulations/directives do not have the force of law, do not bind the courts and must conform to the public law. The interpretation of the law is heavily influenced by the jurisprudence of the courts.

As Poland is an EU Member State, EU law is binding in Poland and prevails over Polish statutes.

2. *Court System*

The administration of justice is the responsibility of the Supreme Court, the Supreme Administrative Court, the common courts, the *voivodeship* administrative courts and the military courts. All courts are independent. A very significant position in the Polish judicial system is also held by the Tribunal of the State[3] and the Constitutional Tribunal.[4]

The common courts consist of specialized divisions (for example, criminal, civil, industrial and social) and are vertically structured. The Supreme Court (*Sąd Najwyższy*) consists of five chambers:

(i) The Civil Chamber;

(ii) The Criminal Chamber;

(iii) The Labor and Social Insurance Chamber;

(iv) The Extraordinary Control and Public Affairs Chamber; and

(v) The Professional Responsibility Chamber.[5]

The Supreme Court is the court of final appeal against decisions of the lower state courts. The Supreme Administrative Court (*Naczelny Sąd Administracyjny*) settles appeals against decisions of the administrative bodies.[6] The structure of the administrative courts is governed by regulations in force as of January 1, 2004. The system of administrative courts is vertically structured. The Supreme Administrative Court acts as the court of final appeal against decisions of *voivodeship* administrative courts. In tax matters, the taxpayer is entitled to appeal against decisions of the tax offices to the *voivodeship* administrative courts and to the Supreme Administrative Court.

The Constitutional Tribunal was established for purposes of verifying the conformity of the statutes and international agreements with the Constitution. Moreover, an individual complaint can be filed with the Constitutional Tribunal if constitutional rights are infringed by statutes, by regulations issued by a public authority or by a court decision.[7]

The Tribunal of the State was established for purposes of issuing judgments regarding the liability of persons holding the highest offices of state, such as the President, the Prime Minister, Ministers and others, resulting from violations of the Constitution and Acts of Law.

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[1] Constitution of the Republic of Poland, Journal of Laws 1997 No. 78 Item 483.

[2] Act on Publication of Normative Acts and Other Legal Acts, Journal of Laws 2005 No. 190 Item 1,606.

[3] Act on the Tribunal of the State, Journal of Laws 2002 No. 101 Item 925.

[4] Act on the Constitutional Tribunal, Journal of Laws 1997 No. 102 Item 643; new Act on the Constitutional Tribunal, Journal of Laws 2016 Item 1157.

[5] Act on the Supreme Court (consolidated text), Journal of Laws 2023 Item 1093.

[6] Act on Organization of Administrative Courts (consolidated text), Journal of Laws 2016 Item 1066.

[7] Constitution of the Republic of Poland, Sec. 188.

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Decisions of the Constitutional Tribunal are published in official registers. Selected Supreme Court, Supreme Administrative Court and lower court decisions are reported in specialized periodicals. The most significant court decisions are also unofficially reported in numerous legal periodicals.

Dispute resolution may also be referred to arbitration courts. The scope of the disputes that may be resolved in arbitration court encompasses matters concerning property rights, except for claims for maintenance. Poland is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards.

On December 31, 1999, with effect from February 18, 2000, Poland ratified the Lugano Convention[8] on the jurisdiction and enforcement of foreign judgments in civil and commercial matters. Foreign court judgments issued in accordance with this convention are enforceable in Poland.

3. Alternative Dispute Resolution

Although all the most popular methods of alternative dispute resolution, such as mediation, conciliation, med-arb, etc., are used in Poland, only arbitration and mediation are regulated by law. There are two types of arbitration — ad hoc arbitration and standing arbitration.

Several self-standing arbitration courts operate in Poland. The most popular is the Court of Arbitration at the Polish Chamber of Commerce in Warsaw.

Mediation may be initiated in almost all commercial cases.

[8] Lugano Convention on Jurisdiction and Enforcement of Court Judgments in Civil and Commercial Matters, Journal of Laws 2000 No. 10 Item 132.

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II. Operating a Business in Poland

A. Foreign Investment Regulations

1. General

Poland is currently one of the most attractive countries in Europe for foreign investment. This is the natural outcome of the economic boom in Poland, the size of the consumer market and the government's policy of providing substantial incentives for capital investment. In recent years, the indices of economic growth in Poland have been impressive with Poland having some of the highest social and economic growth rates in Europe.

The main factors attracting foreign investment in Poland are:

(i) Stable democracy and political climate;

(ii) Stable economic and social conditions;

(iii) Highly qualified workforce;

(iv) Relatively cheap workforce;

(v) Very large consumer market;

(vi) Relatively high level of consumption;

(vii) Stable and developed capital market; and

(viii) Poland's membership in the European Union (EU).

These advantages of the Polish market should lend strong support to the continuation of the transformation and growth of the Polish economy in the future.

The principles of economic activity are regulated with effect from April 30, 2018 by the Law of Entrepreneurs.[9] The Law of Entrepreneurs is one of five acts that constitute the Constitution for Business.[10]

The Act on Counteracting Excessive Delays in Commercial Transactions (as amended) introduces the categories of micro, small, medium and large entrepreneurs, in line with the definition set forth in Annex I to Commission Regulation (EU) No 651/2014 as of June 17, 2014.

2. Suspension of Business Activity

An entrepreneur registered with Central Registration and Information on Economic Activity (CEIDG) operated by the competent Minister for the Economy who does not employ individuals or who employs only individuals on maternity leave or any other type of parental leave may suspend his or her business activity for an indefinite or a definite period of time (minimum 30 days). An entrepreneur registered in the register of entrepreneurs maintained by the National Court Register may suspend his or her business activity for a period of 30 days up to 24 months.

The period of suspension of business activity begins on the date indicated in the application for suspension of business, which may not, however, be earlier than the date on which the application is filed in the register of business entities (or the register of business activity maintained by the relevant municipality), and lasts until the date on which an application is submitted to resume the business activity or until the date indicated in the original application, provided it does not precede the date of submission of such application.

During the suspension of business activity, an entrepreneur has the right to:

(i) Perform all the steps necessary to preserve or protect sources of income;

(ii) Take action or otherwise regulate any duties or obligations undertaken prior to the date of suspension of his or her business;

(iii) Dispose of his or her fixed assets and equipment; participate in legal, tax and administrative proceedings associated with the activities carried out prior to the suspension of business activity;

(iv) Perform all duties prescribed by law; and

(v) Generate revenue from financial activities carried out prior to the suspension of business activity.

The entrepreneur may be subject to inspection on the same terms as an entrepreneur carrying on a business activity. During the suspension period, payment of contributions to the pension scheme and medical insurance is voluntary, i.e., an entrepreneur may make such contributions but is not required to do so. Furthermore, entrepreneurs are not required to pay sickness or accident insurance contributions in such circumstances.

3. Foreigners

A "foreigner" is defined as a natural person who is not a citizen of Poland, a legal person having its seat abroad or an organization without separate legal personality, but having legal capacity, with its seat abroad. A "foreign investor" is a foreigner carrying on business activity abroad or a citizen of Poland carrying on business abroad.

Citizens from the following countries enjoy the same rights as Polish citizens to the extent of undertaking and carrying on business activity: EU Member States, European Free Trade Association (EFTA) countries,[11] and countries that enjoy

[9] Act on the Law of Entrepreneurs (*Prawo przedsiębiorców*), Journal of Laws 2024 Item 236, as amended (in force from April 30, 2018).

[10] The other statutes are as follows: (i) Act on the Central Registration and Information on Economic Activity and the Information Point for the Entrepreneur (*Ustawa o Centralnej Ewidencji i Informacji o Działalności Gospodarczej i Punkcie Informacji dla Przedsiębiorcy*), Journal of Laws 2022 Item 541, as amended (in force from April 30, 2018); (ii) Act on the Adviser for Small- and Medium-size Entrepreneurs (*Ustawa o Rzeczniku Małych i Średnich Przedsiębiorców*), Journal of Laws 2023 Item 1668, as amended (in force from April 30, 2018); (iii) Act on the Rules of Participation of Foreign Entrepreneurs and other Foreign Entities in Business Trading in the Republic of Poland (*Ustawa o zasadach uczestnictwa przedsiębiorców zagranicznych i innych osób zagranicznych w obrocie gospodarczym na terytorium Rzeczypospolitej Polskiej*), Journal of Laws 2025 Item 89470, as amended (in force from April 30, 2018); and (iv) Act on Provisions Implementing the Act on the Law of Entrepreneurs and Other Acts regarding Business Activity (*Przepisy wprowadzajce ustaweę — Prawo przedsiębiorców oraz inne ustawy dotyczące działalności gospodarczej*), Journal of Laws 2018 Item 650 (in force from April 30, 2018).

[11] I.e., Iceland, Liechtenstein, Norway and Switzerland.

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the right of establishment pursuant to agreements with the European Communities or their Member States.

A citizen of a country other than those countries also enjoys the same rights if he or she:

(i) Is a family member (within the meaning of the Act on the Entry, Residence and Departure from the Republic of Poland of Nationals of European Union Member States and their Family Members)[12] joining a citizen of one of the countries referred to above;

(ii) Has obtained permission to settle in Poland;

(iii) Has obtained permission for long-term residence in the EU;

(iv) Has been granted permission to reside for a specific period of time pursuant to certain provisions of the Act on Foreign Persons;[13]

(v) Holds a permit to reside for a specified period of time granted to a family member of the a person referred to in (ii), (iii), (vii) and (ix), being a family member who arrives in Poland or stays in Poland to be reunited with his/her family, within the meaning of the Act on Foreign Persons;

(vi) Has obtained consent for a tolerated stay;

(vii) Has obtained refugee status;

(viii) Holds a valid Pole's Card;

(ix) Has obtained supplementary protection;

(x) Has obtained permission to reside for a specific period of time and is married to a Polish citizen residing in Poland;

(xi) Enjoys temporary protection within Poland and enjoys, to the extent of undertaking and carrying on a business activity, the same rights as a Polish citizen; or

(xii) Participates in programs organized or co-organized by the entities listed in the Act on Open Data and the Reuse of Public Sector Information.[14]

Entrepreneurs from EU Member States, EFTA countries and countries that have concluded agreements on the freedom to provide services with the European Communities and their Member States may temporarily provide services on terms defined in the Treaty Establishing the European Community or as provided for in freedom of services agreements without the entrepreneurs having to register in the register of business entities or the register of business activity maintained by the relevant Polish municipalities.

Foreigners other than those listed above may operate businesses in Poland in the form of joint stock, simple joint stock or limited liability companies, limited partnerships and partnerships limited by shares, and may invest in such companies and partnerships, unless otherwise provided for in an international agreement ratified by Poland.

Family members (within the meaning of the provisions of the Act on Foreign Persons) of foreign persons to whom the above international agreements relate who hold permits to settle for specified periods of time may undertake and pursue economic activity on the same terms as such foreign persons.

Where a foreigner holds a permit to settle for a specified period of time and pursues economic activity on the basis of an entry in the records of economic activity made pursuant to reciprocity, a family member (within the meaning of the provisions of the Act on Foreign Persons) of that foreigner who holds a permit to settle for a specified period of time granted in connection with his or her arrival in Poland or stay in Poland to be reunited with his or her family, may undertake and pursue economic activity on the same terms as that foreigner.

4. Branch Offices and Representative Offices

Foreign investors may establish branch offices or foreign representative offices, subject to the rule of reciprocity, unless international agreements ratified by Poland provide otherwise. The rule of reciprocity does not apply to foreign investors who are citizens of EU Member States, European Economic Area (EEA) countries,[15] or non-EEA countries that enjoy the right of freedom of establishment pursuant to agreements with the European Communities or its Member States.

The branch office of a foreign company may carry on business activity within the scope of the subject of activity of the foreign company abroad. Before commencing operations, a branch office must be registered in the register of business entities. A foreign investor may also conduct business activity in Poland through a foreign representative office. The activities of a representative office of a foreign investor are, however, limited to advertising and the promotion of the foreign investor. The establishment of a representative office requires only registration in the records of foreign representative offices kept by the Ministry of Economic Development and Technology, i.e., the competent Minister for the Economy. The entry in the records is made for a two-year period with the possibility of a two-year extension at the request of the foreign investor.

A representative office established in accordance with the abovementioned regulations, as provided for in the Ordinance of the Council of Ministers,[16] can continue to conduct its business on the same terms and subject to the same conditions as applied previously until its permit expires.

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[12] Act on the Entry, Residence and Departure from the Republic of Poland of Nationals of European Union Member States and their Family Members (*Ustawa o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin*), Journal of Laws 2024 Item 633.

[13] Act on Foreign Persons (*Ustawa o cudzoziemcach*), Journal of Laws 2024 Item 769.

[14] Act on Open Data and Re-use of Public Sector Information (*Ustawa o otwartych danych i ponownym wykorzystywaniu informacji sektora publicznego*), Journal of Laws 2023 Item 1524.

[15] I.e., the EU Member States plus Iceland, Liechtenstein and Norway.

[16] Ordinance of the Council of Ministers regarding the conditions, procedure and proper bodies with respect to granting foreign real and legal persons the right to establish representative offices on the territory of the Polish Peoples' Republic for the purpose of conducting business activity (*Rozporządzenie Rady Ministrów w sprawie warunków, trybu i organów właściwych do wydawania zagranicznym osobom prawnym i fizycznym uprawnień do tworzenia przedstawicielstw na terytorium Polskiej Rzeczypospolitej Ludowej dla wykonywania działalności gospodarczej*), Journal of Laws 1976 No. 11 Item 63.

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5. Incentives

a. Tax Incentives

There are no special tax incentives for foreign investors in Poland. Polish law does not distinguish between the positions of investors based on their geographic location. Tax exemptions awarded to investors relate solely to the size and nature of the investments and their significance to the national economy or the achievement of specific social targets (for example, a decrease in the unemployment rate) that may result from the implementation of particular economic undertakings. In particular, tax incentives for investment are effected under the general scheme of Special Economic Zones and pursuant to favorable decisions under the Act on Supporting New Investments.[17]

Incentives (in the form of corporate income tax exemptions) were introduced by the Act on Special Economic Zones,[18] as amended. This Act provided that Special Economic Zones could be established to support the economic development of certain less developed parts of Poland. The establishment of Special Economic Zones served economic and social aims and, in particular, the development of specific forms of business activity, the development of new technical and technological solutions in industry, the utilization of existing industrial property and infrastructure, and the creation of new workplaces.

There are currently 14 Special Economic Zones in Poland. However, as the Special Economic Zones scheme was outdated, from mid-2018 it is no longer possible to start benefiting from this incentive. The incentive continues to be available only with respect to taxpayers who received the permit to operate in a Special Economic Zone prior to mid-June 2018.

The mechanism of tax relief offered in Special Economic Zones and the method for calculating the extent of such aid are described in detail in section V.B.11. below.

From mid-2018, the tax incentive in the form of an exemption from taxation is no longer limited to the territories of Special Economic Zones. The incentive is now being offered to taxpayers who obtain a favorable decision on the basis of the Act on Supporting New Investments. Such support decisions may cover investments in any area within Poland. The existing Special Economic Zones permits will remain in force.

b. Non-Tax Incentives

The Support Program for Investments of Material Significance for the Polish Economy for 2011–23, which supported foreign investments with direct cash grants for new investment and job creation and was administered by the Ministry of Economic Development and Technology and the Polish Investment and Trade Agency, was replaced by the Program for Supporting Investments of Major Importance to the Polish Economy for 2011–30.

Investment support is provided in the form of a grant on the basis of an agreement concluded between the Minister responsible for the economy and the investor. The agreement lays down conditions for the payment of the grant, which is paid proportionately to the degree the investor's commitments are fulfilled. The support is granted based on eligible costs for the creation of new jobs and investments. The amount of a grant may be increased if training programs are also offered to employees.

Under the rules of the Program, support may be granted only to investors planning the following types of investments:

(i) Strategic investment: a production investment with eligible costs of at least PLN 160 million and 50 new jobs;

(ii) Innovative investment: a production investment with eligible costs of at least PLN 7 million and 20 new jobs, which results in a new product or process innovation at least on a national scale;

(iii) Investment in Advanced Business Services Centers: an investment in the sector of modern business services within which at least intermediate processes are implemented (as per the detailed definition in the Program), with eligible costs of at least PLN 1 million and 100 new jobs;

(iv) Investment in Centers of Business Process Excellence: an investment in the sector of modern business services, within which only advanced or highly advanced processes are implemented, with eligible costs of at least PLN 1 million and 100 new jobs;

(v) Investment in Highly Advanced Service Centers: an investment in the sector of modern business services within which only highly advanced processes are implemented, with eligible costs of at least PLN 1 million and 10 new jobs for persons with higher education.

The above requirements may be reduced by 50% in the case of investment in areas at risk of exclusion.

Investment support may only be granted to investors who undertake to cooperate with scientific units (universities, specific research and development institutes, etc.).

In addition, each investment is assessed in accordance with the quality criteria defined for a given type of investment. Projects are assessed in terms of their development of structural, scientific and territorial balance, human resources and social responsibility. The impact of investments in the targeted sector is taken into account at the regional and national levels. The impact on competition, human capital and the local environment is also analyzed.

Additional funding may be obtained from EU co-funded grants for specific objectives, for example, training, R&D activity and various environmental projects (energy efficiency, environmental protection, etc.). EU grants for investors are distributed primarily by the Ministry of Economic Development and Technology or the Polish Agency for Entrepreneurship Development on the terms published each year within the framework of regional aid.

Foreign investors in Poland may receive special assistance from the State Treasury as regards the financing of business activity.

The municipal authorities may further offer price reductions for land, premises or municipal property as well as estate tax exemptions/reductions to attract foreign investors.

[17] Act of May 10, 2018 on Supporting New Investments (*Ustawa o wspieraniu nowych inwestycji*), Journal of Laws 2024 Item 459.

[18] Act on Special Economic Zones (*Ustawa o specjalnych strefach ekonomicznych*), Journal of Laws 2023 Item 1604, as amended.

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c. State Aid

The rules on the provision of state aid are governed by the State Aid Law.[19] The State Aid Law was introduced to replace the law on the conditions for admissibility and supervision of state aid for entrepreneurs dated July 27, 2002, and to bring Polish rules in line with EU provisions.

The State Aid Law contains rules on:

(i) Procedures regarding preparations for notification of draft aid schemes, drafts of individual aid projects and individual aid for restructuring projects;

(ii) Cooperation between the President of the Office for Competition and Consumer Protection (OCCP) and the Minister of Agriculture and Rural Development with the entities developing aid schemes, aid-granting authorities, entities applying for the aid and beneficiaries of the aid;

(iii) The mechanism for the recovery of unlawfully granted state aid; and

(iv) Supervision by the President of the OCCP of the aid-granting process.

Because the EC regulations on state aid have applied in Poland directly since May 1, 2004, the principles for assessing the lawfulness of state aid are provided for in Articles 106–109 of the Treaty on the Functioning of the European Union (TFEU). The main rule is that any aid granted by an EU Member State or through state resources, in any form whatsoever, that distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods, is to be considered, insofar as it affects trade between Member States, incompatible with the Internal Market.

On the other hand, state aid may be granted if it is in compliance with specific conditions set out in Articles 106–107 of the TFEU (for example, aid that has a social character or is granted to individual consumers (provided the aid is granted without discrimination with respect to the origin of the products concerned) and aid that addresses damages caused by natural disasters or exceptional occurrences) and is, therefore, considered to be compatible with the Internal Market.

EU law does not contain any definition of state aid. However, under the TFEU, state aid may be understood as any benefit conferred directly or indirectly out of state funds on entrepreneurs as a result of which the entrepreneurs or their products are favored in relation to other market competitors, where this distorts or may distort the competition in the EU market as well as affects or may affect trade between the EU Member States.

Consequently, the State Aid Law applies to any kind of state support provided to companies, i.e., individual aid, regional aid, sectoral aid and horizontal aid. The Law provides for certain *de minimis* exemptions (aid granted to entrepreneurs where the total value of the aid over any period of three fiscal years does not exceed the equivalent of 300,000 euros and exemptions for aid provided under specific regulations under the Polish system of state aid, for example, for the purposes of:

(i) Providing assistance in regions where the standard of living is extremely low or there is a shortage of jobs (regional aid);

(ii) R&D, the development of small- and medium-sized enterprises, combating unemployment, environmental protection, the restructuring of enterprises, training directly connected with the development of enterprises and interim aid (horizontal aid); and

(iii) Accelerating required changes and the development of "sensitive sectors," restoring the long-term operation of "sensitive sectors," and moderating the social and economic costs of changes required in "sensitive sectors" (sectoral aid).

It should also be noted that Poland can grant companies entrusted with the operation of services of general economic interest (public services) compensation to cover the specific costs of such services (which may not, however, exceed the actual costs incurred) in accordance with the criteria set out in the decision of the CJEU in *Altmark*.[20]

The criteria set out by the CJEU are as follows:

(i) There must be an act of entrustment, whereby the state confers on an undertaking responsibility for the execution of a specific task;

(ii) The entrustment must relate to a service of general economic interest;

(iii) To be valid, the exception to the prohibition on state aid must be necessary for the performance of the tasks assigned and proportionate to that end; and

(iv) The aid must not affect the development of trade between EU Member States to an extent that would be contrary to the interests of the EU.

The State Aid Law contains rules for the supervision of the state aid granting process. In the first phase, any state body intending to grant aid (for example, the municipal tax office or the labor office) must obtain the opinion of the President of the OCCP. The second phase of the aid process involves obtaining the approval of the European Commission. Entrepreneurs with regard to whom these procedures were not followed by the body granting the aid may be required to repay the funds (with interest).

6. Trade Licenses and Permits

In principle, any person is allowed, on equal terms, to freely undertake and conduct business activities, subject to the fulfillment of the conditions defined by the law. The undertaking of economic activity by a legal entity with legal personality is not subject to notification, although the entity itself must be registered in the register of business entities maintained by the court. To be able to undertake business activity, a natural person must be entered in the relevant register of business activity kept by the relevant local government body.

There are three forms of state control over business activities:

(i) License (*koncesja*);

[19] Act of April 30, 2004, on the procedural issues concerning state aid (*Ustawa o postępowaniu w sprawach dotyczących pomocy publicznej*), Journal of Laws 2023, Item 702.

[20] C-280-00, O.J. L/312 of Nov. 29, 2005.

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(ii) Regulated economic activity; and

(iii) Permit (*zezwolenie*).

The main difference between a license and a regulated economic activity is that a license is granted at the discretion of a competent authority, whereas a regulated economic activity may be carried out by an applying entity that meets all the conditions provided by the law with regard to the regulated economic activity after it is entered in the Register of Regulated Economic Activity. The introduction of a new license is only possible for fields with special importance to national security and the public interest.

Licenses are issued for a period of time, which is specified for each type of license individually. If the number of applying entities that meet all the conditions for obtaining a license is greater than the number of licenses to be granted, the licensing authority organizes a tender.

The licensing authority may refuse to grant a license in any of the following cases:

(i) If the entrepreneur does not meet the conditions with respect to the activity subject to the license;

(ii) If national safety or the security of the country or citizens are endangered;

(iii) If the license has been granted to other entrepreneur(s) in the tender;

(iv) If a decision was issued disallowing the exercise of rights from shares of the entrepreneur based on the provisions of the Act of July 24, 2015 on the Control of Certain Investments, provided it is in the public interest; or

(v) In situations described in separate provisions.

Any refusal to grant a license is subject to appeal in accordance with the Administrative Procedure Code. However, if an entrepreneur's license is revoked, the entrepreneur may not reapply for a license within the same scope until after three years have elapsed from the date of issuance of the revocation.

Details on various issues regarding licenses are regulated under separate acts.

The main difference between a license and a permit is that the public authority granting a permit has much less discretion than in the case of granting a license — an entrepreneur who fulfils the requisite legal conditions will obtain a permit. Another difference between a license and a permit is that the Act sets out one uniform procedure for granting a license (irrespective of the type of business activity for which a license is granted), while the procedures for granting a permit are set out in separate acts. The introduction of a new permit also requires an amendment to the Act; however, such an amendment procedure is easier to carry out than the procedure required when introducing a new license.

Details on issues regarding permits are regulated under separate acts.

Under the regulated economic activity regime, an entrepreneur who meets the requisite legal conditions and obtains an entry in the Register of Regulated Economic Activity is allowed to carry on the regulated economic activity in question. Details on issues regarding entries to registries of regulated activity are regulated under separate acts. The registers of regulated economic activities are public and may be viewed by anyone through the authority that maintains them.

Foreign ownership restrictions have been generally lifted, except with respect to certain types of telecommunications and broadcasting activity.

7. Transaction Permits

Certain transactions carried out in Poland may require other administrative permits. The consent of the Minister of the Interior and Administration is required for acquisitions of real estate or companies (including subscription of shares in such companies) holding real estate by non-EEA entities, otherwise such acquisitions would be null and void.

United Kingdom entrepreneurs who intend to acquire real property in Poland, or shares in companies that own or have perpetual usufruct of real property in Poland, must apply for a permit from the Minister of the Interior and Administration pursuant to the general terms of the Act of March 24, 1920 on the Acquisition of Real Estate by Foreigners, unless they satisfy the prerequisites concerning exemptions from obtaining a permit.

Entrepreneurs and companies established by entrepreneurs from the EEA do not generally require such consent.

A state-owned legal entity that intends to transfer or dispose of intangible assets, tangible fixed assets or long-term investments (including contributions to a company or cooperative) is required to obtain consent of the following authorities if the value of these assets exceeds PLN 200,000:

(i) The supervising authority, if the market value of the fixed assets does not exceed PLN 5 million;

(ii) The President of the General Prosecutor's Office of the Republic of Poland, if the market value of the fixed assets exceeds PLN 5 million;

(iii) The President of the General Prosecutor's Office of the Republic of Poland, if the state legal person does not have a supervising body; or

(iv) The President of the General Prosecutor's Office of the Republic of Poland, if the supervising body of the state legal person is the Prime Minister.[21]

The Minister may veto such a transaction. Disregarding the procedure makes the transaction void.

In dealings with natural persons, spousal consent may be required for a transaction to be valid.

In addition, if a legal entity intends to acquire or attain a significant participation, or control of legal entities protected under the Act on Control of Certain Investments, the President of the Office for Competition and Consumer Protection must be notified.

Investments in Poland are screened under a number of regimes, some of which apply regardless of an investor's country of origin. The Act on Control of Certain Investments comprises two types of mechanisms aimed to protect companies operating in key sectors of the Polish economy against

[21] Act on Principles of Managing State Property of December 16, 2016, Art. 38.

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takeovers (screening relating to key companies and screening relating to entities in non-EU Member States).

8. General Notification Requirements

On August 9, 2017, the Minister of Finance issued an ordinance regarding the transfer of information required for the National Bank of Poland (NBP) to determine Poland's balance of payments and international investment position.[22] The ordinance defines the manner, scope and terms under which specific Polish residents performing foreign exchange transactions must submit certain information to the NBP.

Residents subject to this obligation include the following:

(i) Public sector financial entities, the net amount of whose assets and liabilities at the end of the calendar year amounts to:

(a) At least PLN 500 million (reports to be submitted monthly); or

(b) At least PLN 26 million and not more than PLN 500 million (reports to be submitted quarterly);

(ii) Investment companies (reports to be submitted monthly);

(iii) Natural persons whose net amount of assets and liabilities related to non-commercial activity at the end of the calendar year amounts to at least PLN 7 million (reports to be submitted quarterly);

(iv) Other residents, the net amount of whose assets and liabilities at the end of the calendar year amounts to:

(a) At least PLN 300 million (reports to be submitted monthly); or

(b) At least PLN 10 million and not more than PLN 300 million (reports to be submitted quarterly);

(v) Residents listed in points (i) – (iv), above, who failed to reach the designated thresholds at the end of the calendar year or the respective quarter (as applicable) and whose net amount of assets and liabilities related to foreign exchange at the end of the calendar year amounts to at least PLN 3 million (reports to be submitted quarterly);

(vi) Branches of foreign companies established in Poland (reports to be submitted annually); and

(vii) Resident companies where at least 10% of the votes in their decision-making bodies is held by nonresidents, as well as resident companies and resident natural persons that hold at least 10% of the votes in the decision-making bodies of legal entities registered abroad.

Penalties apply in the case of failure to comply with these obligations.

B. Currency and Exchange Controls

The Polish currency is the "złoty" or PLN. On December 31, 2024, US$1 was equal to PLN 3,9351 and 1 euro was equal to PLN 4,1012.

The Act on Polish Foreign Exchange implementing the EU Directives regarding the free movement of capital came into force on October 1, 2002.[23]

Under the EU rules, no restriction may be imposed on any capital transaction unless the limitation is justified by serious public interest justification. Foreign exchange transactions between Polish residents and nonresidents who are residents of the European Union, the EEA or the Organisation for Economic Cooperation and Development (OECD) countries (the "Member Countries") are generally free from limitations, subject to a few minor restrictions.

Among the remaining restrictions, there is an obligation to transfer funds via a bank account if the amount of the transfer exceeds the equivalent of 15,000 euros,[24] as well as a prohibition on payments in currencies defined as nonconvertible currencies, and on exports and imports of gold and platinum. Under the new Act, state control still exists in relation to countries other than the Member Countries, defined as the "Third Countries". Some Third Countries that have concluded bilateral investment treaties with the Republic of Poland are treated more favorably (the "BIT Countries").

The Act on Polish Foreign Exchange includes a list of foreign exchange transactions that may be performed exclusively based on a foreign exchange permit. Nonresidents from Third Countries, as a matter of principle, are required to obtain a permit to sell and/or buy in Poland securities or receivables except for those primarily acquired in Poland.

Other transactions that are limited include:

(i) Transfers of funds by Polish residents to Third Countries for the development of business activity;

(ii) Investments by Polish residents in Third Countries in real property, shares, participation units and receivables; and

(iii) The opening of opening bank accounts in Third Countries by Polish residents.

On April 20, 2009, the Minister of Finance issued an Ordinance regarding general foreign exchange permits.[25] The general permits waive certain limitations relating to the restricted foreign exchange transactions listed in the Act on Polish Foreign Exchange. The following examples can be given:

(i) Residents may transfer funds for the development of business activity in BIT countries and buy real property in BIT countries for the development of such business activity;

[22] Ordinance regarding transfer of information mandatory in preparation by National Bank of Poland of balance of payments and international investments position (*Rozporządzenie w sprawie przekazywania Narodowemu Bankowi Polskiemu danych niezbędnych do sporządzania bilansu płatniczego oraz międzynarodowej pozycji inwestycyjnej*), Journal of Laws 2024 Item 1746.

[23] Act on Polish Foreign Exchange (*Prawo dewizowe*), Journal of Laws 2024 Item 1131, as amended.

[24] Please note that according to Art. 19 of the Law of Entrepreneurs, any transfer of funds between entrepreneurs exceeding the equivalent of PLN 15,000 has to be made via a bank transfer.

[25] Ordinance regarding the general foreign exchange permits (*Rozporządzenie w sprawie ogólnych zezwoleń dewiqzowych*), Journal of Laws 2009 No. 69 Item 597.

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(ii) Residents may buy shares of entities registered in BIT countries, participation units of investment funds registered in BIT countries and securities issued by entities from BIT countries;

(iii) Residents may buy in Poland shares of entities registered in Third Countries, participation units of investment funds registered in Third Countries and securities issued by entities from Third Countries; and

(iv) Both residents and nonresidents may perform foreign exchange settlements provided that: (a) one of the parties is a consumer; or (b) both parties are natural persons and the settlement is not in connection with any business activity.

The President of the NBP may issue individual foreign exchange permits, which are applicable to individual transactions.

Foreign exchange values (foreign currency, gold and platinum, as well as securities denominated in foreign currency that constitute a means of payment) may be owned by Polish residents, whether in Poland or abroad, and by nonresidents in Poland. Residents are no longer required to repatriate foreign exchange values or Polish currency held abroad, and may maintain foreign bank accounts with any bank in a Member Country. Opening bank accounts with banks operating in Third Countries is still subject to restrictions. There are no foreign exchange restrictions with regard to crossing the border between Poland and any other Schengen area member country.

The PLN is externally convertible. The list of convertible currencies comprises 127 currencies that comply with the requirements of Article VIII of the Articles of Agreement of the International Monetary Fund. Any transaction may be concluded and settled in PLN or in any of these currencies. Transactions concluded in Poland between residents of Poland may be settled in a foreign currency. Foreigners (nonresidents) employed in Poland may receive compensation in foreign currency, whether paid in Poland or deposited directly in their bank accounts abroad.

Although transfers of funds from Poland are legal, residents conducting foreign exchange transactions are required to use a bank as an intermediary if the amount of the transaction exceeds 15,000 euros or its equivalent. The banks have some supervisory obligations with respect to the transfer of funds involving foreign exchange transactions between residents and nonresidents. There are no restrictions on the opening of bank accounts by nonresidents.

Special permits are required to organize and run an exchange office. The State Treasury, the NBP, and authorities acting in criminal, civil and administrative proceedings, as well as banks and other financial institutions (which fall under relevant financial supervision), such as payment institutions, are generally not subject to the limitations under the Act on Polish Foreign Exchange.

In the event of extraordinary public threats to the stability and integrity of the financial system of Poland, the Council of Ministers may introduce extraordinary restrictions for a period of up to six months by means of an ordinance.

C. Trade and Commerce Regulation

1. Imports and Exports

a. Licenses and Quotas

As a member of the EU, Poland is subject to the EC internal market regulations. Any tariffs on trade between the EU Member States are abolished, while trade relations with third states are governed by common rules. The basic principles of trading between the EU and other countries, as well as administrative procedures applicable in that respect, are governed by the EC legislation. This includes the Union Customs Code (in effect from May 1, 2016, replacing the Community Customs Code)[26] and the Integrated Tariff of the European Communities (TARIC).[27] Complementary provisions are specified in the Polish Customs Law.[28]

Moreover, both Poland and the EU are parties to the World Trade Organization (WTO) Agreement, which contains numerous provisions on international trade and administration.

b. Customs Duties and Other Taxes

The EU constitutes one customs area and goods are charged with the relevant customs tariffs upon their importation into the EU customs territory. The tariffs are set at the EC level. Once the required customs procedures are complied with in one EU Member State, the product can move freely within the whole of the European Union, including Poland. In addition, goods are charged with value added tax (VAT) on importation. The standard rate of this tax in Poland is 23%. However, certain goods are charged at other rates, such as 5%, 8% or 0%. Some goods are also subject to excise tax. The method of calculating this tax, as well as its amount, differs depending on the goods concerned.

c. Documentation

In addition to the customs declaration, an importer is required to present other documents to the customs authorities at the time of importation: the invoice; the certificate of origin (if applicable) and a declaration of the customs value.

2. General Business Regulations

Polish antitrust regulations are provided for by the Act on Competition and Consumer Protection dated February 16, 2007 (the "Antimonopoly Act,") as amended.[29]

The Antimonopoly Act regulates issues regarding the abuse of a dominant position, agreements restricting competition, concentrations of business entities, practices infringing

[26] Regulation (EU) No. 952/2013 of the European Parliament and of the Council of October 9, 2013, laying down the Union Customs Code; Official Journal L 269/1, 10.10.2013; Community Customs Code, Council Regulation (EEC) No. 2913/92, Official Journal L 302, 19.10.1992.

[27] Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, Official Journal L 256, 7.9.1987.

[28] Customs Law (*Prawo celne*), Journal of Laws 2023 Item 1590, as amended.

[29] Act on Competition and Consumer Protection (*Ustawa o ochronie konkurencji i konsumentów*), Journal of Laws 2024 Item 1616.

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the collective interests of consumers and provisions of standard contracts recognized as abusive.

a. Enforcement of the Antitrust Act

The Antimonopoly Act is enforced by the President of the OCCP. The President of the OCCP has broad investigatory powers and may issue decisions ordering the cessation of anticompetitive practices and impose significant fines for violation of the Antimonopoly Act.

The powers of the President of the OCCP have been broadened through the reform of the system of EU competition law. With effect from May 1, 2004, the responsibility for enforcement of EU competition rules has been shared between the European Commission, the national competition authorities and national courts. This means that the President of the OCCP is authorized to apply Articles 101 and 102 of the TFEU, as well as to carry out inspections (dawn-raids) with officials from other national competition authorities and/or the European Commission.

(1) Practices Restricting Competition

Like the EU regulations, domestic law prohibits practices restricting competition — agreements (including not only contracts, but also arrangements and concerted practices) and the abuse of a dominant position.

(2) Anticompetitive Agreements

According to the Antimonopoly Act, agreements that have as their object or effect the elimination, restriction or any other infringement of competition in the relevant market are prohibited, in particular those consisting in:

(i) Directly or indirectly fixing prices or other contractual terms;

(ii) Limiting or controlling the volume of production, sales, technical development or investment;

(iii) Market sharing;

(iv) Applying to equivalent transactions with third parties onerous or not comparable agreement terms and conditions, thus creating unequal conditions of competition for these parties;

(v) Making an agreement subject to the acceptance or fulfillment by the other party of terms having no substantial or customary relation to the subject of the agreement;

(vi) Limiting the market access of, or eliminating from the market, undertakings that are not party to the agreement concerned; and

(vii) Fixing the terms of a tender by ostensible competitors (bid rigging).

The concept of "agreement" is understood very broadly. Anticompetitive agreements include agreements or arrangements in any form made between entrepreneurs, or resolutions or other deeds of entrepreneur associations or their statutory bodies, the purpose or result of which is to eliminate, limit or otherwise restrict competition.

If an entrepreneur enters into an anticompetitive agreement, the violation is also committed by an entrepreneur exercising decisive influence on that entrepreneur — parental liability. The exercise of decisive influence occurs when there are economic, legal or organizational ties between entrepreneurs, the effect of which is that the entrepreneur over whom decisive influence is exercised carries out or adapts to the instructions given to him or her by the entrepreneur exercising decisive influence, in such a way as to limit or prevent his or her independent behavior in the market. An entrepreneur is presumed to exercise decisive influence if his or her share in the capital of an entrepreneur over whom he or she exercises decisive influence exceeds 90%.

(3) Exemptions

Practices restricting competition are acceptable under competition law rules if they qualify for a de minimis exemption or a block exemption, as follows:

(i) De minimis exemptions apply to both horizontal and vertical agreements. Horizontal agreements are not prohibited provided the joint market share covered by the agreement of the undertakings concerned does not exceed 5%. Vertical agreements are not prohibited provided the market share of any of the undertakings in the relevant market covered by the agreements does not exceed 10%. De minimis exemptions do not apply to "hard-core" violations, such as price fixing; restrictions on the volume of production, sales, technical development or investment; and market sharing or bid rigging.

(ii) Block exemption regulations provide that certain types of agreements are to be deemed legal, provided the conditions laid down in the regulations are fulfilled.

There are specific block exemption regulations concerning vertical agreements (including distribution agreements), technology transfers, R&D agreements and vertical agreements in the motor vehicle sector.

An agreement may also be exempted on the basis of an individual assessment.

(4) Abuse of Dominant Position

The Antimonopoly Act defines a dominant position as a position derived from economic strength that enables an undertaking to prevent effective competition in the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and consumers. A dominant position is presumed to exist if an undertaking's market share exceeds 40% in the relevant market.

Abuse of a dominant position may take, inter alia, one of the following forms:

(i) Directly or indirectly imposing unfair prices, including excessively high or predatory prices, delayed payment terms or other sale or purchase conditions;

(ii) Limiting production, sales, purchases or technical development to the prejudice of consumers or customers;

(iii) Applying to equivalent transactions with third parties dissimilar or onerous conditions, thus creating unequal conditions of competition for these parties;

(iv) Conditioning an agreement on the acceptance or fulfillment by the other party of terms having no substantial

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or customary relation to the subject of the agreement (tying contracts);

(v) Blocking the formation of conditions necessary for the emergence or development of competition;

(vi) Imposing onerous agreement terms and conditions, giving rise to unjustified profits for the undertaking imposing them; and

(vii) Dividing a market based on territorial, product or entity-related criteria.

If an entrepreneur abuses its dominant position, the violation is also committed by an entrepreneur exercising decisive influence on that entrepreneur — parental liability.

b. Anti-Competitive Practices — Fines

A system of fines is imposed by the President of the OCCP for failure to comply with competition law. The penalties are discretionary and may amount to:

(i) Up to 10% of the total annual revenues of a company earned in the accounting year preceding the year in which the fine is imposed where the company enters into an anti-competitive agreement or abuses a dominant position. When calculating turnover in a case where decisive influence was exerted on the infringing entrepreneur by another entrepreneur or entrepreneurs, the OCCP will also take into account the turnover achieved by the entrepreneur or entrepreneurs exerting decisive influence and the entrepreneurs on whom this decisive influence is exerted;

(ii) Up to 3% of the total annual revenues of a company earned in the accounting year preceding the year in which the fine is imposed, if no information or false or misleading information is provided by an entrepreneur during anti-competitive proceedings or if the entrepreneur has not cooperated in the course of the inspection being carried out within the framework of such proceedings; or

(iii) Up to 5% of the average daily revenues of a company earned in the accounting year preceding the year in which the fine is imposed for each day of delay in complying with a decision of the President of the OCCP or a ruling of the Competition and Consumer Protection Court.

If it is found that the offending entrepreneur was decisively influenced by another entrepreneur or entrepreneurs, the OCCP may impose a joint fine on that entrepreneur and the entrepreneur or entrepreneurs exercising decisive influence over him or her on a joint and several liability basis.

In addition, the Antimonopoly Act provides for penalties that may be imposed by the President of the OCCP on persons acting as managers, or persons who are members of a managing body of a company as well as persons authorized by the company in the course of the inspection. The penalties take the form of fines of up to 50 times the average remuneration in the business sector (currently around 102,000 euros).

Furthermore, the President of the OCCP may impose fines on individual managers of a company who intentionally make the company engage in an anti-competitive agreement. Such fines may amount to as much as PLN 2 million, i.e., approximately 483,000 euros.

Fines may be collected pursuant to executory administrative proceedings (i.e., by way of seizure and removal of assets as well as measures related to bank accounts and other property of a debtor).

c. Commitment Decisions

In the case of competition-restricting practices, practices infringing collective consumer interests, or practices where provisions of standard contracts are recognized as abusive, the President of the OCCP may issue a "commitment decision," whereby he or she accepts the commitments made by the undertaking concerned. If complied with, the commitments will result in the elimination of the prohibited practices and their effects. Commitment decisions are beneficial to undertakings because they entail full immunity from fines. They are also a faster and cheaper solution for both the public and the wrongdoer.

In October 2015, the President of the OCCP updated the "Guidelines on issuing the commitment decision in cases of competition-restricting practices and practices infringing collective consumer interests," issued in July 2012. The Guidelines set out the circumstances in which the President may conclude proceedings by way of conciliation and specify the conditions for accepting commitments by undertakings to change the prohibited practice.

In the Guidelines, as amended, the President of the OCCP named the commitment decisions as a negotiating form of termination of the proceedings. Moreover, the President of the OCCP indicated that he expected not only that the undertakings would commit to terminating the prohibited practice, but also that undertakings would indicate the way to nullify the consequences of such practice (for example, changing the agreement, reducing the price, etc.). Although the Guidelines are not legally binding, the President will adhere to them to ensure that transparent and homogeneous rules are being applied.

d. Leniency

Companies and individual managers participating in an anticompetitive agreement may apply to the President of the OCCP for immunity from, or the reduction of, fines (the "leniency program") under the Antimonopoly Act. The leniency program is available only to members of secret cartels, i.e., horizontal agreements, the existence of which is partially or wholly concealed.

The basic rules are as follows:

(i) Immunity from fines (full leniency) will be granted to a company applying for leniency as a first applicant that, on its own initiative, provides the President of the OCCP with such information on the prohibited agreement as is sufficient for the President of the OCCP to initiate antimonopoly proceedings, or evidence sufficient for the President of the OCCP to issue an infringement decision. Additionally, the applicant must fully cooperate with the President of the OCCP in the course of the proceedings and withdraw from the agreement before or immediately after the submission of the leniency application.

The existence of the following is sufficient for the OCCP to find an infringement:

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(a) Evidence or information that enables the OCCP to apply to the court of competition and consumer protection for permission to conduct a search in connection with the agreement to which leniency relates, if the OCCP did not yet have in its possession sufficient evidence to carry out such an inspection or had not already carried out such an inspection; or

(b) Evidence that, in the OCCP's view, is sufficient for it to find an infringement, if the OCCP did not yet have in its possession sufficient evidence to find such an infringement and that no other undertaking previously qualified for immunity from fines under (a) in relation to that secret cartel.

Full leniency is not available to a company that coerces other undertakings to enter into such an agreement.

(ii) Reduction of fines (partial leniency) is available to a company that does not meet the conditions for full leniency and that fully cooperates with the President of the OCCP; provides the President of the OCCP, on its own initiative, with substantial evidence related to the case under consideration, which was not available to the President of the OCCP; and that terminates its participation in the agreement before or immediately after the submission of the leniency application.

A sliding partial leniency level scale is available as compared to the fine that would have been imposed on the applicant if he or she had not applied for leniency, as follows:

- A fine imposed on the second applicant will be reduced by 30–50%;
- A fine imposed on the third applicant will be reduced by 20–30%; and
- A fine imposed on the other applicants will be reduced by up to 20%.

Since January 18, 2015, a new instrument (leniency plus) is available. This instrument allows an undertaking to receive an additional 30% reduction in fines provided it informs the President of the OCCP of another anti-competitive agreement in which it has participated. In such circumstances, the undertaking will have the status of the first applicant and will be able to avoid the fine entirely.

With effect from January 18, 2015, undertakings wishing to participate in the leniency program have at their disposal a new ordinance on the leniency program[30] and guidelines on the reduction of fines. The leniency program allows undertakings that started to cooperate with the President of the OCCP and submitted evidence on the existence of anti-competitive agreements to obtain immunity from financial sanctions or the reduction of such sanctions.

e. Fines Policy

As noted in b., above, under the Antimonopoly Act, the President of the OCCP has the power to impose fines on enterprises using anticompetitive practices, including fines for the abuse of a dominant position and for concluding unlawful agreements. The maximum fine may not exceed 10% of the revenue obtained by the company in the year preceding the year in which the decision on the fine is issued.

Based on the amendments to the Antimonopoly Act, the President of the OCCP issued guidelines for setting fines for anticompetitive behavior.

The guidelines, published on January 1, 2016, were last updated on March 31, 2024. The aim of the guidelines is to increase transparency regarding the methodology for setting antitrust sanctions and thus help enterprises understand the consequences of engaging in unlawful activities.

The most serious (and the most severely punished) infringements are violations of horizontal competition restrictions, i.e., those that occur at the same level of distribution of goods or provision of services between competitors, for example, pricing agreements between producers or bid rigging between tender participants, as well as abuses of a dominant position that aim at, or lead to, the elimination of competition (i.e., all significant competitors).

On the other hand, fines imposed by the President of the OCCP in cases involving, for example, vertical arrangements or the abuse of a dominant position that leads to a significant restriction of competition in the market, are usually less severe. However, the decisional practice of the President of the OCCP tends towards the imposition of high penalties for the most serious anti-competitive vertical agreements, such as fixing the resale price of goods or services, or improperly allocating markets within a distribution network.

In setting a fine, the President of the OCCP takes into account not only the harmfulness of the infringement concerned, but also other factors, such as the benefits derived by the enterprise as a result of the infringement, the impact that the practice has on the market and the duration of the anti-competitive behavior.

At the same time, the President of the OCCP also takes into consideration certain mitigating circumstances, for example, the fact a practice had ceased by the time the President's proceedings were initiated, the fact that an enterprise acted under coercion or that it voluntarily removed the effects of the infringement, as well as circumstances that have an aggravating effect, including the fact that an enterprise acted as the leader or initiator of the practice concerned or where there is recidivism.

The President of the OCCP issues a statement of objections, i.e., a detailed justification of charges with respect to practices violating collective consumer interests or anti-competitive practices. The President presents the statement of objections once the collection of evidence in a case is completed. The document sets out the factual and legal grounds for the charges brought by the President as well as the evidence supporting the charges. In this way, the undertaking concerned has an opportunity to address the charges before a decision is issued.

f. Merger Control

Poland's merger control regulations are contained in the Antimonopoly Act. While the Antimonopoly Act does not define the concept of a concentration as such, it lists the types of

[30] Ordinance of the Council of Ministers of December 23, 2014, on the procedure applicable to undertakings seeking immunity from or reduction of fines imposed by the President of the Office for Competition and Consumer Protection, Journal of Laws 2015 Item 81.

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transactions that require the giving of prior notice to the President of the OCCP.

(1) Notification Requirement

The requirement of notifying the President of the OCCP arises on:

(i) The merger of undertakings;

(ii) The taking by one undertaking of the direct or indirect control of another undertaking or a part of it;

(iii) The creation of a joint venture; and

(iv) Certain acquisitions of assets.

The above transactions may be subject to pre-closing review by the President of the OCCP if:

(i) The combined worldwide turnover of the entire groups to which the companies participating in the transaction belong exceeded the equivalent of 1 billion euros in the financial year preceding the year of the transaction; or

(ii) The combined turnover in Poland of the entire groups to which the companies participating in the transaction belong exceeded the equivalent of 50 million euros in the financial year preceding the year of the transaction.

Additionally, the acquisition of the property of another undertaking (whether the entirety or only part of that property) is subject to review by the President of the OCCP if the turnover in Poland arising from the property to be acquired exceeded 10 million euros in either of the two financial years preceding the year of notification.

Notifying the President of the OCCP is a mandatory pre-merger requirement imposed on the management body of the acquirer, i.e.:

(i) On a share acquisition, on the purchaser of the shares; and

(ii) In the event of a change in the control of a company, on the undertaking that takes over control.

All parties to a transaction are required to make the filing in the case of a transaction consisting of a merger of undertakings or the creation of a joint venture. A mere intent to enter into such transactions triggers the notification requirement.

(2) Exemptions

The forms of concentration listed above do not require any filing with the President of the OCCP if (among other requirements):

(i) The combined turnover in Poland of the target company and its subsidiaries did not exceed the equivalent of 10 million euros in either of the two financial years preceding the year of notification;

(ii) The turnover of at least one of the merging parties or at least one of the joint venture's partners and their capital groups did not exceed the equivalent of 10 million euros in any of the two financial years preceding the year of notification in Poland;

(iii) The combined turnover of the target company and its subsidiaries, plus the turnover achieved by the to-be-acquired property (if the target and the property belong to the same capital group) in any of the two financial years preceding the year of notification, did not exceed the equivalent of 10 million euros in Poland;

(iv) The undertakings concerned are controlled, directly or indirectly, by the same entity (i.e., they belong to the same group);

(v) The concentration consists of a temporary acquisition or the taking up of shares by a financial institution for the purpose of reselling such shares, where the economic activity carried on by the institution includes investing in shares of other enterprises on its own account or the account of others, provided the resale is effected before one year has elapsed from the date of acquisition or taking up, and provided:

- The institution does not exercise rights in the shares other than the right to a dividend; or
- It exercises such rights for no other purpose than to prepare to resell the enterprise in whole or in part, or the assets of the enterprise, or the shares;

(vi) The concentration consists in a temporary acquisition or taking up of shares by an entrepreneur with the object of securing receivables, provided the entrepreneur does not exercise rights in the shares other than the right to sell them; or

(vii) The concentration occurs in the course of bankruptcy proceedings, except where the entity proposing to take over control is a competitor or a member of a corporate group the members of which are competitors of the target entrepreneur.

(3) Non-Compete Covenants

Non-compete covenants are commonly included in Polish sale agreements. Essentially, there are no specific guidelines provided by the President of the OCCP on such clauses.

The clauses are assessed according to the general principles of Polish anti-monopoly legislation and in compliance with the EU legislation thereon. In principle, the legal effectiveness of non-compete covenants should not be undermined provided the term of the covenant is limited to a period of up to two years (three years in some cases).

(4) Powers of the Office for Competition and Consumer Protection

There are two phases of review.

(i) The first phase lasts one month. If the case merits extensive market analysis, a second phase will be initiated.

(ii) The second phase will last no longer than four additional months.

In the event that the undertaking concerned meets the conditions for obtaining a conditional decision, the statutory review period is extended for an additional 14 days. During this period, the authority has the right to request additional information. Such requests for information stop the clock until the authority has received the requested information.

The President of the OCCP may clear a concentration, impose conditions upon which the transaction may be performed,

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or prohibit it if the merger would result in the creation or strengthening of a dominant position or otherwise lead to a significant limitation of competition.

The transaction may not be consummated (closed) until the issuing of a final decision approving (either conditionally or unconditionally) the transaction or the lapse of the statutory period for the President of the OCCP's review of the notification. A decision of the President of the OCCP may be appealed to the Court of Competition and Consumer Protection within one month from the date of the delivery of the decision.

The President of the OCCP has issued Guidelines on the merger notification requirements and process. The Guidelines contain important explanations regarding the issues that may be important in a specific practice area, for example, the effect on the Polish market of extraterritorial concentrations and the documents confirming the intention to create a concentration.

(5) Fines

Should the parties to a merger transaction complete the transaction without obtaining the required clearance from the President of the OCCP or consummate the transaction before clearance has been issued, the President of the OCCP may:

(i) Impose on the undertaking a fine of up to 10% of the revenues it has generated in the previous financial year;

(ii) Impose on a person holding a managerial post or who is a member of a managing body of the undertaking a fine of up to 50 times the average remuneration in the business sector (i.e., currently around 102,000 euros);

(iii) Order:

(a) That the merged entity be divided;

(b) That the entirety or part of the merged entity's assets be disposed of; or

(c) The disposal of stocks or shares ensuring control over the undertaking or undertakings, or dissolution of the company over which the undertakings have joint control;

(iv) Issue a decision ordering that the merged entity be divided and its assets/shares be disposed of within five years following the consummation of the transaction. Should such decision be issued but not complied with, the merged entity may be dissolved by decision of the President of the OCCP, and the court asked to take actions designed to restore the pre-merger situation.

g. EU Antitrust and Merger Control Law

With effect from May 1, 2004, the competition rules of the EU treaties and the secondary legislation directly apply in Poland. Practices that affect trade between Member States of the EU are, therefore, within the scope of Articles 101 and 102 of the TFEU.

Article 101(1) of the TFEU prohibits all agreements (horizontal or vertical), concerted practices and decisions by associations of undertakings that may prevent, restrict or distort competition within the internal market. Individual and block exemptions may be granted under Article 101(3) of the TFEU. Article 102 of the TFEU outlaws the abuse of a dominant position.

Concentrations of Polish undertakings may be directly subject to the EU merger control regulations if they have an EU dimension. A concentration is deemed to have an EU dimension if:

(i)(a) The combined aggregate worldwide turnover of all the undertakings concerned is more than 5 billion euros; and

(i)(b) The aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than 250 million euros; however, there is no EU dimension if each of the undertakings concerned obtains more than two-thirds of its aggregate EU-wide turnover within one and the same EU Member State; or

(ii)(a) The aggregate global turnover of all participating undertakings exceeds 2.5 billion euros;

(ii)(b) The aggregate turnover of all the participating undertakings exceeds 100 million euros in each of at least three EU Member States;

(ii)(c) In each of the three EU Member States specified for purposes of (ii)(b), the aggregate turnover of each of at least two of the participating companies exceeds 25 million euros; and

(ii)(d) The total turnover in the European Union of each of at least two of the participating companies exceeds 100 million euros.

However, there is no EU dimension if each of the participating companies generates more than two-thirds of its aggregate intra-EU turnover in one and the same Member State.

h. Unfair Trade Practices

Problems regarding unfair trade practices are governed by the Act on Combating Unfair Competition (the "Unfair Competition Act").[31]

The Unfair Competition Act regulates the prevention and suppression of unfair competition engaged in by an entrepreneur in the context of economic activity and, in particular, the pursuit of industrial and agricultural production, trade and services, in the interests of the public, entrepreneurs and customers. Under the Unfair Competition Act, an "entrepreneur" is a natural or legal person, or an organizational unit not having legal personality that, by undertaking a profit-making or professional activity (even if that activity is secondary in nature) engages in an economic activity.

(1) Unfair Competition

An act of unfair competition is defined as an activity contrary to the law or good practice that threatens or impairs the interest of another entrepreneur or a customer.

The Unfair Competition Act contains a non-exhaustive list of unfair competition activities, including the following:

(i) Persuading a competitor's employees to terminate or refrain from carrying out their employment agreements;

[31] Act on Combating Unfair Competition (*Ustawa o zwalczaniu nieuczciwej konkurencji*), Journal of Laws 2022 Item 1233, as amended.

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(ii) Violating (including disclosing) business secrets;

(iii) Persuading a competitor's clients to terminate or refrain from carrying out their agreements;

(iv) The misleading marketing of an enterprise;

(v) The misleading marketing of goods or services;

(vi) Impeding market access; infringing the prohibition on practices restricting competition; or

(vii) Engaging in prohibited advertising, which include:

(a) Advertising that is contrary to the law or good practice or offends against human dignity; advertising that misleads customers;

(b) Advertising that appeals to the emotions of customers by provoking fear or exploiting the superstitions or credulity of children;

(c) Statements encouraging the purchase of products (or services) by creating the impression of providing neutral information;

(d) Advertising that significantly interferes with the privacy of customers, in particular the objectionable disturbance of customers in public places, the sending of unsolicited products at the customer's expense and the abusive use of technical means of communication; and

(e) Comparative advertising that is contrary to good practice.

(2) Penalties

If an act of unfair competition is committed, an entrepreneur whose interests have been violated may bring before a civil court a legal action against the entrepreneur concerned for the infringement of its interests. In the case of an act of unfair competition, the company whose interests are thereby jeopardized or infringed may demand:

(i) The discontinuation of the prohibited practices;

(ii) The elimination of the effects of the prohibited practices;

(iii) The making of one or more statements of appropriate content and form;

(iv) The repair of the damage suffered, pursuant to the general rules;

(v) The handing over of unjustified benefits, pursuant to the general rules; and

(vi) Where the act of unfair competition was deliberate, the adjudication of an adequate amount of money to go towards a specified social goal related to supporting Polish culture or the protection of the national heritage.

The demands referred to in (i)–(iii) and (vi) can also be brought by a national or regional organization whose statutory objective is to protect the interests of entrepreneurs, Additionally, certain acts of unfair competition may lead to parallel criminal responsibility (with the possibility of a fine or imprisonment).

i. Consumer Protection

The Antimonopoly Act provides that practices violating collective consumer interests, i.e., any unlawful activity of an undertaking prejudicial to such interests, are prohibited, in particular:

(i) Breaching the duty to provide consumers with reliable, truthful and complete information;

(ii) Unfair commercial practices and acts of unfair competition; and

(iii) Proposing that consumers acquire financial services incompatible with their needs (based on the available information the undertaking has about the consumer's needs) or soliciting services in a way that misrepresents the nature of the service ("misselling").

The sum of the interests of individual consumers does not constitute a collective consumer interest.

(1) Fines

The fines for violation of consumer interests are as follows:

(i) Up to 10% of the turnover of the offending company in the financial year preceding the year in which the penalty is imposed;

(ii) Up to 3% of the total annual revenues of a company earned in the accounting year preceding the year in which the fine is imposed, if no information, or false or misleading information is provided by an entrepreneur according to the implementation of the obligations imposed in the commitment decision;

(iii) Up to 5% of the average daily revenues of a company earned in the accounting year preceding the year in which the fine is imposed for each day of delay in complying with a decision of the President of the OCCP or a ruling of the Competition and Consumer Protection Court.

In addition, the Antimonopoly Act provides for penalties that may be imposed by the President of the OCCP on persons acting as managers, or persons who are members of a managing body of a company, as well as persons authorized by the company in the course of inspection. The penalties take the form of fines of up to 50 times the average remuneration in the company sector (currently around 102,000 euros).

Furthermore, the OCCP has become a member of the Polish Financial Supervision Authority. As a consequence, the OCCP may now impose penalties on managers who deliberately violate collective consumer interests or allow their companies to use abusive clauses. The maximum amount of these penalties is PLN 2 million, i.e., approximately 483,000 euros and, in the case of a manager in the financial sector, PLN 5 million, i.e., approximately 1,208,000 euros. The penalty may be imposed on an individual as part of a decision of the OCCP imposing a fine on an undertaking. In the past, this was possible only in the case of violations of the competition protection law.

(2) Unfair Commercial Practices

The Act on Prevention of Unfair Commercial Practices dated August 23, 2007 (the "Unfair Commercial Practices

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Act") concerns practices exerting a negative influence on the commercial decisions of consumers involving the purchase of goods and services.[32] Under the Unfair Commercial Practices Act, a commercial practice is considered unfair if it is contrary to good practice and negatively influences or may negatively influence the commercial behavior of the average consumer as regards goods or services.

The following commercial practices are regarded as exceptionally unfair:

(i) Misleading commercial practices — commercial practices involving an action or omission that, by depriving the average consumer of access to important information, may deny him or her the ability to make a free choice, including for instance: surreptitious advertising; bait advertising; displaying a trust mark, quality mark or equivalent without having obtained the necessary authorization; claiming to be a signatory to a code of conduct when the trader is not a signatory; making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his or her family if the consumer does not purchase the product.

(ii) Aggressive commercial practices — commercial practices involving the unlawful exertion of pressure that considerably reduces or may reduce the average consumer's freedom of choice, including among other things:

- Making persistent and unwanted (not caused by the action or omission of the consumer) solicitations by telephone, fax, e-mail or other remote media, except, to the extent justified, in order to enforce a contractual obligation as allowed by the relevant laws;
- Creating the false impression that the consumer has already won, will win, or will win upon performing a particular act, a prize or other equivalent benefit, when in fact there is no prize or other equivalent benefit, or taking any action in relation to claiming that a prize or other equivalent benefit is subject to the consumer paying money or incurring a cost;
- Explicitly informing a consumer that if he does not buy the product or service concerned, the trader's job or livelihood will be in jeopardy;
- Creating the impression that the consumer cannot leave the premises until a contract is executed; and
- Conducting visits to the consumer's home and ignoring the consumer's request to leave or not to return, except, to the extent justified, in order to enforce a contractual obligation as allowed by the relevant laws.

(3) Claims

Consumers have been accorded a specific right to submit individual claims regarding unfair practices, whereby they may demand that:

(i) Such a practice be discontinued;

(ii) The effects of such a practice be removed;

(iii) A single or multiple statement of appropriate content and appropriate form be made;

(iv) Price be reduced;

(v) The damage as per general terms and conditions be redressed — in particular, they may request that the contract concerned be cancelled, the benefits be mutually returned, and the costs associated with the purchase of the product be reimbursed by the entrepreneur;

(vi) An adequate amount of money be adjudicated for a specific social purpose related to supporting Polish culture, the national heritage or consumer protection.

The claims referred to in (i), (iii) and (vi) above may also be brought by:

(i) The Ombudsman;

(ii) The Insurance Ombudsman;

(iii) A national or regional organization whose statutory objective is to protect consumer interests;

(iv) A district (municipal) consumer ombudsman.

Unlike other Polish regulations regarding consumer protection, the burden of proof in these circumstances rests solely with the company accused of breaching the Unfair Commercial Practices Act, i.e., it is for the accused company to demonstrate that the breach has not occurred and not for the consumer to demonstrate that the breach has occurred.

Additionally, the Unfair Commercial Practices Act provides criminal penalties for conducting unfair commercial practices: fines in the case of aggressive commercial practices and imprisonment if the activity concerned is organized or conducted in an organized manner.

j. Abusive Clauses

Contractual clauses that have not been negotiated individually are not binding for consumers if they structure consumers' rights and obligations in a way that is contrary to good practice and grossly violates consumer interests. In particular, such clauses violate consumer interests if they:

(i) Exclude or limit liability towards the consumer in the event of personal injury;

(ii) Exclude or severely limit liability towards the consumer for nonperformance or improper performance of a contractual obligation;

(iii) Refer to clauses that the consumer was unable to review before concluding the contract;

(iv) Grant the person with which the consumer concludes the contract the exclusive right to interpret the contract; or

(v) Exclude the jurisdiction of Polish courts, or submit disputes to a Polish or foreign arbitration panel or other body.

The list of such clauses provided in the regulations is not exhaustive and, therefore, numerous other clauses hampering consumer interests could be covered.

According to the amendments of the Antimonopoly Act which entered into force on April 17, 2016, the President of the OCCP decides which clauses are abusive.

[32] Act on Prevention of Unfair Commercial Practices (*Ustawa o przeciwdziałaniu nieuczciwym praktykom rynkowym*), Journal of Laws 2023 Item 845.

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Proceedings are initiated by the President of the OCCP *ex officio*. However, consumers, the Insurance Ombudsman and consumer and foreign organizations (that have an objective in their statutes that justify notification) may notify the President about abusive clauses that threaten consumer interests.

As noted in the April 2016 amendments, the President of the OCCP may issue two types of decisions.

(i) First, if the President on his own finds out about the abusive clause, he may issue a decision recognizing that the provisions are abusive and prohibiting their use.

In this context, the President may:

(a) Oblige the undertaking to inform customers about the prohibited clause; or

(b) Compel the violator to release a statement (or statements) about the violation while giving guidance as to the form and content of the statement, as noted in his decision.

(ii) Second, the President may issue a commitment decision, should the undertaking commit to taking or abandoning certain actions. The President may indicate a deadline by which the commitments should be fulfilled.

The decision to recognize the provisions as abusive and to prohibit their use impacts both the undertaking that used the prohibited clause and all consumers that made an agreement with the undertaking based on that clause, as specified in the decision.[33]

The proceedings should be completed within four months and, in particularly complicated cases, no longer than five months from the date on which proceedings were initiated.

The fines for such abusive clauses are as follows:

(i) Up to 10% of the turnover of the offending company in the financial year preceding the year in which the penalty is imposed;

(ii) Up to 3% of the total annual revenues of a company earned in the accounting year preceding the year in which the fine is imposed, if no information, or false or misleading information, is provided by an entrepreneur during anticompetitive proceedings;

(iii) Up to 5% of the average daily revenues of a company earned in the accounting year preceding the year in which the fine is imposed for each day of delay in complying with a decision of the President of the OCCP or a ruling of the Competition and Consumer Protection Court; and

(iv) Up to PLN 2 million i.e., approximately 483,000 euros and, in the case of a manager in the financial sector, PLN 5 million i.e., approximately 1,208,000 euros, imposed on managers who allow their companies to use abusive clauses.

[33] Generally, the abusive clause does not invalidate the entire contract, unless the abusive clause relates to the essential aspects of the contract (however, it may not regard the provisions specifying the main performance of the parties, including the price or remuneration, if they are made in plain and intelligible language).

k. Price Controls

Generally, no price controls are imposed in Poland. However, some obligations are provided for under the Act on Informing about Prices of Goods and Services.[34]

The Act does not apply to prices in transactions between natural persons that are not entrepreneurs or to prices set in accordance with separate legislation.

The Act requires entrepreneurs to provide customers with information about prices in an explicit and clear manner, including information about price reductions. In particular, whenever a price reduction for a product is announced to consumers, the lowest selling price indicated must have been valid in the last 30 days.

Specific rules regarding the display of prices of goods and services are provided in the Ordinance of the Minister of Development.[35] Information regarding the standard required by the President of the OCCP when communicating price information to consumers can be found in the guidelines issued by the President of the OCCP.

It should be noted that the district councils or *powiat* councils (*Rada Gminy, Rada Powiatu*) maintain the right to establish rates applicable to public and taxi transportation in the territory of the relevant district or *powiat* (the second level of local government administration in Poland). However, this is regulated by a separate legal instrument.

If a business evades its obligation to mark goods with their prices, the provincial inspector from the Trade Inspectorate may impose a financial penalty of up to PLN 20,000 (approx. 4,638 euros). If an entrepreneur repeats this breach within 12 months, a fine up to PLN 40,000 (approx. 9,276 euros) may be imposed. The Act does not provide for criminal sanctions in case of a breach of its provisions.

The Act on Protection of Competition and Consumers prohibits a company from gaining a dominant market position by imposing exorbitant or predatory prices. A company is considered dominant if it has the power to behave to an appreciable extent independently of its competitors, customers and consumers. A dominant position is presumed to exist if the company's market share exceeds 40%. The imposition of exorbitant or excessively low prices by dominant companies is illegal.

l. Securities Regulation

Securities regulation in Poland is heavily affected by the EU capital markets union regulations including, in particular, the MiFID II package. Legal regulations relevant to the securities' market are contained in various legal acts and regulations. The following sections discuss the key national provisions relevant to securities. The EU Level 2 and 3 measures applicable to entities operating in Poland are not discussed in detail in this document.

[34] Act on Informing about Prices of Goods and Services (*Ustawa o informowaniu o cenach towarów i usług*), Journal of Laws 2023 Item 168 as amended.

[35] Ordinance of the Minister of Development of December 19, 2022, regarding the display of prices for goods and services (*Rozporządzenie Ministra Rozwoju w sprawie uwidaczniania cen towarów i usług*), Journal of Laws 2022 Item 2776.

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The Polish Civil Code[36] contains general provisions regarding securities. Three types of securities are recognized by the Civil Code:

(i) Registered securities that are transferred by an assignment accompanied by the delivery of the document;

(ii) Securities on order, such as bills of exchange and checks entitling the person indicated in the document as well as any person to whom the rights have been transferred by endorsement; and

(iii) Securities in bearer form, the transfer of which requires only the delivery of the document.

Securities upon mandate may be transferred if the transfer is delivered and an unbroken sequence of endorsements is maintained.

Poland has a generally accepted unwritten *numerus clausus* (closed catalogue) rule regarding securities, under which a particular type of security may be issued only if the law allows for it.

In addition to the general regulations regarding securities, public trading in securities is subject to very detailed regulations, based principally on the following Acts:

(i) The Act on Public Offering and Conditions for Introduction of Financial Instruments into the Organized Trading System and on Public Companies;[37]

(ii) The Act on Trading in Financial Instruments;[38]

(iii) The Act on Supervision of the Financial Market;[39] and

(iv) The Act on Capital Market Supervision.[40]

The capital market is supervised by the Polish Financial Supervision Authority (FSA). The FSA supervises the capital market as well as entities operating in this market, in particular:

(i) Investment firms (brokerage houses, banks conducting brokerage activity, foreign investment companies that have their registered seats in EU Member States conducting brokerage activity in Poland and foreign companies that have their registered seats in OECD or WTO countries conducting brokerage activity in Poland);

(ii) Custodial banks;

(iii) Companies operating regulated markets and companies operating commodities exchanges;

(iv) Companies operating a securities depository (i.e., the National Depository of Securities (NDS));

(v) Investment funds, management companies and alternative investment companies;

(vi) Commodities brokerage houses;

(vii) Issuers making initial public offerings (IPOs) or issuers the securities of which are to be admitted to trading on the regulated market;

(viii) Stock exchanges (i.e., the Warsaw Stock Exchange (WSE)); and

(ix) Other supervised entities listed in Article 5 of the Act on Capital Market Supervision.

(1) Shares

Under the Commercial Companies Code,[41] the shares in a joint stock company are securities unlike shareholders' titles in limited liability companies. The shares in a joint-stock company must have an equal nominal value of at least PLN 1/100. Shares may be in bearer or registered form. It is also possible to issue a class of shares with various types of preferences, in particular, a preference may relate to dividends, voting rights or the distribution of the company's assets in the event of winding up.

(2) Bonds

The principles governing the issuance, trading and redemption of bonds are regulated by the Act on Bonds.[42] The Act defines bonds as securities issued in series, wherein the issuer declares that it is a debtor of a bondholder obliged to perform a specified action for the benefit of the bondholder. The action may be pecuniary (payment of the principal amount and interest) or nonpecuniary. Bonds may be in registered form or made out to the bearer, with each single issue providing the bondholder with equal rights.

The issuer is liable with its entire property for the liabilities resulting from the bond, or may limit its liability to a portion or the whole of the proceeds obtained from the activities that were financed with the funds acquired from the issue of the bonds or from proceeds acquired from other activities specified by the issuer (income bonds).

The catalogue of issuers of income bonds is specifically restricted by the Act on Bonds. It includes local governments and companies in which local governments hold shares representing at least 50% of the votes at the general meeting of shareholders and that are designated for the performance of public utility services, and other companies that only perform public utility services. Bonds may be issued by way of public or private placement. The provisions of the Act on Public Offering apply to the public subscription of bonds.

The provisions of the Act on Bonds do not apply to treasury debt securities. Because of the definition of bonds, issuing debt securities in a different form is generally prohibited, except as recognized by the law (for example, bills of exchange, mortgage bonds or banking debt securities).

[36] Civil Code (*Kodeks cywilny*), Journal of Laws 2023 Item 1610, as amended.

[37] Act on Public Offering and Conditions for Introduction of Financial Instruments to Organized Trading System and on Public Companies (*Ustawa o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizaowanego systemu obrotu oraz o spółkach publicznych*), Journal of Laws 2022 Item 2554, as amended ("Act on Public Offer").

[38] Act on Trading in Financial Instruments (*Ustawa o obrocie instrumentami finansowymi*), Journal of Laws 2023 Item 646, as amended.

[39] Act on Supervision of the Financial Market (*Ustawa o nadzorze nad rynkiem finansowym*), Journal of Laws 2024 Item 135, as amended.

[40] Act on Capital Market Supervision (*Ustawa o nadzorze nad rynkiem kapitałowym*), Journal of Laws 2023 Item 188, as amended.

[41] Commercial Companies Code (*Kodeks spółek handlowych*), Journal of Laws 2024 Item 18, as amended.

[42] Act on Bonds (*Ustawa o obligacjach*), Journal of Laws 2022 Item 2244, as amended.

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(3) Other Securities

Other types of securities that exist in Poland include, among others:

(i) Checks and bills of exchange (very often used for commercial paper programs);

(ii) Treasury bills and bonds (regulated by the Act on Public Financing);[43]

(iii) Banking securities (regulated by the Banking Law); and[44]

(iv) Mortgage bonds (regulated by the Act on Mortgage Bonds).[45]

Admission to trading on the regulated market or the public offering of securities by the State Treasury or the NBP requires no drafting, approval or publication of an issue prospectus.

Furthermore, Article 2 of the Act on Trading in Financial Instruments provides for a broader catalogue of "financial instruments," including but not limited to "securities," to which detailed specific regulations (similar to regulations governing securities) apply.

(4) Organized Trading in Securities

The Act on Trading in Financial Instruments defines securities as: shares; preemptive rights as understood by the Commercial Companies Code; rights to shares; subscription warrants; depositary receipts; mortgage bonds; investment certificates; banking derivative rights, and other transferable securities, including securities incorporating property rights equivalent to rights attaching to shares or debt, issued under pertinent provisions of Polish or foreign laws, as well as other transferable property rights created by issuance that incorporate a right to acquire or subscribe to such securities or that are exercisable by way of a cash settlement (derivative rights).

Securities that are:

(i) Offered in a public offering;

(ii) Admitted to trading on a regulated market;

(iii) Introduced to an alternative trading system; or

(iv) Issued by the State Treasury or the NBP

are issued in uncertificated form as of the date of their registration with the NDS and/or NBP, i.e., the organization that operates the central deposit and registration system.

The NDS operates deposit accounts for all investment companies. The deposit accounts reflect the global number of the securities registered on all securities accounts operated by each authorized entity for the holders of the securities accounts. The NDS also maintains individual securities accounts for institutions authorized to invest in securities, which are deemed to be the owners of the securities. The NDS may also maintain omnibus accounts.

According to the Act on Public Offering, a "public offering" is an "offer of securities to the public,"[46] i.e., a communication to at least two persons (or to unspecified recipients) in any form and by any means, providing sufficient information on the terms of the offer and the securities being offered to enable an investor to decide whether to purchase or subscribe for those securities (this definition also applies to the placing of securities through financial intermediaries).

The public offering of securities, as well as admission to trading on the regulated market, is regulated by the Prospectus Regulation and the Act on Public Offering, as well as the rules of the WSE main market and the WSE alternative trading system.[47]

The public offering or admission to trading on the regulated securities market and the alternative trading system may require the drawing up of an issue prospectus that has to be approved by the FSA (or by another competent financial supervisory authority from an EU Member State and passported into Poland) and made available to the public.

The Prospectus Regulation provides for a number of cases that are exempt from this requirement, the most important being:

(i) An offer of securities addressed solely to qualified investors;

(ii) An offer of securities addressed to fewer than 150 natural or legal persons, other than qualified investors, per Member State;

(iii) An offer of securities whose denomination per unit amounts to at least EUR 100,000;

(iv) An offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100,000 per investor, for each separate offer.

While the above exemptions are fully applicable in Poland, Polish law provides for certain additional, specific requirements that may also apply to public offers issued in Poland based on a relevant prospectus exemption. The contents of the prospectus will depend on the type of offering and are regulated by, in particular, the Prospectus Regulation. Under this regulation, the prospectus must include, inter alia, information on the following:

(i) The issuer;

(ii) The issue;

(iii) The issuer's business activity;

(iv) The material risks connected with investment in the offered securities;

(v) The names of the members of the governing bodies of the issuer and its main shareholders; and

[43] Act on Public Financing (*Ustawa o finansach publicznych*), Journal of Laws 2023 Item 1270, as amended.

[44] Banking Law (*Ustawa — Prawo bankowe*), Journal of Laws 2023 Item 2488, as amended.

[45] Act on Mortgage Bonds and Mortgage Banks (*Ustawa o listach zastawnych i bankach hipotecznych*), Journal of Laws 2023 Item 110.

[46] Within the meaning of Art. 2(d) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of June 14, 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (the "Prospectus Regulation").

[47] The New Connect and the bond markets or the Bond Spot and Catalyst (both the regulated and the over-the counter (OTC) market).

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(vi) The recent financial statements of the company and consolidated financial statements of the group (these must not have been drawn up more than nine months prior to the application).

The inclusion of any false, misleading or incomplete statements in the prospectus or the information memorandum may expose the issuer and the entities that drafted the documents to claims for damages and give rise to criminal liability. The next step towards the approval of a prospectus by the FSA is the registration of the securities with the NDS. This is followed by the issuing of a permit for trading on the WSE (resolution of the Exchange Board).

The Act on Public Offering also contains a number of provisions regarding disclosure (notification) obligations, transfers of substantial blocks of shares, the concept of parties "acting in concert," and civil and criminal liability.

(5) Investment Funds

Under the Act on Investment Funds,[48] investment funds in Poland take the form of legal persons governed by investment fund joint stock companies (TFI). Such companies manage investment funds and represent them in relations with third parties. The types of investment funds allowed under Polish law are described in (a) to (e), below.

(a) Open-Ended Funds

The interests of investors in this type of fund are represented by participation units that are not securities. Participation units are nontransferable, may only be purchased from the fund and may only be redeemed by the fund.

They are sold and redeemed at a price per unit that is equal to the net asset value of the fund, divided by the number of participation units plus (or, in the case of redemption, minus) handling fees. In exceptional circumstances, sale and redemption may be suspended.

The scope of investments available to such a fund is limited (generally, securities traded on regulated markets and debt securities with maturities exceeding one year are available, or deposits in national banks with maturities of less than one year).

There are also substantial obligations relating to the diversification of the portfolio. Investors' meetings of open-ended investment funds are subject to restricted powers.

Open-ended funds are governed primarily by the provisions of the Act on Investment Funds implementing the UCITS directive (Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)).

(b) Specialized Open-Ended Funds

A specialized open-ended fund differs from an ordinary open-ended fund in the following ways:

(i) The statute of a specialized open-ended fund lists the persons allowed to participate in the fund or determines the conditions that must be fulfilled by entities that wish to participate in the fund;

(ii) The redemption of units may be less frequent; and

(iii) An optional board of investors may be established as a supervising body.

(c) Closed-Ended Funds

Closed-ended funds issue investment certificates that are transferable securities. Investment certificates may be public or nonpublic.

(i) Public investment certificates must be admitted to trading on the regulated market in accordance with the Act on Public Offering, after an issue prospectus is drawn up, approved and made available to the public;

(ii) Nonpublic investment certificates cannot be offered publicly. A closed-ended fund may redeem its investment certificates that are paid up in full only if its statute so provides.

There are very few restrictions on the types of investments available to such funds (securities, debts, shares in limited liability companies, currencies, derivatives and futures are all available). Obligations relating to the diversification of the portfolio are less restrictive than those that apply to open-ended funds.

Closed-ended investment funds have optional governing bodies, which are the board of investors and the investors' meeting. The board of investors supervises the implementation of the investment objectives and the investment policy of the fund, as well as the application of the investment restrictions. The statute of a closed-ended investment fund provides for the scope of competences of the investors' meeting. Typically, the investors' meeting approves decisions concerning:

(i) A change of the depositary bank;

(ii) The issue of new investment certificates;

(iii) The amendment of the fund's statute regarding the waiver of preemptive rights to acquire investment certificates of a new issue;

(iv) Investment decisions concerning the fund's assets with a value exceeding 15% of the total asset value; and

(v) The issuing of bonds.

Closed-ended funds are governed primarily by the provisions of the Act on Investment Funds implementing the AIFMD (Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010).

(d) Special Investment Fund Structures

Among other issues, the Act on Investment Funds provides for the following special investment fund structures:

(i) Investment funds with various categories of participation units;

[48] Act on Investment Funds (*Ustawa o funduszach inwestycyjnych i zarządzaniu alternatywnymi funduszami inwestycyjnymi*), Journal of Laws 2023 Item 681, as amended.

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(ii) Investment funds with separated sub-funds;

(iii) Master and feeder investment funds; and

(iv) Basic and related investment funds.

Each of these special investment fund structures contains some features of an open-ended or closed-ended investment fund but differs with respect to the restrictions on investments and the investment diversification requirements.

(e) Special Types of Investment Funds

Under the Act on Investment Funds it is possible to establish a special type of investment fund with special objectives. The Act on Investment Funds provides for the following special types of investment funds:

(i) Money market funds, which invest their assets exclusively in money market instruments or deposits with maturities of less than one year in national banks or reliable credit institutions;

(ii) Portfolio funds, which issue public investment certificates on a continuous basis;

(iii) Receivables funds, which invest their assets in receivables or a pool of receivables; and

(iv) Nonpublic asset funds, which invest at least 80% of their assets in assets other than securities offered through public offerings or financial instruments.

(f) Mixed Funds

A mixed fund issues investment certificates that are transferable bearer securities and may be redeemed by the fund at the request of the holder. The investment certificates may be admitted to public trading and listed on a stock exchange. The investments available are similar to those available to closed-ended funds, subject to a few more restrictions.

The establishment of both investment funds and investment fund companies requires a permit from the FSA.

(g) Alternative Investment Companies

Under the Act on Investment Funds, it is possible to establish a special type of investment company, i.e., an alternative investment company. The Act on Investment Funds sets out the regulation of alternative investment companies, outlining the various possible structures.

Alternative investment companies are considered to constitute alternative investment funds within the meaning of the AIFMD.

D. Licensing and Franchising

1. General

Licensing agreements relating to intellectual property rights (IPRs) (i.e., patents, trademarks, industrial designs, utility models and copyrights) are widely used throughout Poland in virtually all sectors of the economy. Franchising agreements, which involve licensing, are most often used in such industry sectors as the food and clothing industries. Licensing agreements are regulated by the Copyright Law (1994)[49] and the Industrial Property Law (2000).[50] There are no specific provisions regulating franchising agreements in Polish law and such agreements are governed by the general rules of the Civil Code relating to contracts.

Licensing agreements covering industrial property rights (i.e., patents, trademarks, utility models and industrial designs) must be concluded in writing to be valid. Copyrights must be in writing only with respect to exclusive licensing agreements. Although there are no requirements as to the form of franchising agreements, the written form is also recommended for such agreements for evidentiary purposes. Licensing agreements covering industrial property rights may be recorded in the Polish Patent Office. This is advisable for evidentiary purposes and, in addition, enables exclusive licensees to pursue infringement actions against third parties.

2. Protection Afforded to Intangible Property Rights

a. International Treaties

Poland is a party to the most significant international regulations relating to IPRs. These include, for instance:

(i) The Agreement on Trade-Related Aspects of the Intellectual Property Rights (TRIPS);

(ii) The Bern and Rome Conventions; the Madrid Agreement;

(iii) The European Patent Convention;

(iv) The Singapore Treaty; and

(v) The Hague Agreement.

Poland has agreed to protect all areas of intellectual property by signing the treaty establishing the WTO. Poland is also a party to the Convention Establishing the World Intellectual Property Organization (WIPO). As part of the EU accession process, IPR legislation in Poland was reviewed to ensure it met the EU standards.

b. Patents

There are three ways of obtaining patent protection in Poland:

(i) By applying to the Polish Patent Office;

(ii) By using the international patent system established under the Patent Co-operation Treaty (PCT); and

(iii) By using the European patent system, which has been available in Poland since March 1, 2004, when Poland joined the European Patent Convention and became a member of the European Patent Organization.

Irrespective of the system chosen, the same right is granted, i.e., a national Polish patent. The European or the PCT system may be attractive to companies wishing to apply for patent protection in Poland and, additionally, in one or more other countries that are a party to the European Patent Convention or the PCT, respectively. A single application can be filed to obtain national patents in all such countries. A Community

[49] Act on Copyright and Neighboring Rights (*Ustawa o prawie autorskim i prawach pokrewnych*), Journal of Laws 2019 Item 1231, as amended.

[50] Law on Industrial Property (*Prawo własności przemysłowej*), Journal of Laws 2020 Item 286, as amended.

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patent system, which would allow for a single patent enforceable throughout the EU has not yet been implemented.

The requirements that must be met to qualify for patent protection in Poland are similar to those existing in most countries, i.e., the criteria of novelty, "nonobviousness" and the possibility of industrial application. A patent gives the exclusive right to use an invention for commercial or professional purposes within Poland. Patent protection is granted for 20 years. Patent protection for medicinal or plant protection products may be extended by the Polish Patent Office for up to five years by the granting of a supplementary protection certificate (SPC).

Where an invention is created by an employee under an employment or any other agreement, the right to obtain the patent belongs to the employer or the party ordering the work, unless otherwise agreed to by the parties. The right to obtain the patent or the patent itself may be assigned and may be subject to succession. The patent holder may authorize another person to use his or her invention by means of a licensing agreement.[51]

c. Petty Patents — Utility Models

A utility model is a new and useful solution of a technical nature affecting the shape, construction or permanent assembly of an object. A utility model can be a form of protection of a technical solution that is not complicated enough to meet the criteria for being a patent. A registered utility model gives a right of exclusive use for commercial or professional purposes in Poland. The term of protection is 10 years, starting from the date of the filing of the application with the Polish Patent Office.

d. Industrial Designs

An industrial design is a new form of a product that has distinct individual characteristics with respect to its shape, surface, coloring, structure, material or decorative design. To be registered, a design must be new and of an individual character.

Three types of registered designs are protected in Poland:

(i) Polish national designs registered by the Polish Patent Office;

(ii) Community designs registered by the Office for the Harmonization of the Internal Market (OHIM), available in Poland since May 1, 2004, which provide for a single right enforceable throughout the EU; and

(iii) International designs registered by the WIPO, which provide for design protection in a number of countries through a single application filed with the WIPO.

The protection lasts for a maximum period of 25 years, starting from the date of the filing of the application for registration.

There are also two systems that protect unregistered designs in Poland:

(i) Polish unregistered industrial designs, which are considered subject to and protected by the Copyright Law. To a limited extent, unregistered designs may also enjoy protection based on the Act on Combating Unfair Competition (1993).[52]

(ii) Community unregistered designs, which have been available in Poland since May 1, 2004. The Community unregistered design system follows the same general principles for protection as the Community registered design system, although it is a right against copying only. An unregistered Community design right offers protection for a period of up to three years (after first public disclosure) throughout the EU.

e. Topography of Integrated Circuits

Registration may be granted for the topography of integrated circuits if the topography is an original result of the author's intellectual effort and is not commonly known at the moment of creation. The registration of the topography gives its holder an exclusive right to use the topography for commercial or professional purposes in Poland.

The period of protection is 10 years from the end of the year in which registration was filed for or the year in which the topography or integrated circuit including the topography was first released on the market.

f. Trade and Service Marks

A trademark is any sign that can be graphically represented and is capable of distinguishing the goods or services of one enterprise from similar goods or services of another enterprise. All provisions regarding trademarks relate also to service marks. Polish law also protects well-known and renowned trademarks.

Three types of registered trademarks are protected in Poland:

(i) Polish national trademarks registered by the Polish Patent Office;

(ii) International trademarks registered by the WIPO under the "Madrid system," which is a multinational system based on two international treaties; and

(iii) Community trademarks available in Poland since May 1, 2004 — the Community trademarks system provides for a single right enforceable throughout the EU.

Trademark applications are subject to the examination of the Polish Patent Office with regard to their form, registrability and potential conflicts with prior registrations. The trademark is registered for the goods and/or services indicated in the trademark application. Trademark protection lasts for 10 years from the date on which the application is filed and may be extended indefinitely at the owner's request for further 10-year periods. Trademarks may also enjoy protection from use in trade under the Act on Combating Unfair Competition.

A trademark owner has the exclusive right to use the trademark for commercial or professional purposes in Poland. The right to the trademark may be assigned or licensed. A trademark registration may be cancelled at the request of a third party on the basis of nonuse or if the registration requirements were not met.

[51] Those rules apply also to utility models and industrial designs.

[52] Act on Combating Unfair Competition.

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g. Geographical Indications and Designations of Origin

Geographical indications are word indications that relate directly or indirectly to the name of a place, locality, region or country (territory) and that identify a product as originating in that territory, where a certain quality, the good reputation or another characteristic of the product is attributed predominantly to the geographical origin of that product.

The link between the product and its designation, must be based on the product's production and processing within the geographical area named on the product.

There are two categories of protected names: geographical indications and designations of origin. They are protected in Poland under domestic and EU laws, as follows:

(i) Polish geographical indications covering regional names and designations of origin — the registration is administered by the Polish Patent Office and is unlimited in time; and

(ii) The EU system of protected designations of origin and protected geographical indications, available in Poland as of May 1, 2004.

h. Trade Names

Trade names are governed by the Commercial Companies Code, the Civil Code and the Act on Combating Unfair Competition. A trade name of a newly established company or partnership must sufficiently differ from the trade names of companies running their business on the same market and must be disclosed in the relevant register.

Furthermore, trade names are considered personal rights that enjoy protection under the Civil Code. Furthermore, the designation of an enterprise that may mislead the customer as to its identity through the use of a trade name previously used for the designation of another enterprise constitutes an act of unfair competition prohibited under the Act on Combating Unfair Competition.

i. Know-How

There are no specific statutory provisions regulating know-how as such; however, the Act on Combating Unfair Competition provides protection for trade secrets, defined as any information of commercial value that was not disclosed to the public and with regard to which protection measures were undertaken to maintain its confidentiality.

Know-how may be licensed. The protection of know-how is based on a contractual nondisclosure obligation. However, once the know-how is in the public domain, there are no grounds for protection.

j. Copyrights

Copyright protection is assured on the basis of the Copyright Law. A wide range of works, including literary, artistic, musical and dramatic works, are subject to copyright. Copyright extends also to databases and computer programs. Economic copyright consists of the exclusive right to use and dispose of a work and the right to remuneration.

The Copyright Law also recognizes an author's moral rights, which are vested in the author and cannot be transferred.

Only economic copyrights may be assigned or licensed to third parties. Assignment and license agreements must clearly indicate the fields of use for which they are assigned. A copyright assignment agreement and an exclusive copyright license must be concluded in writing to be valid.

Unlike in the case of industrial property rights, there are no registration requirements or other formalities for copyright protection. A copyright vests and comes into existence automatically upon the creation of the work. As a general rule, an economic copyright expires after a period of 70 years following the author's death.

Furthermore, the Copyright Law provides for the protection of the following types of neighboring rights:

(i) Artistic performances;

(ii) Phonograms and videograms;

(iii) Program broadcasts; and

(iv) First, scientific and critical editions.

k. Anti-Counterfeiting

The Polish Customs Authorities have the power to seize goods if they suspect a breach of IPRs. They may seize the goods concerned on their own initiative (a rare practice) or based on an application filed by the IPR owner with the Director of the Customs Chamber in Warsaw. Such an application is not subject to the payment of any fee, but the IPR owner must commit to cover any expenses that may be incurred by the Customs Authorities (for example, destruction costs). An application allows the Customs Authorities to adopt the "simplified procedure".

This procedure was introduced by Council Regulation No 1383/2003 of July 22, 2003 and implemented in Poland on June 27, 2006. The IPR owner is notified once the suspect goods are seized by the Customs Authorities. If a breach of the IPRs is confirmed by the IPR owner and the holder, owner or importer of the seized goods gives written consent, the Customs Authorities may destroy the seized goods based on the application filed by the IPR owner. This must happen within 10 working days from the receipt of the notification. Acting under the simplified procedure, the Customs Authorities may destroy the seized goods without having to ask the court to authorize the destruction or having to determine, in a separate proceeding, that the IPRs were infringed. However, in practice it rarely happens that the owner or importer of the seized goods gives written consent for their goods to be destroyed and therefore, if the seized goods are assessed as counterfeit and the IPR owner wishes them not to be released, the IPR owner usually needs to consider if it wishes to resort to criminal procedure (i.e., by filing a criminal motion against the importer/owner) or civil procedure (by suing for trademark infringement).

The IPR owner has an opportunity to file an application for action (AFA), which grants customs protection in EU Member States (including in the Polish market). The IPR owner decides which trademarks it wishes to include in the AFA and cover by customs protection. This applies to trademarks registered for goods rather than services. An AFA can be filed for one Member State (a "national AFA") or for more than one Member State (an "EU AFA"). Filing an AFA is free of charge.

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An AFA is valid for one year and can be extended/renewed and/or updated each year.

In October 2024, a new online enforcement system for AFAs implemented in the European Union (IPEP, IP Enforcement Portal). This is an electronic system that allows AFAs to be filed and/or renewed.

E. Employment of Foreign Individuals

The employment of foreign individuals in Poland is governed, in principle, by the Act on Employment Promotion and Labor Market Institutions[53] and the Act on Foreign Persons[54] and the respective ministerial regulations. Since January 17, 2007, the Polish labor market has been open to all nationals of EU Member States, as well as nationals of EEA Member States and Switzerland (generally referred to as "EU Personnel"). As a result, EU Personnel may be employed in Poland without their having to obtain any work authorization. In general, other foreigners ("Non-EU Personnel") must obtain work authorization (work permits) and required residence title to be employed in Poland.

1. Necessary Authorizations

A foreign individual may be employed in Poland or may provide personal services for remuneration to a Polish business entity, subject to obtaining a work permit issued by the relevant Provincial Governor (*Wojewoda*) or other decision covering the right to work. The obligation to obtain a work permit applies also in the case of a foreign individual appointed as a member of the management board of a Polish company who is not an employee, unless the individual's stays in Poland on the basis of a working visa and his or her stay in Poland does not exceed six months within a period of 12 consecutive months. Before commencing work, the foreigner must, however, obtain the required residence title. Thus, the administrative procedure regarding the employment of a foreign individual is divided into two stages:

(i) The issuing of a work permit; and

(ii) The issuing of a work visa or temporary residence permit.

By way of an exception, a foreigner's right to reside and work in Poland may result from a single permit, such as:

(i) An integrated temporary stay and work permit (*zezwolenie na pobyt czasowy i pracę*); or

(ii) A temporary residence permit for highly-qualified workers (*zezwolenie na pobyt czasowy w zawodzie wymagającym wysokich kwalifikacji*).

The choice of the appropriate permit depends on the circumstances of the case.

It should be noted that there are exceptions that allow certain groups of foreigners to work in Poland without a work permit (for example, foreigners authorized to reside and work in another EU/EEA country or Switzerland, employed therein by a local employer and temporarily seconded to Poland to render services). In November 2020, a government decree extended the list of cases in which it is possible for a foreigner to work without a work permit (for example, for workers fulfilling international obligations and those in the medical professions).

Note: UK citizens no longer benefit from the work and residence entitlements of EU citizens in Poland. By way of exception, a UK citizen who exercised the right to reside in Poland in accordance with EU law before the end of the transition period (i.e., December 31, 2020) and will continue to reside in Poland after the end of the transition period will generally remain eligible to reside in Poland (the UK citizen must apply for a document confirming this with the regional authorities). In other cases, UK citizens and their family members will be covered by the general provisions applicable to foreigners. For a short-term trip, UK citizens will benefit from a visa exemption in the Schengen area. For a long-term trip, UK citizens will have to receive a national visa/Schengen visa or a residence permit. To work in Poland, a UK citizen will be required to obtain a work permit or other work authorization title (for example, the uniform work and residence permit).

a. Work Permits

The work permit for a foreigner in Poland is issued by the appropriate Provincial Governor at the written request of the prospective employer. The procedure described herein concerns the basic type of work permit (work permit type A) issued at the request of the Polish entity that intends to employ the foreign national in Poland. As a rule, a work permit will be issued if no Polish candidates for the position are to be found on the domestic market. The employer is thus obliged to submit an employment offer to the appropriate Regional Employment Office (REO) in the first instance. If no Polish citizens are available who would be fit for the post, the REO will issue the appropriate confirmation to the employer in writing.

Once the employer obtains confirmation from the REO, the employer submits an application for the issue of a decision on a work permit for the foreigner, together with the REO confirmation. The prospective employer is obliged to provide in the application the foreigner's personal data (i.e., first name, surname, date of birth and citizenship), details of the foreigner's passport document (i.e., type of document, serial number and period of validity).

In addition, information must be provided regarding the proposed employment post in Poland (including the job description and monthly remuneration). The employer is also required to indicate the period of employment and describe the legal basis for the employment (employment agreement, service agreement, etc.).

The employer is required to pay an administrative fee for the issue of the work permit equal to:

(i) PLN 50, i.e., approximately US$13 (if the foreigner is to be employed in Poland for a period not exceeding three months) and

(ii) PLN 100, i.e., approximately US$25 (if the foreigner is to be employed in Poland for a period exceeding three months).

The administrative fee for the application to extend a work permit for a foreigner is one-half of the above-mentioned fees.

[53] Act on Employment Promotion and Labor Market Institutions (*Ustawa o o promocji zatrudnienia i instytucjach rynku pracy*), Journal of Laws 2025 Item 214, as amended.

[54] Act on Foreign Persons (*Ustawa o cudzoziemcach*), Journal of Laws 2024 Item 769, as amended.

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The process of issuing a work permit generally takes about one month from the date of filing of the complete application, but it may take up to two months or even longer in very complicated cases.

In 2018, a temporary residence seasonal work permit (*zezwolenie na pracę sezonową*) was introduced. This type of work can be performed for no longer than nine months in a calendar year and only in the sectors of agriculture, gardening and tourism.

If a temporary work engagement does not fall under the classification of "seasonal work," a short-term work authorization may also be granted to a foreigner based on a declaration on entrusting work to a foreigner (*oświadczenie o powierzeniu wykonywania pracy cudzoziemcowi*). This authorization is subject to a simplified procedure, but is issued only to citizens of Armenia, Belarus, Georgia, Moldova and Ukraine, assuming the foreigner is authorized to reside in Poland during that time. On this basis, according to the current regulations, as of January 1, 2022, a foreigner may be allowed to work for up to 24 months (assuming that the foreigner's stay in Poland is legal during this time).

In 2018, two other types of permits were introduced to allow for temporary stays, also covering the right to work, i.e.:

(i) For a foreigner who is to be transferred within an enterprise to Poland from outside the European Union (*przeniesienie wewnątrz przedsiębiorstwa*); and

(ii) For a foreigner who is moving to Poland on a long-term basis from within the European Union (*mobliność długoterminowa*).

These permits are intended to simplify the immigration process in the case of intra-company transfers and long-term mobility scenarios.

b. Work Visas (National Visa/Schengen Visa) or Temporary Residence Permits

After obtaining a work permit, a foreigner must himself obtain a work visa. The application for a work visa should be submitted to the head of the Polish consular office located in the foreigner's country of origin. The foreigner's family members may also obtain visas from the Polish Embassy or Consulate. The validity period of a visa may not exceed one year.

To obtain a work visa, a foreigner must complete a visa application, submit a color photograph of himself or herself and present the original decision on the work permit for the employment of a foreigner (which is arranged by the employer). The foreigner must also prove that he or she has medical health care insurance, sufficient financial resources and accommodation available to them.

In 2021, a new type of visa was introduced called *Poland.Business Harbour* (PBH) visa. This is a type of national visa (type D) issued to individuals in the IT sector who intend to relocate to Poland. This authorization is issued only to citizens of Armenia, Azerbaijan, Belarus, Georgia, Moldova, the Russian Federation or Ukraine who can prove they are engaged in the IT sector (i.e., that they possess a relevant university degree or have professional experience) and their immediate family members. When applying for a PBH visa, a foreigner must present proof of a Polish entity's interest in hiring or cooperating with him or her. A foreigner to whom a PBH visa has been issued can work or register and conduct individual business activity in Poland without a separate work authorization for the period of the visa's validity.

On January 26, 2024, the Minister of Foreign Affairs decided to temporarily suspend the PBH visa program. The immediate reason for the suspension of the program was the fact that many workers with PBH visas misused such visas and, instead of staying in Poland, continued to travel to other EU Member States. The suspension of the program does not affect holders of PBH visas already issued.

A foreigner seeking employment in the Polish IT sector may continue to apply for a Polish visa under the general rules. However, the following rules apply to a foreigner wishing to be able to work legally in Poland:

(i) A foreigner must obtain the appropriate work permit or statement of assignment of work to him or her by the entity wishing to employ him or her;

(ii) Based on the work permit or registered statement of assignment, a foreigner residing abroad may apply for a work visa through the relevant consulate;

(iii) Having obtained a work visa, a foreigner may commence work in Poland immediately upon his or her arrival in the country for a maximum period of one year (the term for which the work visa is valid); and

(iv) Should a foreigner wish to stay in Poland for longer than one year, he or she may apply for a temporary residence period, valid for up to three years (such a temporary residence permit may be extended for a further period).

The suspension of the program is expected to last until the relevant procedures have been successfully revised or until new procedures have been adopted to ensure adequate effective verification of companies and foreigners benefitting from the program.

Foreigners who are citizens of certain countries may benefit from visa-free movement, i.e., cross borders without the need to obtain a visa or other residence document when entering the territory of the Schengen States, including Poland, including for the purpose of taking up employment. However, these foreigners must possess a biometric passport. The visa-free period is 90 days within each 180-day period.

A foreigner who resides in Poland and who intends to remain in Poland and commence work for a period of more than three months may apply to a Provincial Governor for a temporary residence permit. The foreigner must prove the existence of circumstances justifying his or her temporary residence in Poland, for example, possession of a work permit to perform work in Poland or a statement from the employer of its intent to employ the foreigner in circumstances where a work permit is not required. Temporary residence permits are granted for a maximum period of three years. The process of obtaining a residence permit typically takes up to a year, depending on the provincial office reviewing the case. Significant delays in processing visa applications are likely, resulting from the ever-increasing workload of the immigration authorities.

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c. Simplified Procedure for Residence and Work Permits

To obtain a residence and work permit in one procedure, a foreigner should submit an application to a Provincial Governor. Along with the application, the foreigner should attach color photographs, a copy of a valid travel document, a document confirming stable and regular source of income, health insurance, a legal title to the apartment he or she occupies, information from the REO to the effect that no Polish citizens are available for the offered post and a statement from the future employer regarding the lack of a "criminal record" with regard to the hiring of foreigners. Residence and work permits are granted for a maximum period of three years. The process of obtaining such permits typically takes up to a year, depending on the provincial office reviewing the case.

d. Special Rules Related to Hiring Ukrainian Citizens Relocating to Poland Due to the Ongoing War

In 2022, as a result of a large influx of Ukrainian citizens, a special law on helping Ukrainian citizens displaced as a result of the war on Ukrainian territory was introduced.

Following the escalation of the armed conflict in Ukraine in early 2022, Polish employers can hire Ukrainian citizens who arrived in Poland on or after February 24, 2022 under simplified rules (Ukrainian citizens with "special UKR status").

The simplified procedures also apply to Ukrainian citizens who:

(i) Moved to Poland prior to February 24, 2022; and

(ii) Were legally residing in Poland on that date.

Such Ukrainian citizens can:

(i) Commence employment without the need to obtain a separate or new work authorization; or

(ii) Register and conduct individual business activity in the same way as Polish citizens.

However, a Polish employer is obliged to notify the REO when it employs such a Ukrainian citizen within seven days of the date on which the Ukrainian citizen commences work.

The simplified procedures set out above are valid until September 30, 2025.

2. Regulations on Employment of EU Citizens

Citizens of EU Member States and their family members, as well as citizens of states with which the European Union has concluded agreements on the free movement of persons and their family members, do not need to obtain work permits if the reciprocity rule in the Treaty of Accession applies. However, should they spend more than three consecutive months in the Republic of Poland, they must register their stay.

On June 28, 2018, the European Commission approved a new set of revisions to the rules on the posting of workers in the EU. Posted workers are employees of an EU Member State who are sent by their employer to temporarily perform work in another EU country. EU Member States were to implement these new regulations by July 30, 2020, with Poland having done so on September 4, 2020.

The key changes concerned:

(i) The posting period;

(ii) The remuneration calculation; and

(iii) The expansion of other minimum criteria.

F. Labor Relations

Labor relations in Poland are primarily governed by the Labor Code.[55]

Labor law also regulates collective labor agreements and other collective arrangements, as well as the rules and statutes that specify the rights and duties of the parties in employment relationships. The provisions of collective labor agreements, statutes and rules may not be less favorable to employees than the provisions of the Labor Code or other legislation. Any provisions of these acts determining the rights and duties of the parties to an employment relationship are null and void to the extent they infringe the principle of equal treatment in employment.

The basic principles of Polish labor law, as defined in the Labor Code, consist of: the right of free choice of employment; the employer's duty to respect the dignity and personal rights of the employee; equal rights related to the performance of identical tasks; equal rights of men and women in labor relations; the prohibition of any form of discrimination and mobbing; the right to obtain fair remuneration for work performed; the protection of employees' rights; employees' and employers' rights to establish or join labor and employer's associations and organizations; and the right of employees to limited participation in the management of the employer's business.

The State Labor Inspectorate supervises and controls compliance with all labor laws, including the provisions on work safety and hygiene.

1. Individual Labor Law

In 2023, Polish Labor Law was substantially amended to comply with EU directives. The changes cover new rules on remote working, sobriety checks, new entitlements related to parenthood and changes in the rules terminating fixed-term employment contracts.

In line with the changes implemented with respect to probationary and fixed contracts:

(i) There is an obligation to indicate a reason for the termination of an employment contract for a fixed-term period and to consult the trade unions on such terminations;

(ii) The duration of the probationary period will depend on the presumed duration of the subsequent contract (for example, a maximum of one month in the case of a contract for a fixed term of up to six months and a maximum of two months in the case of a contract for a fixed term of six to 12 months).

a. Definition of Employment Relationship

Employment will always be assumed to exist in any case where a person is obliged to perform a specified job for an employer, under its supervision, at the place and time specified

[55] Labor Code (*Kodeks Pracy*), Journal of Laws 2025 Item 277, as amended.

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by the employer, in return for remuneration. An employment agreement should be executed in writing or using a qualified electronic signature (QES). If the agreement is not executed in writing, the employer should, before commencement of work by the employee, confirm with the employee in writing the agreed nature and conditions of employment.

In addition, no later than seven days following the execution of a contract of employment, the employer must inform the employee about:

(i) The employee's daily and weekly working time standard;

(ii) The length of the employee's daily and weekly working time;

(iii) The breaks at work to which the employee is entitled;

(iv) The employee's daily and weekly rest entitlement;

(v) The rules on overtime work and overtime compensation;

(vi) In the case of shift work — the arrangements for shifts changes;

(vii) In the case of several workplaces — the rules for relocating between places of work;

(viii) The components of the employee's remuneration as well as any benefits in cash or in kind other than those agreed upon in the employment contract;

(ix) The employee's paid leave entitlement;

(x) The rules applicable to the termination of employment relationships;

(xi) The employee's right to training, if provided by the employer;

(xii) Any collective labor and bargaining agreements applicable to the employee.

When the employer has no obligation to issue workplace regulations, it should also inform its employees about:

(i) The nighttime working hours;

(ii) The place, period and time of payment of remuneration; and

(iii) The procedures for confirming presence at work and justifying absence from work.

In general, the employment documents and, in particular, the employment agreement, must be drawn up in Polish (although other language versions may be prepared as well). However, if the employee concerned is not a Polish citizen, the employment agreement may be written in the language used by the employee, at his or her request. The employer must, however, inform the employee about the Polish-language rule before concluding the agreement.

Direct discrimination is deemed to occur where one person is treated less favorably than another has been, or would be treated differently in a comparable situation, in relation to the establishment and termination of an employment relationship, the conditions of employment, promotion and access to training aimed at raising professional qualifications, on the grounds of sex, age, disability, racial or ethnic origin, religion, nationality, political beliefs, membership in a trade union, or sexual orientation, as well as on the grounds of being employed for a definite or indefinite period, or a period for completing a specific task.

Indirect discrimination is deemed to occur when a seemingly neutral regulation, applied criterion or commenced action gives rise or could give rise to distortions disadvantageous to certain employees or a particularly disadvantageous situation in the context of the establishment and termination of an employment relationship, employment conditions, promotion and access to training in order to raise occupational qualifications to the detriment of all or a significant number of employees who belong to a group distinguished by one or several discriminatory factors, unless such regulation, criterion or action is justified by objective reasons due to a lawful purpose to be achieved, and the measures serving the achievement of this purpose are proper and necessary.

In addition, discrimination may also be understood as encouraging any other person to breach the principle of equal treatment in employment, or behavior aimed at or resulting in the violation of dignity, or the humiliation or abuse of an employee.

Definitions of sexual harassment and mobbing have also been introduced:

- Mobbing is any act or behavior relating to an employee that involves persistent and long-term bullying or intimidation, resulting in lower self-evaluation by the employee of his professional abilities, with the purpose or effect of humiliating or ridiculing, isolating or eliminating that employee from the team. One of the employer's duties is to prevent such behaviors.

- Sexual harassment in the workplace is any unacceptable sexual or gender-based behavior that aims or results in the violation of dignity or the humiliation of an employee. Such behavior may include physical, verbal or non-verbal elements.

The employer should introduce the provisions on discrimination, unequal treatment and harassment. It is also recommended to provide periodic training on harassment and introduce an anti-mobbing procedure in the company.

The right of an employer to request information from a prospective employee is limited to the personal data specified in the Labor Code.

In general, employment is considered to be for an indefinite period. Under current legislation, an employee may be engaged by an employer for a definite term:

(i) Of up to 33 months; or

(ii) Based on up to three definite term contracts.

If any of the above limits is exceeded, employment must be continued on an indefinite (permanent) basis. The law provides only minor exceptions to this rule (for example, for seasonal work).

b. Continuing Employment After Merger or Takeover

In the case of a merger or takeover by a new employer, employees are automatically transferred to the new employer by virtue of law and do not need to sign any new employment agreements. For the same reason, the former employer does

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not need to issue certificates of employment to the employees. The existing and the new employer must notify the transferred employees at least 30 days prior to the anticipated date of the transfer.

The notification letter must provide employees with the following information:

(i) The planned date of the merger or takeover;

(ii) The reasons for it;

(iii) The legal, economic and social consequences for the employees; and

(iv) The planned conditions of employment, remuneration and training.

If one or more trade unions exist in the company, the notification must be provided to those bodies only and there is no obligation to notify the employees. An employee has a period of two months, from the moment of the takeover or transfer, during which he or she can terminate his or her employment agreement without a notice period, by means of a written statement made seven days prior to the date of termination. The Labor Code treats the termination of employment by the employee in these circumstances as termination by the employer.

If there is a works council established by the employer, additional consultations with the works council relating to the planned transfer of employees are also required.

c. Termination

Under the Labor Code, the notice of termination periods with respect to employment agreements concluded for indefinite and fixed-term periods depend on the length of employment and are as follows:

(i) Two weeks, if the employee was employed for less than six months;

(ii) One month, if the employee was employed for at least six months; and

(iii) Three months, if the employee was employed for at least three years.

The length of notice to be given depends on the period of employment with the current employer (and, in exceptional cases, on the employment period with the previous employer, if the employee was taken over by the current employer). Any decision by an employer to terminate an employment agreement, whether concluded for an indefinite or a definite period (with or without notice), must clearly state the reasons for the termination and provide information on the employee's right to appeal to the Labor Court. The employee may challenge the reasons for the notice before the Labor Court.

An employee may bring a claim against his or her employer for wrongful or unjustified dismissal. If the Labor Court recognizes such a claim to be justified, the employee has a right either to be reinstated in his or her position under the former conditions (if his or her contract has already been terminated) or, alternatively, to compensation not lower than the remuneration corresponding to the notice period.

An employee who resumes employment as a result of being reinstated is also entitled to remuneration for the period during which he or she was unemployed (in general, this may not exceed three months). If the employee files a request for reinstatement or the voiding of the notice of termination, and the court concludes that granting such a request is without purpose or that reinstatement is impossible, the court will award compensation to the employee regardless of the employee's intention (unless the employee's contract was terminated despite the employee being protected against dismissal).

Where an employee terminates employment without notice due to unjustified reasons, an employer may also have a right to compensation. Such compensation, in principle, may not exceed the employee's remuneration due for the notice period.

d. Remuneration Regulations

An employer that employs 50 or more employees must introduce remuneration regulations if no collective labor agreement is in force. An employee who is prepared to perform work but cannot do so for reasons connected with the employer has the right to remuneration based on his or her individual rate of pay per hour or per month and, if the rate of remuneration has not been established, to 60% of the normal rate of remuneration, but no less than the minimum wage. A pension bonus equal to one month's salary must be paid to every employee whose employment relationship ceases in connection with retirement or pension.

The law determines the minimum mandatory remuneration for those employed on a full-time basis (monthly: PLN 4,666 gross in 2025).

e. Restriction on Competition

An employer may stipulate in a separate agreement (in writing or containing a qualified electronic signature (QES)) with an employee that the employee may not accept a job offer from a competitor either during his or her employment or for a given period after the termination of his or her employment. Such a restriction on an employee may only apply to activity connected with that of the employer. A restriction effective during employment may be imposed on all employees, while a restriction after termination of employment may be applied only to those employees who had access to particularly important information the disclosure of which could cause damage to the employer. The agreement should provide for the term of the restriction period after the termination of employment, as well as the amount of compensation due to the employee, which cannot be less than 25% of the remuneration received by the employee prior to the termination of employment for a period corresponding to the period of validity of the prohibition on competition. Compensation may be paid in monthly installments.

f. Work Regulations

An employer employing 50 or more employees must issue work regulations establishing the rules of organization and order at work, as well as the related rights and obligations of the employees and the employer, unless there is an applicable collective labor agreement.

In principle, work time may not exceed eight hours per day and an average of 40 hours per an average five-day work week. However, the Labor Code allows for different work schedules. For instance, an employer may agree with a particular individual on a work schedule providing for work to be carried out on-

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ly on Fridays, Saturdays and Sundays, if so requested in writing by the employee. Weekly standard working time, together with the hours of work performed overtime, cannot exceed an average of 48 hours in the adopted accounting period. However, this limitation does not apply to employees managing an enterprise on behalf of an employer. The annual overtime limit is 150 hours. In certain circumstances, a collective labor agreement, a contract of employment or the workplace regulations may provide for more than 150 hours of overtime per year.

An employee has a right to at least 11 hours of continuous rest in a 24-hour period and at least 35 hours per work week. The 35-hour rest period must encompass Sunday or another day if work on Sunday is permitted. These rules do not apply to employees managing an enterprise on behalf of an employer, or to cases in which it is essential to conduct a rescue operation for purposes of preserving human life or health, property, or the environment. The weekly rest period in the latter two cases may be shortened, but it may never be less than 24 hours per week.

The minimum vacation leave is 20 working days for those employed for less than 10 years, and 26 working days after 10 years of employment. Employment periods for previous employers accumulate regardless of the manner in which the respective employment agreement was terminated. Certain periods of education are also taken into account in calculating the holiday entitlement of an employee (for example, graduation from a university equals eight years of employment), as are time spent in basic military service and periods during which the individual obtained unemployment benefits, among other periods.

An employee who takes up a job for the first time in his or her life acquires, after each completed month of employment, the right to 1/12 of the vacation leave due to him or her after one year. The employee acquires the right to further leave in each subsequent calendar year.

Employees who improve their professional skills at the request of the employer or with the employer's consent are entitled to training leave, the length of which depends on the type of training (up to 21 days for examination or thesis preparation) and release from work obligations in order to attend training during the times and over the period of such training. The employer and the employee should conclude an agreement covering their rights and duties related to the training, unless the employer does not intent to require the employee to remain employed after the training.

Labor legislation adopted in 2018 clearly defines the conditions and procedures regarding an employee's monitoring (for example, CCTV, business mailbox) in the workplace. An employer can introduce CCTV surveillance over the work and surrounding areas provided the surveillance is necessary to ensure the safety of employees, control production and protect property and information that could cause harm to the employer if disclosed, subject to some limitations.

Thus, CCTV surveillance cannot cover premises such as:

(i) Bathrooms;

(ii) Cloakrooms;

(iii) Canteens;

(iv) Smoking rooms (with some minor exceptions); and

(v) Premises of trade union organizations (with some minor exceptions).

Employers must comply with certain procedural requirements, for example, employees must be informed about the introduction of monitoring in writing, places where this occurs must be properly marked, and the purpose, scope and method of surveillance must be established in the collective bargaining agreement, the work regulations or the monitoring announcement (as the case may be), among others. Surveillance over the employees' business mailboxes and other forms of monitoring are subject to similar rules, with some differences, for example, with respect to the conditions for monitoring.

2. Collective Labor Agreements

Collective labor agreements may regulate, in particular, working hours, wages, salary, overtime and night work allowances, vacation pay and bonuses in a more advantageous way than the Labor Code. These agreements are negotiated between the trade unions on the one side, and the appropriate industry or a single employer on the other. A collective labor agreement is generally beneficial to all employees and not only those that are members of the trade union that concluded the agreement.

3. Co-Determination — Employee Participation on Corporate Boards

Co-determination can be defined as the right of employees, their representatives or labor organizations to influence company policy beyond the mere negotiation of individual employment contracts or collective labor agreements. This type of co-determination permits employee representatives or unions to have a say with respect to matters that go beyond those directly related to the terms of employment, such as the determination of general corporate policies by way of representation on a supervisory or other decision-making body.

a. Act on Trade Unions

All individuals performing paid work have the right to establish and join a trade union.[56] Trade unions are entitled to represent and protect their rights, as well as their individual and collective interests.

Trade unions represent the collective rights and interests of all people performing paid work, regardless of whether they are members of a trade union. In individual cases, a trade union represents only its members unless the union consents to represent an employee or individual who is not a member. If a member does not request that he or she be represented by a trade union, or if the union does not consent to such representation, the employer is under no obligation to consult with the trade unions on any individual employment matters related to that member.

Employers are required to treat all trade unions equally. Employers are not allowed to include, in employment contracts or related regulations, any conditions preventing employees or individuals from joining trade unions or from being union representatives.

[56] Act on Trade Unions (*Ustawa o związkach zawodowych*), Journal of Laws 2022 Item 854, as amended.

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In certain individual cases resulting from an employment relationship, employers are, in turn, required to receive from trade unions information on people being represented by them. Should a trade union not provide such information, the employer may go to court to verify the number of members represented.

Trade unions perform two main functions:

(i) The review and approval of certain decisions made by the employer; and

(ii) The provision of opinions on labor matters.

The absence of trade union approval or opinion will not invalidate an employer's decision; however, disregarding the obligation of trade union consultation is considered a form of negligence that may give grounds for challenging the employer's actions in court. Generally, opinions given by a trade union are not binding on an employer. The role of trade unions in individual cases is usually of a consultative nature only and does not include any veto rights.

Based on the 2019 legislation, any individuals working under a civil-law contract may join a trade union, although they continue not to have a right to create such a union. Previously, only employees (i.e., individuals with employment contracts; not independent contractors) could join trade unions. Additionally, employers are allowed to apply to the court to review the number of trade union members, as a legal way to prevent trade unions from abusing their rights based on an incorrectly reported headcount. To do so, the employer must file a written reservation within 30 days of the information being reported. The legislation also specifies the types of information that must be provided by the employer to the trade unions, upon request, although the list is not exhaustive.

b. Act on European Works Councils

According to the Act on European Works Councils, employees of companies that operate throughout the EU are able to set up and join European works councils.

Such councils are entitled, among other things, to obtain information and enter into consultation relating to the entire company or group of companies operating throughout the EU, in particular, information on the company's economic situation, development perspectives, planned essential organizational changes, etc.

c. Action on Information and Consultation of Employees

A works council may be formed in a company with 50 or more employees. When the company's headcount reaches 50, the company is obliged, in its capacity as the employer, to inform its employees about their right to set up a works council within the company. To form a works council, a valid request must be made by 10% or more of the total number of employees in the company. Works councils must be informed of and consulted about any important facts and decisions that may affect employment, such as changes in business activities, the employer's financial standing, staffing levels, business transfers and any other anticipated decisions that might lead to material changes in work organization, or pay and conditions.

4. Redundancies

The issue of redundancies is regulated by the Act on Special Rules for the Termination of Employment Agreements for Reasons Not Related to the Employees, which applies to employers with at least 20 employees.[57]

Mass redundancies are deemed to occur when an employer who employs at least 20 persons terminates employment relationships with:

(i) At least 10 employees if the employer employs fewer than 100 persons;

(ii) 10% of employees if the employer employs at least 100 but fewer than 300 persons; or

(iii) 30 employees if the employer employs 300 or more persons.

The special procedure relating to mass redundancies requires the trade union(s) active in the company (or the employee representatives, if there is no trade union) and the relevant State employment bodies to be notified of the planned redundancies within a reasonable time. The employer must consult with the trade union(s) or the employee representatives for up to 20 days from the date of the notification. Consultations with the unions should be aimed at reaching an agreement.

If an agreement cannot be reached, the employer must set out its conditions in the by-laws, having regard, where possible, to any proposals made by the trade union(s) in the course of the consultations. Where the consultations are with employee representatives, the employer must issue collective redundancies by-laws, having regard, where possible, to any proposals made by the employee representatives during the consultations (there is no option for a formal agreement being reached with the employee representatives).

Employees whose employment is terminated as a result of mass redundancy are entitled to severance pay. The amount of the payment depends on the period of employment with the current employer and is equal to between one month's and three months' salary. The employer is entitled to cap the amount of the redundancy payment at the level of 15 times the minimum remuneration (PLN 69,990 for 2025).

An individual employee whose employment agreement is terminated only for reasons not related to him or her by an employer employing at least 20 persons is also entitled to receive severance pay under the Act described above.

5. Social Insurance

As a rule, foreign nationals employed by Polish companies are subject to social insurance obligations as provided for by the Act on Social Insurance System.[58] Foreign nationals who do not reside in Poland on a permanent basis and are employed by a foreign diplomatic establishment or council office, mission, special mission or international institution are not subject to social insurance obligations, unless otherwise provided under in-

[57] Act on Special Rules for Termination of Employment Agreements for Reasons Not Related to the Employees (*Ustawa o szczególnych zasadach rozwiązywania z pracownikami stosunków pracy z przyczyn niedotyczących pracowników*), Journal of Laws 2024 Item 61, as amended.

[58] Act on Social Insurance System (*Ustawa o systemie ubezpieczeń społecznych*), Journal of Laws 2024 Item 497, as amended.

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ternational agreements. The task of the payer is to transfer and partially finance the contributions of employees who are subject to mandatory pension, illness and disability insurance.

The social insurance system rests on three pillars composed of various funds into which the payer pays the contributions on behalf of the insured person. Contributions paid to the Social Insurance Office (ZUS) are distributed among the individual funds established within the Social Insurance Fund (SIF) (pillar I of the Polish insurance system) and, upon the decision of the insured person, they may be partially transferred to the general pension funds (pillar II) through the ZUS.

The amount of benefits payable from pillar I depends exclusively on the amount of contributions accumulated in an employee's lifetime and the number of months of average life expectancy remaining from the time of retirement. The following funds exist within the SIF:

(i) A retirement pension fund;

(ii) A disability pension fund;

(iii) An illness insurance fund; and

(iv) An accidents-at-work insurance fund.

Employers are required to cover a particular percentage of contributions to retirement pension funds, disability pension funds and accidents-at-work insurance funds. The percentage of the latter differs from employer to employer.

Pillar III of the social insurance system is voluntary insurance. It includes, in particular, life/pension insurance, which is purchased by employees on a voluntary basis. Sometimes an employer provides employees with such insurance policies (or pays premiums due on the insurance policies concluded by the employees), which is treated as an additional benefit related to the employment and constitutes a part of the employee's remuneration. The employer pays the monthly insurance premiums due and chooses the insurer and the amount of insurance at his discretion. Usually, if the employment relationship expires, the employee may continue to pay the insurance rates himself or herself.

Contributions to insurance institutions, insurance companies, investment funds or employees' pension funds are calculated by employers based on the after-tax remuneration paid to employees and transferred to their respective accounts.

The general rule is that a foreign employer from an EU Member State employing a worker (as an employee or independent service provider) in Poland is subject to Polish social security laws and not the law of the country in which it is located.

Since 2019, obligatory employee capital plans (*Pracownicze Plany Kapitałowe* or PPKs)[59] have gradually been being implemented and, as of mid-2021, all employers (with some minor exceptions), regardless of the number of employees they hire, are obliged to set up PPKs. All staff subject to obligatory social security pension and disability insurance can participate in a PPK.

Obligatory PPK contributions financed by the participant equal 2% of remuneration, while obligatory contributions financed by the employer amount to 1.5% of remuneration. Both the participant and the employer may declare a higher contribution, which cannot exceed 4% of remuneration. In consequence, the total contributions will be between 3.5% and 8% of gross remuneration. Additionally, PPK participants may receive yearly state contributions of PLN 240 (approximately $60) and a one-off welcome contribution of PLN 250 (approximately $63) financed by the state.

Staff aged 18–54 will be signed up for a PPK automatically, whereas staff aged 55–70 may be signed up for PPK at their request. At any time, a PPK participant may opt out of a PPK and sign back up. Persons who opt out of a PPK will be automatically signed up again every four years, unless they opt out again. The Employee's Capital Plan, Individual Retirement Security Account (*Indywidualne Konto Zabezpieczenia Emerytalnego*) and *Indywidualne Konto Emerytalne* (IKE) complement each other.

6. *Temporary Employment Agencies*

The Act on the Employment of Temporary Workers came into force on January 1, 2004.[60] The Act provides general rules for the employment of temporary employees by an employer that is a temporary work agency and the principles of directing such employees to work for the user-employer. A temporary employee may be employed by a temporary employment agency based on a contract of employment for a definite period of time or a contract of mandate. Such an employee is recruited to carry out only temporary work, such as seasonal, periodical or short-term work.

7. *Whistleblowers*

The Whistleblower Protection Act came into force on September 24, 2024.[61] The Act applies to companies that hire at least 50 individuals as of January 1 or July 1 of a given year. The relevant individuals for this purpose include: (i) employees; and (ii) individual entrepreneurs provided they do not hire further staff for the type of work concerned. Entrepreneurs who work personally (i.e., do not hire further staff) must be taken into account for purposes of the headcount calculation. The Act imposes an obligation on companies that satisfy the above criteria to implement procedures enabling individuals to report work-related breaches that fall within the scope outlined in the Act. The Act places rigorous obligations on companies regarding the handling of reports and the confidentiality of the information they contain, including the identity of the whistleblower. Under the provisions of the Act, whistleblowers are protected from retaliation, and no retaliatory actions, attempts to take such actions or threats of such actions are allowed.

In practice, a company must, in particular: (i) introduce an internal whistleblowing policy; (ii) consult the draft policy with staff (including entrepreneur) representatives; (iii) establish channels for reporting breaches of the law; (iv) appoint an internal unit or a person responsible for verifying reports of breaches of the law; and (v) maintain a register of whistleblower reports.

[59] Act on the Employees' Capital Plans (*Ustawa o o pracowniczych planach kapitałowych*), Journal of Laws 2024 Item 427, as amended.

[60] Act on the Employment of Temporary Workers (*Ustawa o o zatrudnianiu pracowników tymczasowych*), Journal of Laws 2025 Item 236, as amended.

[61] Whistleblower Protection Act (*Ustawa o ochronie sygnalistów*) Journal of Laws 2024 Item 928, as amended.

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G. Financing the Business

1. Shareholder Financing

Under Polish law, a number of means are available for financing and supporting a company's business activity. These goals may be achieved by contributions to the company's equity capital, shareholders' loans and other forms of capitalization.

a. Equity Capital

A shareholder may contribute capital to a company in a number of ways. The Commercial Companies Code provides for various ways of injecting additional capital into a company, depending on the company's legal form.

Capital may be contributed to a company either in cash or in-kind. Generally, the founding capital of a company must be contributed before the company is registered. Shares of a joint stock company issued in return for cash may have one quarter of their nominal value paid up before registration.

The making of a contribution in the course of the normal business activity of a company requires an increase in its share capital in accordance with the conditions provided for by the Commercial Companies Code and generally requires an amendment of the company's articles of association.

The share capital of a company can be increased in the following ways:

(i) By way of additional cash or in-kind contributions made by existing or new shareholders of a limited liability company or a joint stock company;

(ii) From capital reserves; and

(iii) Through the conversion of debt.

Increases made from capital reserves are a form of internal financing and require the re-entry of items on the liabilities side to transfer part of capital reserves to share capital. Where capital is increased by way of the conversion of debt, the company issues shares to the creditor that are covered by an in-kind contribution in the form of a creditor's/shareholder's claim against the company.

A limited liability company may also be financed by its shareholders by way of additional payments. This possibility is provided for by the Commercial Companies Code, which allows a company's articles of association to require shareholders to make additional payments up to a specified amount based on their shareholdings.

Additional payments can be demanded from shareholders in proportion to the value of their shareholdings. The return of additional payments made by shareholders also requires compliance with a specified formal procedure. The conditions described above are intended to protect the company's creditors.

Initial contributions to share capital may only be withdrawn using a special procedure for decreasing share capital that requires the amendment of the articles of association.

Contributions to capital are subject to transfer tax.

b. Shareholders' Loans

The granting of loans to a company by shareholders is not, in principle, subject to any limitations under Polish law. Loans granted to a company by shareholders are treated in the same way as loans from other sources. The regulations regarding thin capitalization should, however, be kept in mind. Moreover, a company may not pay off shareholder loans if such a payment could cause a decrease in the value of the company's assets below the level of the share capital. In the case of the bankruptcy of a company, shareholder loans are treated as an in-kind contribution to the company and are not repayable if granted less than two years prior to the date of bankruptcy.

A company may use various methods to finance its activities through the shareholders. One such method is the issuing of bonds. Under the Act on Bonds, from June 29, 1995, companies may issue bonds, convertible bonds and priority bonds. If there is a private placement of bonds, the bonds may be acquired by the shareholders. However, companies that intend to make such an issue must first meet certain requirements established by Polish law regarding the method by which the issue is secured by financial institutions, the value of the issuer's equity and the availability of financial reports for review.

The issues relating to the provision of financial support to a company by its shareholders that require special consideration are dealt with in (1) to (3), below.

(1) Forgiveness or Waiver of a Shareholder's Loan

The forgiveness or waiver of claims resulting from loans granted by a shareholder to a company will be treated as the company's income for corporate income tax purposes.

(2) Silent Participation Agreement

A silent partnership (*spółka cicha*) is a group of persons formed with the aim of jointly carrying on business for gain. A silent partnership is treated as an obligation arising out of an agreement. The partners are not deemed to be partners jointly operating a commercial company.

The legal status of a silent partnership is not currently governed by any legal regulations. The effectiveness of a silent partnership is subject only to the limitations relating to the general rule of contractual freedom.

A silent partnership is created when one of the parties to the agreement, in exchange for a share in the profit, participates in another person's contribution to the business. The person making the contribution is not publicly known and does not participate in the property of the company. A partner's contribution can be anything of value (for example, work performed).

(3) Participation Rights

The Commercial Companies Code recognizes the concept of shares in corporations guaranteeing financial privileges without voting rights. Such shares may be issued solely by a joint stock company and their issue must be envisaged in the company's Charter. The shares can benefit from dividend privileges and from the right to participate in a liquidation surplus before other shares. Restrictions concerning maximum privileged dividends do not apply to such shares.

Polish Company Law does not, however, recognize participation certificates such as those recognized, for example, under German law (*Partizipationsrechte*), which give an investor the right to a specified share of income depending on profitability.

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The Commercial Companies Code provides for the issuing of founders' certificates. Founders' certificates may be issued only for services provided in relation to the incorporation of a joint stock company. Such certificates confer a right to participate in the net profit of the company up to the limits established in the Charter, following prior deduction of a minimum dividend for shareholders as defined in the Charter.

The maximum period of validity of such certificates is 10 years from the date of registration of the company. The value of remuneration paid to the holders of the certificates must correspond to the market value of the services of the founders rendered in connection with the incorporation of the company.

c. Debt-to-Equity Considerations

Regulations relating to total indebtedness for corporate income tax purposes aim to limit the ability of a company to deduct interest and other financing costs paid not only to its shareholders, but also to unrelated lenders (creditors).

2. External Financing

U.S. banks have been present in the fast-developing Polish bank services market for some time. U.S. banks either act directly in the form of joint stock companies established in Poland conducting banking activity or acquire shares in existing banks. U.S. banks perform a full range of services in Poland. These services include the granting of credits/loans, bank guarantees and sureties, the performance of bank settlements, the issuing of payment cards, services relating to notes and checks, foreign exchange transactions and the carrying out of instructions relating to securities and debt trading.

H. Anti-Corruption Measures

Poland has adopted and implemented measures aimed at combating corruption in business. The main rules are described in 1. and 2., below.

1. Criminal Code

Under the Polish Criminal Code, a person who gives or offers an economic or personal benefit to a person acting as a public officer is guilty of a crime that is subject to a penalty of imprisonment for from six months to eight years, or, in less significant cases, imprisonment for up to two years, limitation of freedom or a fine. There are more severe sanctions for certain specific acts, such as bribery of public officials, which is subject to a penalty of imprisonment for between one and 10 years. These sanctions also apply to public officials in a foreign country or in an international organization.

A person who incites, helps or induces another person to invoke influential friends in a public institution or local government to mediate in a given matter in return for an economic benefit or a promise of an economic benefit is subject to the penalty of imprisonment for between six months and eight years. It is not necessary to offer or deliver a benefit to be held responsible for this crime.[62]

2. International Conventions

Poland is a party to four international conventions that provide additional regulations on corruption.

Under the Paris Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the bribing of a foreign public official to obtain or retain business or gain some other improper advantage in the conduct of international business is treated as a crime.[63] Bribes or other economic benefits should be subject to seizure and confiscation. Poland is also bound by the Strasbourg Criminal Law Convention on Corruption. Under the provisions of this convention, Poland is obliged to treat the bribery of persons working for private sector entities as a criminal offence.[64]

Both conventions provide for the liability of legal persons for active bribery. Poland is also a party to the United Nations (UN) Convention against Corruption, which sets out the international rules concerning the prevention and criminalization of corruption.[65]

Poland is also a party to the Strasbourg Civil Law Convention on Corruption.[66] The convention creates instruments that enable a person who has suffered damages as a result of corruption to seek full indemnity for such damages, including any financial loss or lost profits, from persons giving or accepting bribes.

I. Provision of Payment Services and Operation of Electronic Money Institutions

Following the introduction of the Directive of the European Parliament and the Council dated November 13, 2007, No. 2007/64/EC on payment services in the internal market,[67] a new Polish Payment Services Act[68] (PSA) covering various aspects of rendering payment services entered into force on October 24, 2011.

As of October 7, 2013, the PSA has been significantly revised by the introduction of regulations of electronic money institutions, thus completing the process of transposing Directive 2009/110/EC of the European Parliament and the Council of September 16, 2009,[69] into the Polish legal system.

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[62] Criminal Code (*Kodeks karny*), Journal of Laws 2019 Item 1950, as amended.

[63] Paris Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (*Konwencja o zwalczaniu przekupstwa zagranicznych funkcjonariuszy publicznych w międzynarodowych transakcjach handlowych*), Journal of Laws 2001 No. 23 Item 264.

[64] Strasbourg Criminal Law Convention on Corruption (*Prawnokarna Konwencja o Korupcji*), Journal of Laws 2005 No. 29 Item 249.

[65] United Nations (UN) Convention against Corruption (*Konwencja Narodów Zjednoczonych Przeciwko Korupcji, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych*), Journal of Laws 2007 No. 84 Item 563.

[66] Strasbourg Civil Law Convention on Corruption (*Cywilnoprawna konwencja o korupcji*), Journal of Laws 2004 No. 244 Item 2443.

[67] Payment Services Directive 2007, Official Journal of the European Union L 319, 05/12/2007 P. 0001–0036.

[68] Act on Payment Services (*Ustawa o usługach płatniczych*), Journal of Laws 2020 Item 794.

[69] Directive 2009/110/EC of the European Parliament and of the Council of Sept. 16, 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, Official Journal of the European Union L 267, 10/10/2009 p. 7.

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The PSA introduces the concept of "payment institutions" and "electronic money institutions" and focuses on the activity performed by such institutions.

1. Payment Institutions

The aim of a payment institution is to "render payment services," which comprise the following:

(i) Services enabling cash to be placed on a payment account, as well as all the operations required for running a payment account.

(ii) The execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider, by means of:

- The execution of direct debits, including one-off direct debits;
- The execution of payment transactions through a payment card or similar device; and
- The execution of money transfers, including standing orders.

(iii) The execution of payment transactions where the funds are covered by a credit line for a payment service user, by means of:

- The execution of direct debits, including one-off direct debits;
- The execution of payment transactions through a payment card or similar device; and
- The execution of money transfers, including standing orders.

(iv) The issuing of payment instruments.

(v) The entering on its own behalf into agreements with entrepreneurs for the performance of payment transactions by means of payment instruments.

(vi) The remittance of money remittance.

(vii) The execution of payment transactions, where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

The PSA additionally provides a list of activities explicitly excluded from the scope of PSA, such as:

(i) Payments in cash;

(ii) The transportation of banknotes and coins;

(iii) Payment transactions falling within the scope of a nonprofit activity;

(iv) Cash back;

(v) Foreign exchange; and

(vi) Payment transactions between a parent undertaking and its subsidiary, or between subsidiaries of the same parent undertaking.

The right to render payment services is granted to a limited group of entities (listed in the PSA), which includes in particular:

(i) A domestic bank (a bank having its registered office in Poland);

(ii) An EU credit institution/a branch of an EU credit institution;

(iii) A branch of a foreign bank;

(iv) A payment institution (see 3., below);

(v) A payment services office (see 4., below);

(vi) The European Central Bank and the National Bank of Poland as well as any other central bank of an EU Member State — when not acting in the capacity of a monetary authority or public administration bodies;

(vii) Public administration body; and

(viii) An EU payment services provider (see 5., below).

Entities entitled to render payment services and registered under the laws of Poland must be entered in a special registry of national payment services suppliers held by the FSA (*Komisja Nadzoru Finansowego*) (KNF).

2. Electronic Money Institutions

Electronic Money Institutions (EM Institutions) occupy themselves with issuing and redemption of electronic money. By definition, electronic money means electronically, including magnetically, stored monetary value issued, with obligation to be redeemed, for the purpose of making payment, and which is accepted by a natural or legal person including and other than the electronic money issuer.

As with payment services, the right to render EM services is granted to a limited group of entities listed in the PSA, similar to those which can render payment services, which includes in particular:

(i) A domestic bank (a bank having its registered office in Poland);

(ii) An EU credit institution/a branch of an EU credit institution;

(iii) A branch of a foreign bank;

(iv) An EM institution (see 3., below);

(v) A payment institution (see 4., below);

(vi) The European Central Bank and the National Bank of Poland as well as any other central bank of an EU Member State — when not acting in the capacity of a monetary authority or public administration bodies;

(vii) Public administration body; and

(viii) An EU EM services provider (see 5., below).

Entities entitled to render EM services and registered under the laws of Poland must be entered in a special registry of

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national EM services suppliers held by the FSA (*Komisja Nadzoru Finansowego* or KNF).

3. National Payment and Electronic Money Institutions

The rendering of payment services by a national payment institution or a national EM institution (a legal person incorporated under Polish law with its registered seat in Poland) requires the obtaining of a special permit from the KNF (which is granted subject to certain conditions being fulfilled), and the activity is supervised by the KNF.

This should not, however, apply to banks and EU credit institutions. Payment institutions (unlike payment service offices (see 4., below)) and EM institutions have the capacity to render the full scope of, respectively, payment services and electronic money services under the PSA.

4. Payment Services Offices

Payment service offices may be established by natural persons and legal entities. The services such offices can perform are limited to the remittance of money. Payment service offices may be established by natural persons and legal entities. The services such offices can perform are limited to the remittance of money.

A permit from the KNF is not required to engage in this business, but the office must be entered in the register of payment service providers held by the KNF.

Their activities are limited, in particular, in the following ways:

(i) They can operate only in Poland; and

(ii) The average value of their transactions performed in the preceding year (including transactions performed by agents) cannot exceed 500,000 euros per month.

If the monthly transaction level exceeds this ceiling, it must be reported to the KNF.

5. EU Payment Services and Electronic Money Providers

Foreign payment/EM institutions registered in one of the EU Member States that are subject to relevant supervision in that State will, in principle, be able to perform their operations in Poland via a branch, through an agent or through cross-border provision of services upon sending only a notification to the KNF by the relevant EU supervisory authority. Thus, a separate permit from the KNF will not be required.

An EU payment services/EM provider may, in principle, commence providing services in Poland after a one-month period has elapsed from the date of the receipt of all the relevant data by the KNF from the competent EU supervisory authority.

6. Cross-Border Activities

Under the PSA, a domestic payment or EM institution may provide payment/EM services in another EU Member State (on notifying the KNF) if it meets certain requirements. The provision of cross-border services can be performed either via a branch, via an agent or by cross-border provisions of services, in each case, subject to notification. Additionally, the KNF must send a notification to the host Member State within one month.

Similarly, a payment/EM institution registered in another EU Member State can provide services in Poland within the scope of cross-border activities, via a branch, an agent or through cross-border provision of services (subject to notification). The activity can commence after the KNF receives the required information from the supervisory authority of the other Member State (see 3., above).

7. General Remarks

In general, the PSA is very beneficial to consumers, as can be seen, inter alia, from its regulation of consumer rights and obligations. For example, consumers have the right to terminate the framework contract by giving one month's notice, while the notice period for service providers may not be shorter than two months, and very specific rules apply to consumer liability.

In addition, the PSA lists the obligations of payment services providers and electronic money issuers, which include:

(i) Ensuring that appropriate (documented) means are available at all times to enable the blocking of, and request the unblocking and exchange of, a payment instrument;

(ii) Bearing the risk of sending a payment instrument to the payer or of sending any personalized security features of the instrument; and

(iii) Bearing the burden of proof regarding authorization of a transaction; and rules on the redemption of electronic money.

The PSA also imposes criminal liability in certain situations involving misconduct on the part of the payment institution and electronic money institution, as well as for rendering payment services/electronic money services without being a payment institution/electronic money institution.

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III. Forms of Doing Business in Poland

A. Principal Business Entities

1. Sole Proprietorships and Partnerships

Foreign persons from EU Member States and Member States of the European Free Trade Agreement (EFTA) — parties to the Agreement on the European Economic Area — and foreign persons from countries which are not EEA members who may enjoy freedom of establishment under agreements concluded between these countries and the EU and its Member States, may undertake and carry out economic activity in Poland on the same terms as Polish citizens.

Moreover, the following persons, who are citizens of states other than those mentioned above, may undertake and pursue economic activity on the territory of the Republic of Poland on the same terms as Polish citizens:

- Persons residing in Poland who:

  (i) Hold a permit to settle;

  (ii) Hold an EU long-term residence permit;

  (iii) Hold a permit to reside for a specified period of time, granted as a result of one of the circumstances referred to in the Act on Foreigners;

  (iv) Hold refugee status;

  (v) Enjoy supplementary protection;

  (vi) Hold consent to stay for humanitarian reasons or consent for a tolerated stay;

  (vii) Hold a permit to reside for a specified period of time and are married to a Polish citizen residing in Poland;

  (viii) Hold a permit to reside for a specified period of time in order to conduct a business activity, granted to continue the business activity that is already conducted on the basis of the entry in CEIDG;

- Persons who enjoy temporary protection in Poland;

- Persons who hold a valid Polish ID document (*Karta Polaka*);

- Persons who are family members (as defined in the Act on Entry into, Stay in, and Exit from the Territory of the Republic of Poland of Citizens of the European Union Member States and their Family Members) of citizens of the states referred to in the first paragraph above who are staying or being reunited with them;

- Persons who are participating in programs organized or co-organized by entities referred to in the Act on the Open data and Reuse of Public Sector Information.

Moreover, citizens of states other than those mentioned above, who are staying in the territory of Poland pursuant to the Act on Foreigners or on the basis of a stamp imprint in the travel document, and who, directly before filing an application for:

(i) The granting of a permit to reside for a specified period of time;

(ii) The granting of a permit to settle; or

(iii) Long-term EU resident status,

were entitled to undertake and pursue economic activity based on a permit to reside for a specified period of time granted under the Act on Foreigners, may undertake and pursue economic activity in Poland on the same terms as Polish citizens.

Foreigners other than those listed above may operate businesses in Poland only in the form of joint stock, simple joint stock or limited liability companies, limited partnerships and partnerships limited by shares, and may only invest in such companies and partnerships, unless otherwise provided for in international agreements.

A family member (within the meaning of the provisions of the Act on Foreigners) of foreign persons to whom the abovementioned international agreements refer, and who holds a permit to settle for a specified period of time, may undertake and pursue economic activity on the same terms as these foreigners.

A family member (within the meaning of the provisions of the Act on Foreigners) of foreigners, who holds a permit to settle for a specified period of time and pursues economic activity pursuant to an entry in the records of economic activity, which was made on the basis of reciprocity, may undertake and pursue economic activity within the same scope as these foreigners, as long as they too hold a permit to settle for a specific period of time in Poland or are staying in Poland to be reunited with their family.

Commercial activities carried on individually by natural persons must be recorded in the proper Record of Business Activity for individual entrepreneurs. This Record is maintained by the appropriate local government body. Other forms of operations are registered in the National Court Register.

The following forms of partnership exist in Poland:

(i) A general (civil law) partnership (*spółka cywilna*) regulated by the Civil Code (a general partnership is deemed to be an agreement between its partners; as such, it is not subject to registration — only the partners conducting a business activity need be registered in the proper Record of Business Activity for individual entrepreneurs), as well as a registered partnership (*spółka jawna*);

(ii) A limited partnership (*spółka komandytowa*);

(iii) A professional partnership (*spółka partnerska*); and

(iv) A partnership limited by shares (*spółka komandytowo-akcyjna*),

all of which are governed by the Commercial Companies Code and registered in the National Court Register.

General partnerships have no legal personality and are not able to conduct business activity on their own. Generally, the partners are deemed to conduct business activity in their own name, but within such partnership, and acquire rights and incur liabilities. Although the other types of partnership also have no legal personality, they may acquire rights in their own name, including the right of ownership of real property and other rights in rem, incur obligations, and can sue and be sued.

Partnerships are also generally suitable for small or medium-size businesses. While all the partners of a general and registered partnership are exposed to unlimited liability, limited partnerships and partnerships limited by shares require only

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one partner to be exposed to unlimited liability. The obligations of all the other partners are limited to the amount of their capital contributions.

a. Registered Partnerships

Aside from civil law partnerships, registered partnerships are the simplest form of partnership in Poland. A registered partnership is established by the articles of association, which must be signed by the partners in the ordinary written form or, alternatively, using a template made available through a teleinformation system (processed within 24 hours).

However, it should be noted that the use of a template limits the flexibility of the partners in tailoring the registered partnership's articles of association to their specific needs and requirements. The form of a notarial deed is not required.

The articles of association, together with additional information and documentation including the business name, registered office and address of the partnership, the objects of the partnership, the partners' names and surnames or business names and the names and surnames of persons authorized to represent and bind the partnership, are then submitted to the National Court Register. The Court reviews the documentation and issues its decision on registration in the registry. The partnership is established upon registration.

A registered partnership is managed by all or several partners, or by one partner, as provided for in the articles of association or a partners' resolution on the matter. Partners who are not so appointed are excluded from managing the affairs of the partnership. Management of the partnership may not be entrusted to third parties to the exclusion of the partners.

Generally, each partner entitled to manage the company's affairs may, without a prior resolution of the partners, manage partnership affairs within the ordinary course of business of the partnership. However, where prior to the conclusion of such a matter within the ordinary course of business of the partnership, at least one of the remaining partners objects to the conclusion of the matter, a prior resolution of the partners is required.

If matters which fall within the ordinary course of business of the partnership require a resolution of the partners, it must be adopted unanimously by all partners who have the right to manage the affairs of the partnership.

Matters which fall outside of the ordinary course of business of the partnership, require the consent of all partners, including those who are excluded from managing the affairs of the partnership. A partner who has the right to manage the affairs of the partnership may, without a resolution of the partners, effect an urgent action, where a failure to effect such action could cause serious damage to the partnership.

The granting of a commercial power of attorney requires the consent of all the partners who have the right to manage the affairs of the partnership.

Each partner has the right to represent the partnership individually unless provided otherwise in the articles of association. The right of a partner to represent the partnership includes all actions taken in and out of a court of law. The articles of association may provide that a partner is deprived of the right to represent the partnership or that he or she is authorized to represent the partnership only together with another partner or the holder of the commercial power of attorney. The partner may be deprived of the right to represent the partnership only for significant reasons under a final and non-appealable court judgement.

Each partner is liable for the obligations of the partnership without limitation for all of its assets and is jointly and severally liable with the remaining partners and the partnership. However, a creditor of the partnership may conduct enforcement proceedings from the partner's assets only if enforcement proceedings from the assets of the partnership prove ineffective (subsidiary liability of a partner).

A partner may make a contribution by transferring or encumbering the right of ownership of things or other rights, or by providing another performance to the partnership. In case of doubt, the contributions of the partners are deemed to be equal. The capital share of the partner equals the value of the contribution effectively made. Unless otherwise provided in the articles of association, each partner is entitled to an equal share in the profits and participates in the losses in the same proportion, irrespective of the type and value of the contribution.

b. Professional Partnerships

Professional partnerships are based on the U.S. model. Two main characteristics distinguish such partnerships from registered partnerships: the scope of the partners' liability; and the fact that only individuals authorized to exercise a free profession (such as lawyers, doctors, architects, auditors, etc.) may form such partnerships.

Each partner has the right to manage the partnership, unless otherwise provided in the articles of association or in a separate resolution of the partners. Partners who are not so appointed are excluded from managing the affairs of the partnership. The articles of association may create a management board modelled on the management board of a limited liability company to manage and represent the partnership to the exclusion of the partners. Professional partnerships are subject to rules on the management of the partnership's affairs additional to those applying to registered partnerships.

Each partner has the right to represent the partnership individually, unless the articles of association provide otherwise. A partner may be deprived of this right only for significant reasons under a resolution adopted by a majority of three-fourths of the votes in the presence of at least two-thirds of the total number of partners. The articles of association may provide for stricter requirements for such a resolution.

All partners bear personal and unlimited liability for a partnership's liabilities related to exercising a free profession; however, a partner is not liable for other partners' or his or her subordinates' actions related to exercising a free profession unless the articles of association provide otherwise. The articles of association may also provide that one or more partners agree to be liable as partners of a registered partnership.

A partnership is incorporated in two stages. First, the articles of association must be in writing and signed by the partners. Second, the articles of association, together with additional information and documentation, are then submitted to the National Court Register.

The additional information to be submitted includes:

(i) The business name;

(ii) The registered office and address of the partnership;

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(iii) The full names of the partners and their addresses or addresses for the correspondence purposes;

(iv) The specification of the freelance profession practiced by the partners within the partnership;

(v) The objects of the partnership;

(vi) The full names of the partners who are authorized to represent the partnership (only in instances where the deed of partnership restricts the right of representation by partners);

(vii) The full names of holders of commercial powers of attorney or persons appointed to the management board; and

(viii) The full names of the partners who bear unlimited liability for the partnership's obligations (if provided in the articles of association).

The Court reviews the documentation and issues its decision on registration. A partnership is established on registration.

c. Limited Partnerships

A limited partnership is a hybrid of a registered partnership and a limited liability company.

Limited partnerships have two types of partners:

(i) At least one of the partners is liable without limit for the partnership's obligations (general partner); and

(ii) The liability of at least one of the partners is limited (limited partner).

The limited partner's liability is limited to a specific sum as indicated in the articles of association (the *commendam sum*). A reduction in the *commendam sum* will have no legal effect *vis-à-vis* the creditors whose receivables arose prior to the registration of the reduction in the register.

As far as the management and representation of a partnership is concerned, a partner's powers can vary. The status of general partners with unlimited liability is similar to the position of partners in a registered partnership. Limited partners can manage a partnership if the articles of association expressly grant them that right and they can represent a partnership as proxies only. The consent of a limited partner is required in matters that fall outside of the ordinary course of business of the partnership, unless the articles of association provide otherwise.

If the contribution of a limited partner to the partnership consists in whole or in part of a non-pecuniary performance, the articles of association must define the object of that performance (in-kind contribution), its value and the partner making the contribution. The obligation to provide work or services for the benefit of the partnership and the remuneration for the services provided upon the formation of the partnership may only represent the limited partner's contribution to the partnership if the value of his or her other contributions to the partnership is lower than the *commendam sum*.

A limited partner participates in the profits of the partnership proportionately to his or her actual contribution to the partnership, unless the articles of association provide otherwise. In case of doubt, a limited partner participates in a loss only up to the value of the agreed contribution.

The incorporation procedure is similar to the one applicable to a registered partnership, however, the articles of association must be drawn up in the form of a notarial deed. This type of company may also be registered electronically (processed within 24 hours). However, it should be noted that the use of a template limits the flexibility of the partners in tailoring the limited partnership's articles of association to their specific needs and requirements.

Similar to the above, the articles of association of the limited partnership, together with additional information and documentation, are submitted to the National Court Register. This additional information and documentation to be submitted include the business name, registered office and address of the partnership, the objects of the partnership, the names and surnames or business names of all partners with unlimited liability, the limited partners' names and surnames, the names and surnames of persons authorized to represent the limited partnership and the value of the limited partners' shares.

d. Partnerships Limited by Shares

Partnerships limited by shares have some of the features characteristic of registered partnerships and joint stock companies. Like other types of Polish partnerships, a partnership limited by shares does not have legal personality. It is the only partnership structure that is required to meet minimum share capital requirements (i.e., PLN 50,000) and its capital may be raised by public subscription.

Shares are not issued in document form. Shares are registered in the register of shareholders that is maintained by the respective authority authorized to keep securities accounts.

The selection of the entity keeping the register of shareholders requires a resolution of the general meeting. When establishing a company, the choice is made by the founders. The register of shareholders is kept in electronic form, which may take the form of a distributed and decentralized database.

In partnerships limited by shares, there are two types of partners: at least one must be subject to unlimited liability and one must be a shareholder. A partner with unlimited liability may also be a shareholder. The shareholder is not liable for the obligations of the partnership and is only obligated to provide the performances set out in the statutes.

The formation and operation of partnerships limited by shares is regulated partly by provisions regarding limited partnerships and partly by provisions regarding joint stock companies.

Since partnerships limited by shares have no management board, all partners with unlimited liability manage and represent it unless the statutes provide otherwise or any of the partners has been deprived of the right to represent the partnership under a non-appealable court judgement.

A shareholder may represent the partnership only as an attorney-in-fact.

In addition, a supervisory board may be established by the partners and shareholders at the general meeting that performs a non-executive role and that may oversee the management of a partnership limited by shares.

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The establishment of a supervisory board is generally optional unless there are more than 25 shareholders, in which case it is mandatory. Partnerships limited by shares hold shareholders' meetings, which may be ordinary (general) or extraordinary.

Both shareholders and general partners (even if they have no shareholder status) may participate in such meetings.

Each share subscribed for or acquired by a person who is not a general partner carries one vote, unless the statutes provide otherwise. A shareholder may not be entirely deprived of the right to vote. Each share subscribed for or acquired by a general partner carries one vote.

Certain strategic decisions, namely, those relating to the approval of annual reports, the distribution of profits, claims for the reparation of damages, etc., are made at the shareholders' meeting. In addition, certain actions involving the partnership may require the unanimous consent of the partners and shareholders at a general meeting.

A general partner may make a contribution to the partnership and allocate it to share capital or other funds. However, such a contribution will not prevent the general partner having unlimited liability for the obligations of the partnership.

General partners and shareholders participate in the profits of the partnership in proportion to their contributions made to the partnership, unless the statutes provide otherwise.

Partnerships limited by shares are incorporated in two stages.

(i) First, at least all partners with unlimited liability must sign the statutes before a notary in the form of a notarial deed.

(ii) Second, the statutes, together with additional information and documentation, are then submitted to the National Court Register.

This additional information and documentation to be submitted includes:

(i) The business name;

(ii) The registered office and the address of the partnership;

(iii) The objects of the partnership;

(iv) The amount of share capital;

(v) The number and nominal value of the shares;

(vi) The number of preference shares and the types of preferences (if the statutes provide for preferences);

(vii) An indication as to which part of the share capital has been paid up prior to registration;

(viii) The full names or business names of the general partners and, if applicable, the circumstances concerning restrictions on their legal capacity;

(ix) The full names of the persons authorized to represent the partnership and the manner of representation;

(x) Whether or not the general partners have entrusted the conduct of the partnership's affairs only to some general partners;

(xi) Whether or not, on the formation of the partnership, the shareholders made in-kind contributions; and the duration of the partnership (if fixed).

The National Court Register reviews the documentation and issues its decision on registration. The partnership is incorporated upon registration in the registry.

2. Limited Liability Company

A limited liability company (*spółka z ograniczoną odpowiedzialnością* or *sp. z o.o.*) is well suited to carrying out business activities of all kinds. This type of company is available to all foreign as well as domestic investors, unless the law provides otherwise. The shareholders' liability is limited to the amount of their contributions to capital. The minimum share capital of a limited liability company is PLN 5,000 and the nominal value of one share may not be lower than PLN 50. The shares are not represented by security instruments and, assuming no restriction is provided for in the articles of association, may be transferred to a third party under an agreement signed in a written form and notarized (with signatures notarized by a notary).

The limited liability company may be established by one or more persons, and the articles of association should be drawn up in the form of a notarial deed. This type of company may also be registered electronically (within 24 hours). However, it should be noted that this method of registration limits the flexibility in tailoring the company's articles of association to its specific requirements.

A limited liability company may not be formed solely by another single-member limited liability company. The limited liability company is managed by a management board consisting of one or more members appointed by the shareholders, unless the articles of association provide otherwise. Certain strategic decisions, in particular those relating to the approval of annual reports, the distribution of profits, claims for the reparation of damages, etc., are made at the shareholders' meeting.

As a rule, it is not necessary for a limited liability company to have a supervisory body in addition to the management board. Indeed, limited liability companies with only one shareholder often will not have a supervisory body, but the articles of association may provide for a supervisory board or audit commission, or both. In such cases, the articles may also prohibit individual supervision by shareholders.

In companies that have a share capital in excess of PLN 500,000 and where the number of shareholders exceeds 25, the appointment of a supervisory board or an audit commission is mandatory. The supervisory board consists of at least three members and is obliged to exercise supervision of the company's activities at all times. Its competencies include examining financial statements, reports and motions of the management board regarding the distribution of profits or how to account for losses, in a manner envisaged by the Code of Commercial Companies (CCC).

The shares of a limited liability company are not represented by security instruments and, if no restriction is provided for in the articles of association, may be transferred in a written form with notarized signatures. To be valid, all agreements concerning the transfer or encumbrance of shares must be signed in the presence of a notary. The articles of associa-

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tion may stipulate that transfers of shares or parts or fractions of shares, and the pledging of shares require the consent of the company or be otherwise restricted.

The transfer of a share or part or fraction thereof to another party and the pledging of and creation of the right of usufruct on a share must be notified to the company by the parties involved and proof of such transfer, pledge or right of usufruct must be presented. The transfer, pledge or right of usufruct is effective with respect to the company as of the moment the company receives notification of the same from one of those involved, together with proof of the transaction.

The management board must keep a share register where the surname and first name or business name and seat of each shareholder, the number and nominal value of each shareholder's shares and the creation of pledges or usufructs and the exercise of the right to vote by the pledgee or the holder of a right of usufruct, are entered, together with any changes in the shareholders and their respective shares. Generally, a shareholder is entitled to a share in the profits specified in the annual financial report as allocated under a resolution of the general meeting.

The limited liability company form allows for significant flexibility and only limited formalities are involved in establishing such a company. The annual financial statements of a limited liability company must be audited if the company meets certain employment, asset, or turnover level requirements. Generally, a shareholder is entitled to a share in the profits specified in the annual financial report as allocated under a resolution of the general meeting.

3. Joint Stock Company

A joint stock company (*spółka akcyjna* or *S.A.*) is the corporate form usually used for large undertakings that require substantial capital. A single founder may form a joint stock company. The minimum share capital is PLN 100,000. Shares in a joint stock company are freely transferable unless the company's statutory documents, such as the statutes, provide otherwise. The statutes of a joint stock company may provide for two categories of shares: bearer shares (the transfer of which may not be restricted); and registered shares (the transfer of which may be restricted).

Effective March 1, 2021, all shares were dematerialized and are registered in the register of shareholders held by the respective authority authorized to keep securities accounts. The selection of the entity keeping the register of shareholders requires a resolution of the general meeting. When establishing a company, the choice is made by the founders. The register of shareholders is kept in electronic form, which may take the form of a distributed and decentralized database. As of March 1, 2021, the entries in the register of shareholders became legally binding and share documents will retain their evidentiary value for another five years only to the extent a shareholder can prove to the company that he or she is entitled to share rights.

A joint stock company must have a management board consisting of one or more members and a supervisory board consisting of at least:

(i) Three members in the case of a private joint stock company; and

(ii) Five members in the case of a public joint stock company.

The management board represents the company. Its members are usually appointed by the supervisory board. Certain key decisions concerning a joint stock company are made at the general (stockholders') meeting.

4. Simple Joint Stock Company

As of July 1, 2021, Polish law allows for the formation of a new type of business entity — a simple joint stock company (*prosta spółka akcyjna* or *P.S.A.*) A simple joint stock company has features of both a limited liability company and a joint stock company, and is subject to minimal formalities and procedures. The minimum share capital required to form a simple joint stock company is only PLN 1 and a potential capital increase will not require an amendment to the articles of association.

Moreover, it is possible to contribute know-how or services. This type of company can be registered electronically (within 24 hours) or incorporated in the form of a notarial deed. However, it should be noted that this method of registration limits the flexibility in tailoring the company's articles of association to its specific requirements.

The structure of a simple joint stock company depends on the choice between appointing a single- or a multi-member management board, with the possibility of establishing a supervisory board or a board of directors.

The following is required to form a simple joint stock company:

(i) The drafting of articles of association;

(ii) The establishment of the company's bodies as required by the CCC and the articles of association;

(iii) The making by shareholders of contributions to cover the share capital (at least PLN 1); and

(iv) Entry in the register.

5. Group of Companies

In October 2022, provisions governing the creation of a group of companies were added to the CCC. A group of companies is understood to comprise a parent company and a subsidiary or subsidiaries that are capital companies, following, in accordance with a resolution on participation in a group of companies, a common strategy in order to pursue a common interest (the interest of a group of companies), justifying the parent company exercising uniform management of the subsidiary or subsidiaries.

The provisions regarding the creation of a group of companies do not apply to:

(i) A public company;

(ii) A in liquidation, which has commenced the distribution of its assets, or a company in bankruptcy; and

(iii) A company subject to financial market supervision within the meaning of the Act on Financial Market Supervision of July 21, 2006.

The legislative provisions do not apply automatically. In other words, the parent company and the subsidiary have to be active to benefit from the new regulations.

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(i) First, the articles of association or the statute of the subsidiary have to be adapted accordingly. To do this, the General Meeting of the subsidiary has to adopt a resolution on participation in the group of companies by a three-quarters majority.

(ii) Second, participation in the group of companies needs to be disclosed in the National Court Register. Importantly, this obligation applies not only to the subsidiary but also to the parent company.

Participation in a group of companies is terminated by a resolution adopted by the General Meeting of a subsidiary participating in the group by a majority of three-quarters of the votes or by a declaration on termination of such participation made by the parent company to the subsidiary. The companies may also decide to amend their statutes/articles of association in order to reflect any additional aspects of their participation in the group of companies.

The law provides for the introduction of a number of different institutions, which can be divided into the following groups:

(i) Issue of binding orders by the parent company:

• The parent company may issue binding orders to the subsidiary participating in the group of companies regarding the conduct of the company's affairs if this is justified by the interests of the group or if specific provisions do not provide otherwise. The parent company's orders must be in writing or in an electronic form, otherwise being null and void. At a minimum, such binding orders must indicate:

— The behavior that the holding company expects of the subsidiary in connection with the execution of the binding order;

— The interests of the group that justify the subsidiary's execution of the binding order;

— The benefits or damages to the subsidiary expected to result from the execution of the binding order, if any; and

— The envisaged manner and timeframe for compensating the subsidiary for any damage suffered by the subsidiary as a result of the execution of the binding order.

• The execution of binding orders by a subsidiary participating in a group of companies requires the prior approval of the subsidiary's management board. The resolution must contain the obligatory elements of the content of the binding order.

• A subsidiary participating in a group of companies is able to adopt a resolution to execute binding orders or to refuse to do so where execution of the orders would lead to insolvency or a threat of insolvency of that company. In addition, a subsidiary within a group that is not a single-member company is able to adopt a resolution refusing to carry out binding orders where there is a reasonable fear that the instruction will be contrary to the interests of the company and will cause damage that will not be remedied by the parent company or another subsidiary in the group within the two years following the date on which the event causing the damage occurs, unless the articles of association or statutes provide otherwise.

The articles of association or the statute of a subsidiary in a group may provide additional conditions for refusing to comply with binding orders. The introduction of such additional conditions constituting an amendment to the articles of association or statute will be subject to the condition that the parent company repurchase the shares (stocks) of those shareholders of the subsidiary that do not agree to the amendment. Refusal to comply with binding orders requires a prior resolution of the management board of a subsidiary participating in a group of companies and a justification.

A member of the management board, a member of the supervisory board, the audit committee and the liquidator of a subsidiary are not liable for damage caused by the carrying out of a binding order under the business judgment rule. The introduction of the business judgement rule makes it possible to emphasize that the actions of members of the authorities should be assessed in terms of whether the decision-making procedure is duly applied, in relation to the decision-making moment and related circumstances.

(ii) Obligation for a subsidiary to make information available to the parent:

• The parent company is entitled to inspect the books and records of any subsidiary participating in the group of companies and to request information at all times.

• A parent company to which books and documents have not been made available or information has not been provided may apply to a registry court to oblige the management board of a subsidiary participating in the group of companies to make such books and documents available or to provide information.

• The supervisory board of a parent company may require the management board of a subsidiary belonging to the group of companies to produce books and records and to supply information for purposes of supervision. A member of the supervisory board of a parent company may not disclose a subsidiary's secrets even after his or her mandate has expired. If the articles of association of the parent do not provide for the establishment of a supervisory board, the powers of the supervisory board will be exercised by the management board of the parent company.

• The management board of a subsidiary participating in the group of companies must draw up a report on the contractual relations of that subsidiary with its parent company for the last financial year and submit it to the General Meeting.

(iii) The right to repurchase shares (stocks) and the right to purchase shares (stocks) related to participation in a group of companies in certain circumstances:

• A shareholder representing no more than 10% of the share capital of a subsidiary participating in the group

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of companies may request that the agenda of the next General Meeting include a resolution on the compulsory repurchase of its shares (stocks) by the parent company which will represent, directly, indirectly or by agreement with other persons, at least 90% of the share capital of the subsidiary participating in the group (a "sell-out"). This authorization is exercisable only once in each financial year and no earlier than three months after the date of disclosure in the register of the subsidiary's participation in the group.

• The General Meeting of a subsidiary company participating in the group of companies may adopt a resolution on the compulsory buy-out of the shares of shareholders representing no more than 10% of the share capital by the parent company, which directly represents at least 90% of the share capital (a "squeeze-out"). The articles of association or the statute of the subsidiary may provide for the squeeze-out right to be vested in the parent company, which directly or indirectly represents less than 90%, but not less than 75%, of the share capital of a subsidiary participating in the group.

(iv) Compensation rights of a subsidiary itself, its minority shareholders (stockholders) and its creditors:

• The parent company is liable to a subsidiary for loss or damage caused by the execution of a binding order that is not remedied within the period set out in the order, unless the parent is not at fault. However, the parent is liable for damage caused to a single-shareholder subsidiary only where compliance with a binding order leads to the subsidiary's insolvency.

• If a subsidiary company fails to bring an action for damages caused to it by the parent company within one year from the date of expiry of the period set in the binding order, any shareholder of the subsidiary may bring an action for damages against the parent.

• A parent company that, on the date of a binding order on a subsidiary participating in the group of companies, holds, directly or indirectly, a majority of the votes enabling a resolution to be adopted on participation in the group, on amendment of the articles of association or statutes of the subsidiary, is liable to the shareholders of the subsidiary for a reduction in the value of its shares (stocks) if the reduction is the result of compliance by the subsidiary with the order.

• If an enforcement action against a subsidiary that is part of the group of companies is unsuccessful, the parent company is liable for the damage caused to a creditor of the subsidiary, unless the parent is not at fault, or the damage does not arise as a result of compliance by the subsidiary with a binding order.

(v) Protection of minority shareholders of a subsidiary.

• The minority shareholder(s) of a subsidiary company participating in a group of companies representing at least 10% of the share capital may apply to the registry court to request appointment of an audit firm to examine the accounts and operations of the group of companies.

6. *Branch of a Foreign Entrepreneur and Representative Office*

The Act on the Rules of Participation of the Foreign Entrepreneurs and other Foreign Entities in Business Trading in the Republic of Poland and the Act on the National Court Register govern the procedures and requirements for the establishment of a branch. A foreign entity with a place of business or establishment in Poland must register its presence. The obligation to register is triggered by pursuing economic activity in Poland.

Only certain entities may register the presence of a branch in Poland, including:

• Foreign entities with their head office in an EU Member States;

• Member States of the European Free Trade Agreement (EFTA) or parties to the agreement on the European Economic Area (EEA); and

• Foreign entities with their head office in a non-EEA state that enjoys freedom of establishment under an agreement concluded by that State with the European Union or its Member States.

Other foreign entities may establish branches in Poland if the rule of reciprocity applies between Poland and the home country of the given company.

The principle of reciprocity means that Polish business entities are treated in the same manner as business entities in the foreign country either in fact or pursuant to an international agreement. This rule may be provided for in bilateral treaties signed between Poland and other countries regarding the support and mutual protection of investments. For instance, the rules of reciprocity have been confirmed with the following countries: Turkey, Canada, South Korea, Switzerland, the United States, Tunisia, China and many others.

A foreign company that may act freely based on the exercise of the freedom of establishment referred to above and is intending to set up a branch in Poland is treated in the same manner as a Polish company. The only formal requirement is that the branch must be registered in the National Court Register. A branch does not have a separate legal personality distinguishing it from its foreign head office. A branch may not conduct any economic activity beyond the scope of the activities carried out by its head office.

The head office must file an application with the National Court Register to register the branch and appoint a relevant person authorized to represent the parent company in Poland. The role of such representative is to represent the foreign entity while acting through the branch in Poland.

Further, the branch name must comply with the following conditions:

• The branch name must contain the full name of the foreign entity, including the legal form of the foreign entity (in Polish); and

• The branch name must be supplemented with "*Oddział w Polsce*" ("Branch in Poland").

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The branch is required to notify the National Court Register of all changes with respect to the information disclosed in the National Court Register. For instance, a branch's name can only be changed when the foreign entity's name is changed. A copy of a resolution of the foreign entity and disclosure of the information on the new name in the commercial register is required to complete the change of the branch's name. The process for changing a branch's representative is also at the head office level and requires a resolution of the foreign entity and disclosure of the information on the new representative in the commercial register.

Procedures and requirements for the establishment of a representative office are governed by the Act on the Rules of Participation of Foreign Entrepreneurs and other Foreign Entities in Business Trading in the Republic of Poland. A representative office may be established without a permit from the Minister of Development and Technology even if there is no reciprocity between Poland and the country of the foreign company concerned. The only formal requirement is registration in the records of the representative offices maintained by the Minister of Development and Technology. This requirement does not apply to the representative offices of banks and credit institutions.

Representative offices, like branches, do not have a separate legal personality distinguishing them from their foreign (head office) company. However, once established, a representative office is only entitled to conduct advertising and promotion activities in relation to its head office.

A representative office may also be established by foreign persons authorized by the relevant body of their country of origin to promote the economy of the country in which they have their seat. The scope of activity of such a representative office may only include the promotion and advertising of the economy of that country.

The foreign company must file an application to register a representative office in Poland.

Certified translations into Polish of all documents drawn up in a foreign language must be submitted to the Ministry.

7. European Economic Interest Grouping

On joining the European Union, Poland adopted two new corporate forms: the European Economic Interest Grouping (EEIG) and the European Company (*Societas Europaea* or SE — see 8., below). The formation and operation of an EEIG is regulated by the Council Regulation on the European Economic Interest Grouping (EEIG) and the Act on the European Economic Interest Grouping and the European Company.[70]

For issues regarding these corporate forms that are not addressed by Regulation 2137/85 or the Act on the European Economic Interest Grouping and the European Company, the provisions governing registered partnerships apply.

The purpose of an EEIG is to facilitate or develop the business activities of its members to improve financial results or business. The activity of an EEIG is of an ancillary nature and is not aimed at making profits for the EEIG. Profits resulting from an EEIG's activities constitute profits of its members. The profits are distributed proportionally as set out in the contract for the formation of the EEIG and if the contract does not provide for the manner in which the profits are to be distributed, they are distributed equally. The members of an EEIG are jointly and severally liable for the EEIG's debts and other liabilities of any nature whatsoever.

This corporate form is available for use by companies and other legal bodies governed by private or public law that have been established pursuant to the law of an EU Member State and are located in one of the EU Member States, as well as to natural persons. Potential members of an EEIG must come from different EU Member States, i.e., natural persons wishing to form an EEIG may not carry out their principal activities in the same EU Member State.

An EEIG is incorporated in two stages. First, a contract is signed by the members in simple written form. Second, the contract, together with additional documents, is submitted to the National Court Register.

The compulsory governing bodies for an EEIG include a committee of EEIG members and an administrative body (manager(s)). The contract for the formation of an EEIG may provide for other bodies.

8. European Company

The formation and operation of a European Company ("SE") is regulated by the Council Regulation on the Statute for a European Company (SE) and the Act on the European Economic Interest Grouping and the European Company.[71]

An SE is a legal person. The business name of an SE must include the abbreviation "SE". An SE must be based in the EU, and must have its head office in an EU Member State. An SE may transfer its statutory seat to another EU Member State and such a transfer does not result in its liquidation or the establishment of a new legal person. The share capital of an SE is expressed in Euro and its minimal value (subscribed capital) is 120,000 euros. Shareholders are liable up to the amount the particular shareholder subscribed for. In each EU Member State an SE should be treated as a joint stock company established in accordance with the laws of the Member State in which the SE has its statutory seat.

An SE may only be formed by legal persons, which must, as a rule, have their corporate seats in different EU Member States or perform business activities in more territories than that of one Member State. An SE may be created as a result of a merger of at least two joint stock companies, the formation of a holding company by at least two joint stock companies and/or limited liability companies, the formation of a subsidiary by at least two companies or legal persons, or the transformation of an existing joint stock company that has a subsidiary governed by the laws of another Member State.

The governing bodies of an SE are the general shareholders' meeting and, either a two-tier system involving a management organ and a supervisory organ, or a one-tier system in-

[70] Council Regulation (EEC) No. 2137/85 of July 25, 1985, on the European Economic Interest Grouping (EEIG) Official Journal L 199, 31/07/1985, p. 0001–0009 and Act on the European Economic Interest Grouping and the European Company (*Ustawa o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej*), Journal of Laws 2022 Item 259, as amended.

[71] Council Regulation (EC) No. 2157/2001 of Oct. 8, 2001, on the Statute for a European Company (SE) Official Journal L 294, 10/11/2001, p. 0001–0021 and Act on the European Economic Interest Grouping and the European Company.

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volving only an administrative organ, according to the will of the shareholders. The shareholders of an SE may choose one of these systems regardless of the management/supervision model applicable in the EU Member State in which the SE's seat is located. As a rule, all EU Member States apply the same EU rules for an SE. However, depending on the Member State in which the SE is established, different rules may apply for certain aspects (for example, taxation; competition; intellectual property; insolvency; and preparation, auditing and publication of the annual accounts/consolidated accounts).

9. Other Entities

Other types of entities include foundations, associations, employers' organizations and co-operatives.

Privatization is effected based on the Act on the Commercialization and Privatization.[72]

A special kind of foundation, a family foundation, has been available since May 2023. A family foundation is a legal entity (*osoba prawna*) established to accumulate and manage property, and distribute profits to its beneficiaries. A family foundation is the sole owner of the assets under its management.

A family foundation can be established by the founder(s) making:

(i) A statement/declaration on the establishment of a family foundation; or

(ii) A valid will.

Both statements/declarations and wills have to be made in the form of notarial deeds.

Family foundations are used primarily to:

(i) Facilitate succession and the safeguarding of family assets;

(ii) Prevent the dispersal of inter-generational family wealth to, and minimize the risk of its fragmentation among, unrelated persons or entities; and

(iii) Serve any other purposes specified by the founder(s) in the statute of the foundation.

The governing bodies of family foundations include the following:

(i) The management board;

(ii) The supervisory board (optional); and

(iii) The beneficiaries assembly.

The founder(s) must contribute to the foundation assets (i.e., funds, securities and other rights) worth at least PLN 100,000.

As indicated above, there can be several founders, unless the foundation in question is created in a will.

Only natural persons can establish family foundations and only natural persons and non-governmental organizations can be the beneficiaries of such a foundation.

Importantly, beneficiaries do not have to be family members of the founders, and the founders themselves can also be beneficiaries.

Once it has been created, a foundation must be entered in the Register of Family Foundations maintained by the National Court Register (*Krajowy Rejestr Sądowy*). A fixed fee of PLN 500 is payable on registration.

B. Limited Liability Company

1. Formation

a. Scope of Activities

A limited liability company is well suited to carrying out business activities of all kinds; however, the law provides for some restrictions. For example, banks and insurance companies may not be established in this particular legal form.

b. Corporate Name

Each business name must be sufficiently distinguishable from the names of other businesses operating in the same market. A company's name may be freely chosen, but in all instances, the phrase "*spółka z ograniczoną odpowiedzialnością*" must be added to the company's name. The surnames of shareholders may not be included in the business name without their consent or the consent of their heirs in the event of their death.

The corporate name of a limited liability company may be freely changed.

The following steps are required to change a company's name:

(i) Amend the articles of association in the form of a notarial deed; and

(ii) Register the change with the National Court Register.

The change is effective on registration in the commercial register and must be followed by the updating of information on the company's website, letterhead, licenses, permits and the like, as required.

c. Incorporators

One or more shareholders may establish a limited liability company. The founding shareholder(s) must subscribe to all of the share capital. The shares may not be subscribed for below their nominal value. If a share is subscribed for at a price higher than the nominal value, the balance must be transferred to the supplementary capital. The articles of association of a company must provide whether a shareholder may have only one or may have more than one share in the company.[73]

A limited liability company can be registered in the National Court Register only if the entire share capital has been paid in by the shareholders. A limited liability company may not be established solely by another sole-shareholder limited liability company. In general, if a shareholder has more than one share, all such shares in the share capital will be equal and indivisible.

[72] Act on Commercialization and Privatization (consolidated text), Journal of Laws 2015 Item 747.

[73] There are two systems of shares under the Commercial Companies Code, either: (i) each shareholder may have only one share, in which case the shares may have different par values; or (ii) each shareholder may have more than one share, in which case all the shares must have the same par value.

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d. Articles of Association

The articles of association of a limited liability company must be adopted by the incorporators in the form of a notarial deed. The articles of association must specify the name of the company, the seat of the company, the scope of the company's activity, the duration of the company (if this is a limited period), the amount of the share capital, information as to whether shareholders can subscribe to only one share or to more than one share and the number and value of shares held by individual shareholders.

e. Share Capital

The minimum share capital of a limited liability company is PLN 5,000 and must be denominated in PLN. There is no maximum level of share capital. Shares cannot be issued at a par value of less than PLN 50 each. Neither bearer nor mandate documents may be issued for shares or for rights to participate in company profits.

A private liability company must have at least one shareholder (there is no maximum number). There are no general restrictions or qualifying criteria on the identity of shareholders. However, a limited liability company may not have as its sole shareholder another sole-shareholder limited liability company. The identity of the company's shareholders is publicly disclosed.

Capital contributions may be in cash or in kind and must be paid up before registration. In kind contributions must be described in detail in the articles of association. The management board cannot issue shares in a limited liability company. Shares may be issued by the shareholders only. The issue of shares must be registered with the National Court Register. On formation, limited liability companies are required to file a statement of initial capital with the National Court Register as part of the incorporation process. Any change of the share capital (increase or decrease) needs to be recorded in the register. The registration procedure usually takes about one month.

f. Incorporation Procedure

A limited liability company is incorporated in two stages.

First, the articles of association must be signed by the shareholders in the form of a notarial deed. Upon conclusion of the articles of association, a limited liability company in organization is created.

Second, the articles of association, together with additional documentation, are then submitted electronically to the National Court Register.

The Court reviews the documentation and issues its decision on registration in the National Court Register. A fully-formed (having legal personality) limited liability company is incorporated upon registration.

g. Costs of Incorporation

The overall cost of incorporating an "offline" limited liability company depends on the value of the initial share capital of the company, based on which the notary will charge the notarial fee and the transfer tax. Where the capital is PLN 5,000, the notarial fee is PLN 160 (plus costs of additional excerpts), and the fees and expenses relating to the registration procedure carried out before the National Court Register are fixed and amount to PLN 600. Where the share capital is in excess of PLN 5,000, the notarial fee is calculated according to a decreasing rate. The incorporation of a limited liability company is subject to transfer tax at the rate of 0.5%. An offline incorporation usually takes up to five or six weeks to finalize.

h. Company in Process of Organization

The Commercial Companies Code allows a limited liability company to enter into transactions after its articles of association are signed by the founders but before it is registered in the National Court Register. A company in these circumstances is called "*Spółka z ograniczoną odpowiedzialnością w organizacji*" (i.e., a company in organization). A limited liability company in organization has no legal personality. However it may acquire rights in its own name, including the right of ownership of real estate and other rights *in rem*, incur obligations, and sue and be sued (as in the case of partnerships).

i. Registration of a Limited Liability Company Within 24 Hours

The Commercial Companies Code allows the incorporation of a limited liability company via the Internet through the website of the Ministry of Justice in 24 hours.[74] The procedure is available on the creation of an account, the provision of some personal data and the obtaining of an electronic signature consisting of a login and a password or a safe electronic signature verified with a valid qualifying certificate. The articles of association of a limited liability company established via the Internet may also be signed by using a signature confirmed by the trusted profile, ePUAP.

Under this procedure ("S24,") a limited liability company may be formed without the articles of association having to be executed in the form of a notarial deed, based on an electronic template established and made available by the Ministry of Justice.

It should be noted, however, that:

(i) Online incorporation is available only if the model articles of association provided by the Ministry of Justice are used; and

(ii) The wording of such model articles of association is basic and any future amendments to it must be made in the form of a notarial deed.

The incorporation formalities have also been simplified with respect to making cash contributions towards the initial share capital of the company. Under the fast track procedure, the initial share capital of the company does not need to be contributed before the company is registered in the National Court Register and may be contributed after registration. Moreover, a company will no longer be in "a process of organization" because, once the application is submitted to the National Court Register and the court fee is paid, the form is transferred to the National Court Register, where registration takes place.

All the required information must be provided to the National Court Register electronically. In theory, online incorporation of a limited liability company makes the whole process

[74] Available at https://ekrs.ms.gov.pl/.

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of incorporation easier and should take up to seven days. The cost is PLN 350.

2. Operation

a. Licenses

There is no general requirement to obtain a license or permit for purposes of commencing business activity in Poland. Certain types of activity may require permission (permit/consent) or a license or concession to be granted under the laws governing the particular activity or industry concerned. The government or state consents or permits required to incorporate a limited liability company depend on the scope of its business activity.

If the company wishes to act in certain regulated sectors, it must be authorized to do so by obtaining the required permit/consent granted by the regulator for the relevant industry (banking and financial services, insurance, utilities, media, broadcasting and telecommunications, defense, mining, etc.)

In addition, certain industries require participants to obtain a license (the life sciences and pharmaceuticals, gambling, food and drink production, professional services, production of alcohol or tobacco, etc.) For further details, see II.A.6., above. The process for, and the cost of, obtaining the relevant authorization (permit/consent) or license will depend on the nature of the business.

b. Amendment of the Articles of Association

Unless the articles of association provide otherwise, amendments to the articles of a limited liability company require the approval of a majority of two-thirds of the votes cast at a shareholders' meeting. The shareholders' meeting resolution must be in the form of a notarial deed and filed for registration. An amendment is not effective until it is registered in the National Court Register. The incorporation of the company and amendments to its articles of association must be announced in the official publication known as the Court and Business Journal (*Monitor Sądowy i Gospodarczy*).

Any application for entry in the National Court Registry should be submitted no later than seven days from the date that the event justifying an entry occurred (for example, amendment of articles of association). However, failure to meet the above-mentioned obligation is not punishable in any way. The cost of registration of the amendment of the articles of association is approximately PLN 350 plus additional notary fees.

c. Increases and Decreases in Share Capital

The share capital may be increased based on existing provisions of the articles of association (if allowed) or by way of an amendment of the articles of association. If an increase in the share capital is effected based on existing provisions of the articles of association setting out a maximum amount of the share capital increase and the deadline for such increase, the increase does not require an amendment to the articles of association, and therefore the respective resolution and declaration of the shareholders on subscription for the newly-issued shares may be adopted in a simple written form. Otherwise, the share capital increase may be effected only through an amendment to the articles of association and the above-mentioned documents must be recorded as notarial deeds.

Unless the resolution or articles of association stipulate otherwise, existing shareholders have a preemptive right to subscribe to the new shares in proportion to their existing shareholdings. This preemptive right must be exercised by the shareholders within one month of their being called upon to do so, by way of a declaration made in the form of a notarial deed.

The share capital may be increased by a resolution of the shareholders by means of an amendment to the articles of association, whereby funds from the supplementary capital or reserve capital (funds), created out of company profits, are designated for that purpose. In such case, new shares will be due to the shareholders in proportion to their existing shareholdings and will not have to be subscribed for.

A resolution on the share capital decrease must specify the amount by which the share capital is to be reduced and the reduction method. A decrease in share capital requires the approval of at least two-thirds of the votes cast at a shareholders' meeting. A number of requirements relating to the protection of the creditors must also be met. These requirements include a mandatory announcement by the company's board about the decrease in capital with a simultaneous call to the company's creditors to ascertain whether they have any objections.

Creditors that do not agree with the decrease must object within three months after the board's announcement is issued. Those creditors should have their claims either satisfied or secured by the company.

An increase or decrease in the share capital of a limited liability company is not effective until it is registered in the National Court Register. The cost of registration of the share capital decrease or increase is approximately PLN 350 plus transfer tax of 0.5% of the amount of the increase (in case of an increase). In respect of the share capital decrease and if a change in the articles of association is required for doing so, additional notary fees are payable.

d. Acquisition of a Company's Own Shares

A limited liability company and entities controlled by it can neither subscribe for, acquire nor pledge their own shares on their own account. Any member of the management board or a liquidator allowing such a prohibited acquisition or pledge to be made would be subject to a penalty in the form of imprisonment or a fine.

There are two exceptions to the above-mentioned rule:

(i) An acquisition of shares in the course of execution proceedings to satisfy the company's claims that cannot be satisfied out of other property of the shareholder; and

(ii) An acquisition of the company's own shares for purposes of their future redemption.

If shares acquired in execution proceedings are not sold within a year from the date of their acquisition, they must be cancelled in compliance with the provisions relating to decreases in share capital.

For purposes of better financial control, a company's own shares must not be entered in the books together with other shares held by the company in other commercial companies, but must be entered on the balance sheet as a separate class of assets.

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e. Management Board

A limited liability company must have a management board composed of one or more directors (members). In general, the management board and the shareholders' meeting are the only compulsory corporate bodies in a limited liability company. The management board structure is single-tier and is responsible for the day-to-day management of a limited liability company. The minimum number of directors is one. The articles of association may indicate the exact number of directors or stipulate a higher minimum number of directors. There is no maximum number of directors prescribed by law.

Directors must:

(i) Have full legal capacity (i.e., must be over the age of 18 and not incapacitated); and

(ii) Not have been sentenced (in the last five years) under a final sentence for certain crimes set out in the provisions of chapters XXXIII–XXXVII and Articles 228–231 of the Criminal Code and under Articles 587–587,[2] 590 and 591 of the Commercial Companies Code.

A member of the supervisory board or the audit committee may not be a director (member of the management board). There are no specific corporate requirements as regards the directors' nationality and, therefore, the entire management board could consist of foreign nationals. Also, directors may (but are not required to) be shareholders.

Unless the articles of association provide otherwise, a shareholders' resolution (adopted with an absolute majority of votes) is required for the appointment or removal of a director. There are no restrictions on a director's term of appointment. Subject to the articles of association, directors can be appointed for a definite or an indefinite term.

Directors may resign from the management board. Typically, the resignation of a director involves the execution of a resignation letter by the director and its delivery to the company. The resignation becomes effective once received by the company, represented by one other director or a commercial proxy. It is advisable for a director or proxy to confirm receipt of the resignation letter.

The appointment, removal or resignation of directors must be registered in the National Court Register to protect the interests of third parties dealing with the limited liability company in good faith. The company must file a motion to register the change in the composition of the management board with the National Court Register within seven days from the change.

The management board represents the company both in and out of court. This right extends also to all day-to-day operations of the company.

A director's general duties include:

(i) The right and obligation to manage the affairs of the company (this covers all court proceedings and out of court dealings of the company, including the disposal and encumbering of real property and the granting and revocation of power of attorney; and

(ii) Acting diligently and in a professional manner in the course of performing all their duties.

The legal consequences of this right cannot be restricted *vis-à-vis* third parties.

If the management board is composed of more than one person, the right of representation is regulated by the articles of association. If the articles of association do not contain any provisions in this regard, the CCC provides that for purposes of making company statements and signing in the company's name, the action of two members of the management board acting jointly or, alternatively, of one member of the management board together with a commercial proxy, will be required.

If the management board comprises several members, and the articles of association do not provide otherwise, the relations among the directors are as follows:

(i) Each director has the right and obligation to manage the affairs of the company;

(ii) Each director may, without a prior resolution of the management board, manage affairs that do not go beyond the ordinary affairs of the company;

(iii) If, prior to the conclusion of any such matter, at least one of the remaining directors objects to its conclusion or if the matter falls outside of the ordinary affairs of the company, a prior resolution of the management board is required; and

(iv) Resolutions of the management board may be adopted by an absolute majority of votes if all members have been properly notified of the meeting.

The articles of association may provide that, in the event of a tie, the president of the management board will have the casting vote, as well as grant him or her certain powers in managing the operations of the management board.

Unless the articles of association provide otherwise, the management board meetings can be held remotely, the resolutions can be adopted in writing or remotely and directors may participate in adopting the resolutions of the board by casting their vote in writing through another director.

Regardless of the manner in which it is adopted, any resolution of the company's management board must be recorded in the minutes of the management board meeting.

The minutes should include:

(i) The agenda of the meeting;

(ii) The names of the members of the management board present at the meeting; and

(iii) The number of votes cast on individual resolutions.

The minutes must also include details of any dissenting opinion(s) raised by any members of the management board, along with a statement of reasons.

The minutes must be signed, at least, by the member of the management board chairing the meeting or managing the vote, unless the articles of association or the bylaws of the management board provide otherwise.

In contracts between the company and the director, the company must be represented by the supervisory board or an attorney-in-fact, appointed under a resolution of the shareholders' meeting.

A limited liability company may have one or more holders of a commercial power of attorney. "Procuration" is a commercial power of attorney that may be granted only by a company registered in the National Court Register. A commercial power

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of attorney is granted within the scope of an activity conducted for gain. A holder of a commercial power of attorney must be registered in the National Court Register. The registration entry should specify its type — whether the holder of a commercial power of attorney is authorized to act and sign individually, or jointly with another commercial proxy.

Procuration authorizes its holder to conduct all day-to-day operations, but does not comprise authorization for the disposal, lease or transfer for free use of a business, or the sale or encumbrance of real property. For such activities, the commercial proxy must be expressly authorized by a company's governing bodies. The law provides also a special kind of procuration for branches of the company, known as a "branch commercial power of attorney". A branch commercial proxy may only act within the scope of the activities of the branch as set out in the relevant register. The appointment of a holder of the commercial power of attorney requires the consent of all members of the management board (directors). However, the commercial power of attorney may be revoked by any director.

Directors' general duties are primarily owed to the company and its shareholders. In performing their duties, directors must exercise the due diligence inherent in the professional nature of the business and maintain loyalty to the company.

This duty may be derived from two different sources:

(i) The civil obligation between the company and the members of the management board, which is constituted along with the election of the members of the management board; or

(ii) The employment contract.

In particular, the CCC provides that if there is a conflict between the interests of the company and those of a member of the management board, his spouse, relatives or relations up to the second degree and persons with whom he has personal relations, the member of the management board must refrain from deciding on any such matters.

Members of the management board are not in breach of the duty to act with due professional care (duty of care), if, by acting loyally towards the company (duty of loyalty), they act within the bounds of reasonable commercial risk, including based on the information, reports and opinions that should be taken into account in exercising due professional care in the circumstances (the "business judgment rule").

Following the introduction of the business judgment rule, members of a company's bodies who have diligently and loyally performed their duties and who have decided to take risks for the company will be protected if it turns out *ex post* that the decision was wrong and caused damage to the company. At the same time, it will still be possible to sanction reckless actions.

In certain situations, the directors also owe general duties to third parties, in particular, when the members of the management board provide, intentionally or negligently, false information in the contribution statements. In such cases, they are liable to company creditors jointly and severally with the company for a period of three years following the registration of the company or registration of an increase in the share capital.

The consequences of a breach of their general duties by directors include civil law liability, criminal liability, corporate liability and removal from office.

Members of the management board are liable vis-à-vis the company for damages caused by actions or omissions contrary to the law or the articles of association, whether intentional or unintentional, if:

(i) Such action or omission by the member has led to damage (whether actual damage or lost profit); and

(ii) The damage is a reasonable consequence (adequate causality) of the action or omission.

Members of the management board are liable vis-à-vis third parties if the company does not pay its debts to creditors. Members may be released from liability if they demonstrate that:

- In appropriate time, a petition for bankruptcy was filed;
- Composition proceedings were commenced;
- The non-filing of the petition for bankruptcy or the non-commencement of the composition proceedings was not due to their fault; or
- The creditor did not sustain any damage despite the fact that the petition for bankruptcy was not filed or that composition proceedings were not commenced.

Members of the management board, including any former members, are jointly and severally liable for the company's liabilities if the reason for the ineffectiveness of an enforcement claim against the company arose during their tenure and they had not undertaken any of the actions listed above.

If an application to increase the share capital of the company is filed, the members of the management board must file a declaration stating that contributions towards the share capital have been made by all shareholders. If the members willfully or negligently provide false data in those declarations, they will be severally and jointly liable with the company to the company's creditors for all of the company's obligations for three years following the registration of the increase in share capital. The board members must therefore take care to ensure that shares are subscribed for and fully paid up before making the declaration.

Members of the management board may be criminally liable for a company's breach of laws and regulations, where the breach or violation was intended by the members or occurred due to a lack of supervision or negligence by the members in performing their duties. Criminal law in Poland is based on the principle of guilt. This means that any prohibited action can be treated as a criminal offence only if the individual accused of having committed the act is found guilty of this action. Several laws impose potential criminal liability on board directors, including:

- Commercial Companies Code — for example, if a director fails to file for bankruptcy at the appropriate time, he or she may be liable not only under civil regulations but also under criminal law;
- Accountancy Act — for example, if a director fails to execute an annual financial statement on time, he or she may become subject to a fine and/or criminal liability in serious cases;
- Labor Code — for example, if a director maliciously or persistently infringes employees' rights;

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• Bankruptcy and Rehabilitation Law; and

• Penal Fiscal Code.

Further, board directors may be criminally liable for corporate offences, including:

• Failure to file a bankruptcy petition at the appropriate time, despite there being grounds for such action;

• Submitting false data to the company's governing bodies, public authorities, or a person authorized to carry out an audit;

• Granting permission to issue share certificates that have not been sufficiently paid-up; and

• Failure to draw up annual financial statements.

Limited liability companies may provide the management board with directors and officers (D&O) insurance covering defense costs and financial losses arising from their activity within the scope of their duties. Typically, D&O insurance does not cover damages caused by intentional misconduct of the director.

f. Supervisory Board/Audit Commission

As a rule, it is not necessary for a limited liability company to have a supervisory body. It is very often the case that limited liability companies consisting only of a sole shareholder do not have supervisory bodies. The articles of association of a company may provide for a supervisory board or an audit commission, or both. In such cases, the articles of association may prohibit individual supervision by shareholders. If the share capital exceeds PLN 500,000, and the number of shareholders exceeds 25, the law requires the appointment of a supervisory board or an audit committee.

The supervisory board consists of at least three members and is obliged to exercise constant supervision of the company's activities. The supervisory board meetings should take place at least once a quarter. The supervisory board members are elected for a term of one year, unless the articles of association provide otherwise. Any supervisory board member may be dismissed at any time through a resolution of the shareholders. The supervisory board's competencies include examining the financial statements and reports and motions of the management board as to the distribution of profits or the covering of losses, in the manner and within the scope envisaged by the CCC for the performance of these activities by the supervisory board.

As of 2022, the effectiveness of the supervisory board has been extended. For example:

(i) The supervisory board may demand that the management board, proxies, liquidators, employees of the company or persons employed by the company based on a civil law contract (i.e., performing certain activities for the company on a regular basis under a contract for work, a contract of mandate or any other contract of a similar nature), prepare or provide all information, documents, reports or explanations necessary to supervise the company, in particular those relating to the company's operations or its assets. The request may also relate to subsidiaries and affiliated companies, if the addressees have the necessary knowledge.

(ii) The supervisory board is obliged, at least one week in advance, to notify the key certified auditor who audited the company's financial statements about the date of the meeting regarding matters concerning annual reports. The key certified auditor is obliged to participate in the meeting of the supervisory board referred to above, as well as to present an audit report, discuss the company's ability to continue operations and answer questions from members of the supervisory board.

(iii) Unless the articles of association provide otherwise, the supervisory board may adopt a resolution for a selected advisor to examine, at the company's expense, a specific issue concerning the company's operations or its assets. In the agreement between the company and the selected advisor, the company is represented by the supervisory board.

(iv) Conclusion by a company with its parent company, subsidiary or affiliated company of a transaction whose value exceeds 10% of the total assets of the company within the meaning of the Accounting Act, determined based on the last approved financial statement of the company, requires the consent of the supervisory board, unless the statute provides otherwise. However, this rule does not apply to public companies or groups of companies.

(v) In performing his or her duties, a member of the supervisory board must exercise due diligence commensurate with the professional nature of the business (duty of care) and remain loyal (duty of loyalty) to the company. A member of the supervisory board may not disclose the company's secrets, even after the expiry of his or her mandate.

(vi) The supervisory board may also delegate certain supervisory activities to its members and establish *ad hoc* or permanent committees of the supervisory board, consisting of members of the supervisory board, to perform specific supervisory activities. The exercise by the supervisory board of its ability to delegate certain supervisory activities to its members or to establish *ad hoc* or permanent committees of the supervisory board does not relieve the members of the supervisory board of their liability for the supervision of the company.

Members of the supervisory board to whom activities have been delegated and any established committees have the right to undertake all supervisory tasks unless the supervisory board decides otherwise. The relevant members and committees must report to the supervisory board at least once every quarter on the oversight activities undertaken and their results;

(vii) A supervisory board member of a company participating in a group of companies may rely on an act or omission in the specific interest of the group if the company has disclosed its participation in the group.

The supervisory board must adopt resolutions at a meeting attended by at least half of its members if all the members have been invited. The meeting is convened by the chairman. The articles of association may provide for stricter quorum requirements for the supervisory board. The provisions concerning the

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management board minutes also apply to the supervisory board minutes.

The audit committee consists of at least three members, appointed and dismissed by the same rules as members of the supervisory board.

g. Shareholders' Meeting

The shareholders' meeting makes strategic decisions concerning the approval of the annual reports, the distribution of profits, claims for the reparation of damages and the return of additional payments, etc., as well as other matters reserved in the articles of association for the competence of the shareholders' meeting, in the form of resolutions.

Shareholders' meetings can be ordinary or extraordinary. A minimum number of shareholders' meetings must be held annually. At least one ordinary shareholders' meeting must be held in each year no later than six months after the end of each financial year.

Shareholders' meetings must be held at the seat of the company (i.e., where the company is incorporated), unless another place in Poland is indicated in the company's articles of association or all the shareholders consent to this in writing.

The shareholders' meeting is convened by the management board. In certain circumstances, it may also be called by the supervisory board, the audit commission or shareholders representing at least one tenth of the share capital. If the entire share capital is represented at a meeting, a shareholders' resolution may be passed, even without a formal meeting being called, if none of those who are present object either to the holding of the meeting or to the placing of particular matters on the agenda.

A meeting is called by registered mail or courier, sent no later than two weeks before the date of the meeting. A notice may be sent to a shareholder by electronic mail in lieu of registered mail or courier, provided the shareholder has previously consented to this in writing and indicated an address where the notice should be sent. The invitation must state the date, time and venue of the meeting and a detailed agenda. In the event of a proposed amendment to the articles of association, details of the proposed amendments must be indicated. If the meeting is to be held by means of electronic communication, the notification must also include information on the manner of participating in the meeting, speaking up, exercising voting rights and raising an objection to the resolution(s) adopted at that time.

The quorum requirements for a valid shareholders' meeting (held without a formal convocation) are that the entire share capital must be represented and none of those present may raise objections to holding the meeting or any matters on the agenda. Most resolutions are adopted by an absolute majority of votes.

Resolutions on amending the articles of association, dissolving the company or on the transfer of an enterprise or an organized part thereof are adopted by a two-thirds majority of votes; resolutions on a material change of the object of the company's activity require a three-fourths majority of votes; and resolutions on amending the articles of association, increasing benefits for shareholders or limiting the share rights or rights granted personally to particular shareholders, require the consent of all shareholders to which they refer.

Generally, shareholders' decisions may also be made in writing; however, certain decisions must be made in person. Shareholders' meetings may also take place using electronic means of communication, unless the articles of association provide otherwise.

Shareholders can exercise their right to vote in person or by proxy.

h. Books and Records

The management board must maintain the books and records required by the commercial and tax laws. The books and records must be maintained in such a way that a third party (auditor) is able to form a general view of the state of the company's affairs and their progress within an appropriate period of time.

Books and records must be kept in a reliable, correct, verifiable and timely manner. All records must be retained for five years. The tax authorities may allow an exception if the latter requirement would create excessive difficulty, provided the exception does not impair the assessment of tax.

i. Financial Statements

Within six months from the close of the fiscal year, an ordinary shareholders' meeting must be convened by the management board, in particular to consider and approve the annual report of the company and the financial statements for the previous year. If the balance sheet prepared by the management board reveals losses exceeding the capital reserves and other reserve funds plus one-half of the share capital, the management board is obliged to convene a shareholders' meeting immediately so that a motion can be adopted on the further existence of the company.

Financial statements must be prepared only in an electronic version. As a result, all members of the management board of the company are required to have a qualified electronic signature or a signature confirmed by the trusted profile (ePUAP).

However, it is also possible for the annual financial statements to be signed electronically by one of the management board members and for the wet-ink confirmatory statements to be signed by the remaining management board members.

In addition, at least one of the members of the management board must have or obtain a PESEL number (Polish Resident Identification Number) to be able to file claims in court and submit tax declarations without the need to involve an attorney in the procedure. This is because the filing of a claim in court requires the signature of at least one natural person entitled to represent the company whose PESEL number is recorded in the register of business entities.

j. Dividends and Other Forms of Profit Distribution

Shareholders have the right to receive the net profit shown on the annual balance sheet if it is decided by a shareholders' resolution adopted at the shareholders' meeting to distribute the profit. The articles of association may also provide for different methods of profit distribution. A shareholder is entitled to profit in proportion to his or her contribution to the share capital unless the articles of association stipulate otherwise. The declaration of dividends requires a shareholders' resolution adopted at a shareholders' meeting, unless the articles of association authorize the management board to declare dividends. If the ar-

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ticles of association so provide, the company may declare interim dividends.

Generally, a shareholder's right to a distribution vests on the date of adoption of the resolution on profit distribution, giving right to a dividend for the financial year. However, the articles of association may authorize the shareholders' meeting to determine a specific date on which the qualifying shareholders will be entitled to a dividend for a given financial year (called the "dividend day"). Shareholders who receive dividends, but are ineligible to do so under provisions of law or of the articles of association, must return them. Members of a company's governing bodies responsible for the payment of dividends are jointly and severally liable with the recipient for the return of the payment.

k. Reserves

The Commercial Companies Code does not require a limited liability company to maintain reserves. A limited liability company may set up voluntary reserves out of an existing surplus for general or specific purposes and may resolve to liquidate such voluntary reserves if they are no longer required.

3. Mergers

Mergers of limited liability companies may be effected either by way of:

(i) The transfer of all the assets of one company to another company in exchange for shares granted by the acquiring company to the shareholders of the company being acquired (fusion); or

(ii) The incorporation of a new limited liability company to which the assets of all the merging companies are transferred in exchange for shares in the new company.

A simplified merger may be carried out without increasing the share capital of the surviving company if that company owns shares in the target company. The preferred pre-integration structure is a parent/subsidiary structure as it allows for the simplified merger procedure to be applied. However, brother/sister structures are also used. Under the Commercial Companies Code, mergers involving partnerships and corporations are also possible, subject to the condition that a partnership may not be the surviving entity as a result of such a process.

A simplified merger was introduced to the Polish Commercial Companies Code in September 2023. Under the new legislation, it is possible to conduct a merger without the need to grant shares to the acquiring company in situations where:

(i) One shareholder directly or indirectly holds all the shares of the merging companies; or

(ii) The shareholders of the merging companies hold shares in the same proportion in all the merging companies.

Rights and obligations transfer to a surviving company or a newly-formed company by operation of law. The surviving or newly-formed company assumes, at the date of merger, all the rights and obligations of the target company or companies merging into the newly formed company. The same applies to administrative permits, consents and reliefs. However, certain laws (or the permits, consents or reliefs themselves) may contain provisions preventing such a transfer. Employment agreements transfer automatically on the same terms and conditions. However, employees may terminate their employment agreement by giving seven days' notice within two months from the date of the merger.

Further formal and substantive requirements, such as the approval by a shareholders' resolution adopted by a three-quarters majority of the votes cast at the shareholders' meetings of both companies, as well as notarization of the merger plan, must be met. The merger plan must be audited by an independent auditor appointed by the court (unless the merger is a simplified one or all shareholders consented not to audit the merger plan). A merger is not effective until it is registered in the National Court Register. A merger of companies may require notification of the intention to merge to be given to the Office of Competition and Consumers' Rights. For further details see II.C.2.e., above.

The CCC allows cross-border mergers of limited liability companies under rules implementing Directive 2019/1151 into Polish law. New types of cross-border operations were introduced in September 2023.

A simplified cross-border merger allows a merger to be conducted without the need to grant shares to the acquiring company in situations where:

(i) One shareholder directly or indirectly holds all the shares of the merging companies; or

(ii) The shareholders of the merging companies hold shares in the same proportion in both/all the merging companies.

In addition, a partnership limited by shares may participate in a merger as an acquiring or a newly incorporated company.

Pursuant to these provisions, a limited liability company, a joint stock company or a partnership limited by shares may merge with a foreign company, provided the foreign company is established in accordance with the law of an EU Member State or an EEA country and has its registered office, main management board or main plant in EU or EEA territory (a cross-border merger).

A company intending to carry out a cross-border merger should prepare a common merger plan. Unless all the shareholders of the merging companies agree otherwise, the merger plan should be examined by an expert appointed by the registration court having jurisdiction over the seat of the company. In addition, prior to a cross-border merger, the management board of a company must submit an application for a certificate of compliance with Polish law and procedure to the Polish registry court. The registry court must immediately issue the certificate and must enter the merger in its registry.

The management board of an acquiring company, or the management board or administrative organ of each of the merging companies that will merge by forming a new company must notify the registry court with jurisdiction over the acquiring company's seat or the seat of the new company of the merger.

The commercial division of the National Court Register is the designated competent authority supervising and executing Polish realization of cross-border mergers. As such, participating Polish companies must apply for registry court attestation, i.e., a certificate confirming that the cross-border merger complies with Polish law, and an opinion on the cross-border merger. This certificate must be issued and the information

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on the cross-border merger entered in the register within three months from the date of submission of the application, unless the registry court finds that the merger serves to abuse, breach or circumvent the law. In addition, the company's management board must prepare an application to the competent tax authority, which will issue an opinion on the merger.

A merger will result in either a newly set-up Polish or foreign company, or, in the case of a transfer of all of the assets of a target company to an acquiring company, a Polish or foreign acquiring company. The resulting company will be governed under the law of the country in which that company has its seat (which may be in a third country, provided it is within the EU).

4. Dissolution and Liquidation

A limited liability company may be dissolved by a shareholders' resolution drawn up in the form of a notarial deed. Dissolution is carried out through liquidation, and is completed upon deletion of the company from the register.

A limited liability company may be dissolved:

(i) For the reasons provided for in the articles of association.

(ii) By a resolution of the shareholders' meeting as to the dissolution of the company or as to the transfer of the company's seat abroad, in the form of a notarial deed. The resolution must be passed by a two-thirds majority of the votes cast at a shareholders' meeting.

(iii) If the company is declared bankrupt.

(iv) If the articles of association were concluded using a template by a shareholders' resolution to dissolve the company bearing secure electronic signatures of all partners verified by a qualified certificate profile or confirmed and trusted by ePUAP.

(v) By a civil court decision issued at the request of a shareholder or a member of one of the company's governing bodies, where fulfillment of the company's objectives becomes impossible as a result of the company's particular situation, or at the request of the Public Prosecutor if the company's activities, being in violation of the law, threaten the interests of the State.

The formalities that must be followed before a company can be voluntarily dissolved include:

(i) The adoption of a shareholders' resolution to dissolve the company in the form of a notarial deed;

(ii) The appointment of a liquidator;

(iii) The sending of a notification of the commencement of liquidation to the National Court Register; and

(iv) The initiation of liquidation proceedings.

In the course of the liquidation proceedings, the words "in liquidation" must be added to the company's name. Unless otherwise provided for by a shareholders' resolution, the limited liability company is run during the liquidation by liquidators (appointed from among the management board members unless the articles of association or a shareholders' resolution provide otherwise). The opening of the liquidation proceedings results in the expiration of commercial powers of attorneys. No commercial proxies may be established during the liquidation.

At the beginning of the liquidation and at the end of each subsequent financial year, the liquidators of the limited liability company must prepare a balance sheet. The liquidators must submit to the National Court Register information on the commencement of the liquidation procedure, the names of the liquidators, the manner of the company's representation and statements on acceptance of the appointment of the liquidators.

During the liquidation proceedings, the liquidator must dispose of the company's assets, pay all outstanding debts and collect all money due from creditors. Special requirements apply for disposing of real property. New business may be transacted by the liquidator, only when necessary to close the current business. The amounts necessary to satisfy or secure the creditors of which the company is aware but that have not reported their receivables, or receivables that are not yet due or are disputed, must be deposited in the court deposit. The dissolution of the company ensues after the closing of the liquidation proceedings.

The dissolution of the company through liquidation is final upon deletion of the company from the National Court Register.

5. Reorganizations

The reorganization of a limited liability company can be understood in the following two ways:

(i) Reorganization in an economic sense; and

(ii) Legal transformation.

Reorganization in an economic sense may be effected based on a number of techniques including dissolution followed by the incorporation of another company based on the assets of the dissolved company, the sale of an enterprise and the contribution of the enterprise as a going concern to another company.

With respect to legal transformation, two procedures are relevant:

(i) Conversion of a limited liability company into another type of company or partnership as regulated by the Commercial Companies Code; and

(ii) Conversion of a State-owned enterprise into a limited liability company or a joint stock company as regulated by the Act on Commercialization and Privatization of State Enterprises.

The procedure provided for by the Commercial Companies Code allows a limited liability company to be converted into a registered partnership, a professional partnership, a limited company, a partnership limited by shares or a joint stock company. A company in liquidation or bankruptcy proceedings may not be converted. The conversion process is completed once the new company is entered in the register. At the time of the entry of the new company, the company that was subject to conversion is deleted from the register.

The new company assumes all the rights and obligations of its predecessor, including any permissions, concessions and incentives granted to the company prior to the conversion, unless a relevant administrative decision provides otherwise. Within one year from the date of registration of the conversion, the new company's name must include its new name as well as the old name and the words "former name" in parentheses. A

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conversion requires the preparation of a conversion plan. Further actions are necessary, such as the adoption by the shareholders of a resolution on the conversion, a resolution on the appointment of the new bodies of the converted company, the adoption of the new articles/charter and the registration of the conversion in the commercial register.

Provisions addressing cross-border operations were introduced into the Polish Commercial Companies Code in September 2023. Accordingly, it is now possible for a corporation or a partnership limited by shares to be converted into a foreign company and transfer its registered office to the foreign country concerned, while retaining its legal personality. The provisions related to the examination of cross-border mergers also apply to cross-border transformations.

6. Spin-offs

The Commercial Companies Code allows the division of a limited liability company into two or more limited liability companies or joint stock companies. Divisions involving the establishment of a partnership, or involving entities in liquidation or bankruptcy proceedings, are not allowed.

The division of a company requires, among other items, the preparation of a division plan, a management board report and financial statements, a valuation of the assets of the company subject to division and the auditing of these documents by the court, unless this obligation is waived by all the shareholders.

Generally, the following steps are required to achieve a domestic demerger:

(i) Determine the assets to be separated as a result of the division;

(ii) Draft the division plan and attachments (including financial documents);

(iii) Announce the division plan and file it with the registry court;

(iv) Notify the shareholders of the intention to demerge;

(v) Adopt a shareholders' resolution regarding the division; and

(vi) Register the division with the registry court.

Once the shareholders' meeting resolutions on a division are passed, the division may file for registration. The companies established as a result of a division are jointly and severally liable for the debts of the divided company for a period of three years.

In practice, in addition to the above division procedure, it is also possible to effect a division using any of the following economic methods:

(i) The dissolution and liquidation of an existing company followed by the establishment of a new company based on the capital received;

(ii) The reduction of a company's share capital and the establishment of a new company (companies) based on the assets of the existing company disposed of in this way; or

(iii) The utilization of a company's capital reserves for purposes of establishing a new company (companies).

Provisions addressing a new type of division, a spin-off division, were introduced into the Polish Commercial Companies Code in September 2023. Such a division consists of the transfer of part of the assets and liabilities of the company that is being divided to one or more companies (newly formed or existing) in exchange for the issuance of shares in the acquiring company(ies) to the company being divided (rather than to its partners or shareholders). This type of division may be a useful alternative to transactions involving the sale of a business or an organized part of a business.

It is also possible to conduct a cross-border division of a limited liability company and a partnership limited by shares. However, it will only be possible to transfer the assets of the divided company to a newly formed company(ies), i.e., the assets cannot be transferred to an existing company. The provisions related to the examination of cross-border mergers also apply to cross-border divisions.

C. Joint Stock Company

1. Formation

a. Scope of Activities

A joint stock company may carry on all kinds of activities, including nonprofit activities. The joint stock form is mainly used for large undertakings requiring substantial capital or for public companies.

b. Corporate Name

A company's name must be sufficiently distinguishable from the names of other businesses operating in the same market. While the company name may be freely chosen, the words "*Spółka Akcyjna*" must be included at the end of the name. The surnames of shareholders may not be used in the business name without their consent or the consent of their heirs. The corporate name of a joint stock company may be freely changed at a later date (pursuant to a similar procedure as for limited liability companies).

c. Incorporators

A joint stock company may be established by one or more founders. A sole shareholder limited liability company may not be a single founder of a joint stock company.

d. Company Charter

In Polish business practice, the articles of incorporation of a joint stock company are referred to as the statute or charter. The charter must be notarized and must specify the corporate name, including the abbreviation "S.A.," the company's seat, the scope of the company's activity, the duration of the company (if this is a limited period), the amount of the share capital and the amount of the share capital paid up before registration, a statement describing how the share capital was raised, the par value of each share, a description of each class of shares and the associated rights, and the names and addresses of the founders, as well as the structure of the governing and supervisory bodies.

The charter should also contain provisions concerning:

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(i) The number and types of shareholdings entitling the holder to participate in profits or in the division of the company's assets, together with the associated rights;

(ii) Any obligations towards the company connected with the shares over and above the obligation to pay for the shares;

(iii) The circumstances in which shares may be cancelled and the manner of cancellation;

(iv) Restrictions on the transfer of shares;

(v) Personal entitlements granted to particular shareholders; and

(vi) Information on the approximate costs incurred by the company in connection with its establishment.

e. Share Capital

The minimum share capital of a joint stock company is PLN 100,000. Shares with no minimum par value are not recognized in Poland. Shares may be issued at a minimum par value of PLN 1/100.

The share capital may be paid up in cash or by way of a contribution in kind, or a mixture of the two. Shares issued in return for an in-kind contribution should be paid up in full no later than one year after the registration of the company. In the case of shares issued in return for cash, at least 25% of the capital must be paid up before registration. Bearer shares may not be issued until they are fully paid up.

If shares are issued in exchange exclusively for a contribution in kind, or for in-kind and cash contributions, the initial share capital must be paid up in the amount of at least PLN 25,000 before registration. Shares issued in exchange for an in-kind contribution retain the status of registered shares until the date of approval by the next annual general meeting on the financial statements for the financial year in which the shares were paid up, and may not be disposed of or pledged within such period.

Effective March 1, 2021, all shares are dematerialized and registered in the register of shareholders held by the authority authorized to maintain securities accounts. The selection of the entity maintaining the register of shareholders requires a resolution of the general meeting. When a company is established, the choice is made by the founders. The register of shareholders must be maintained in an electronic form, which may take the form of a distributed and decentralized database.

f. Incorporation Procedure

The incorporation of a joint stock company follows steps similar to those for the incorporation of a limited liability company. First, the charter must be signed in the form of a notarial deed. The shareholders must also subscribe to the shares in the form of a notarial deed. Second, the charter, together with additional documentation, must be submitted to the National Court Register. The Court will then review the documentation and issue its decision relating to registration in the National Court Register.

Subject to certain exceptions, if a contribution in-kind is made or the company acquires real property or pays remuneration for services provided on its creation, the founder must draw up a written report specifying:

(i) The nature and value of the contribution in kind and the number and class(es) of shares and other entitlements to participate in the profits or in the distribution of company assets offered for such in-kind contributions;

(ii) The property acquired prior to registration of the company and the amount and manner of payment;

(iii) The services provided on the creation of the company and the amount and manner of remuneration for those services;

(iv) The persons that make the in-kind contributions, transfer property to the company or are remunerated for the services; and

(v) The method of valuation of the in-kind contribution used.

The proposed transactions must be justified in the report, including the subscription for the shares for the in-kind contributions, and the amount of the remuneration and payment. The originals or officially certified copies of the relevant documents must be attached to the report. If the contributed or the acquired objects include an enterprise, the financial reports for the enterprise for the previous two financial years must be attached to the report of the founders. Further, if the enterprise has been operating for less than two years, the financial report must cover the entire period of its operation. As a rule, an expert auditor appointed by the registration court should then examine the founders' report for veracity and accuracy.

Payment towards the shares must be made, directly or through an investment company, to the account of the company in organization held by a bank in European Union or a country that is party to the agreement on the European Economic Area (EEA). The subject matter of the contribution will be at the exclusive disposal of the management board.

The joint-stock company is incorporated when all of its shares are subscribed for. The consent to the formation of the joint-stock company and the wording of the statutes, as well as to the subscription for the shares by the single founder or founders, or jointly with third parties, must be expressed in one or several notarial deeds. Prior to the constitution of the management board, the company must be represented by all the founders acting jointly or by an attorney-in-fact appointed upon a unanimous resolution of the founders.

g. Costs of Incorporation

The cost of incorporating a joint stock company depends on the value of the joint stock company's share capital. Where the capital is PLN 100,000, the notarial fee is PLN 1,210 (plus the cost of additional excerpts), and the fees and expenses relating to the registration procedure carried out before the National Court Register are fixed. The incorporation of a joint stock company is subject to transfer tax at the rate of 0.5%.

h. Company in Process of Organization

The CCC allows a joint stock company to enter into transactions after the articles of association are signed by the founders but before the company is registered in the National Court Register.

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2. Operation

a. Licenses

As for limited liability companies, generally, under the Commercial Companies Code, a joint stock company does not need a license to commence its business activities, however certain types of activity may require a relevant permission (permit/consent) or a license or concession to be granted under the laws governing the particular business or industry concerned. See II.A.6., above.

b. Charter Amendments

Every amendment to a company's charter requires a shareholders' resolution to be valid. Unless the charter provides otherwise, amendments to the charter require the approval of a majority of three-quarters of the votes cast at a general meeting of the shareholders. The relevant resolution must be notarized and filed for registration. An amendment is not effective until it is registered in the National Court Register.

c. Increases and Decreases in Share Capital

Any increase in a joint stock company's share capital requires an amendment of the company's charter and must therefore be effected via a resolution adopted by three-quarters of the votes cast at the general meeting and by way of an issue of new shares or an increase in the nominal value of the existing shares. Each shareholder enjoys priority rights in acquiring new shares in proportion to the number of shares he or she already holds.

Where the interests of the company so require (subject to certain exceptions), the general meeting may deprive shareholders of the priority right, in whole or in part. Resolutions of the general meeting require at least a majority of four-fifths of the votes. The shareholders may be deprived of the preemptive right with respect to the shares, provided that this has been indicated in the agenda of the general meeting. Ahead of the meeting, the management board must send to the shareholders a written opinion justifying the reasons for depriving the shareholders of the preemptive right and the proposed issue price of the shares or the method of its calculation.

The above right does not apply if:

(i) The resolution on the increase of the capital provides that all the new shares are to be taken up by a financial institution (sub-issuer), which will subsequently offer them to the shareholders with a view to enabling them to exercise the preemptive right on the terms stipulated in the resolution; or

(ii) The resolution provides that the new shares are to be taken up by the sub-issuer if the shareholders who have the preemptive right do not take up some or all of the shares offered to them.

The new shares may be taken up by way of:

(i) The making of an offer by the company and its acceptance by a specified offeree; the acceptance of the offer must be expressed in writing, otherwise, it will be invalid (private subscription);

(ii) The offering of the shares solely to the shareholders who have the priority right (closed subscription); or

(iii) The offering of the shares in a public announcement, addressed to the persons who do not have the pre-emptive right (open subscription).

The increase of the share capital may be effected only after full payment of at least nine-tenths of the existing share capital, except in the event of a merger.

The resolution on the increase in the share capital may not be filed with the registry court after the end of six months from its adoption. In the case of newly-issued shares that are subject to a public offering covered by a prospectus or an information memorandum, such resolution may not be filed after 12 months from the date of, respectively, approval of the prospectus or information memorandum or confirmation that the information included in the information memorandum is equivalent to the information required for a prospectus, and no later than one month of the date of allocation of the shares, provided the application for approval of the prospectus or the information memorandum (or its equivalent) was filed within four months of the date of adoption of the resolution on the increase in the share capital.

An increase in the share capital may be covered by the reserve funds of the company created from the profits. The part of the capital that may be designated for division, corresponding to the uncovered losses and the company's own shares must, however, remain intact.

In addition, the charter may authorize the management board, for a period of no longer than three years, to increase the share capital by a maximum amount equivalent to three-fourths of the existing capital (the authorized capital) in accordance with the rules stipulated in the charter. The management board may exercise the authorization by effecting one or several subsequent share capital increases, within the above-mentioned limits. The authorization for the management board to increase the share capital may be granted for subsequent periods, but not longer than three years. The granting of the authorization shall require amendments to the charter. The shares issued by the management board must be paid for in cash unless the charter provides otherwise.

A resolution of the general meeting on amendments to the charter, providing for the authorization for the management board to increase the share capital within the limits of the authorized capital, requires a majority of three-fourths of the votes. The resolution must be adopted in the presence of the shareholders representing at least one-half of the share capital, and, in the case of a public company, at least one-third of the share capital. The resolution should be justified.

A resolution of the management board, adopted as a notarial deed in accordance with the authorization stipulated in the charter, replaces the resolution of the general meeting on the increase of the share capital. The management board decides on all issues connected with the increase of the share capital, unless the charter provides otherwise. The resolutions of the management board on matters concerning the issue price and the issuance of the shares in exchange for in-kind contributions requires the consent of the supervisory board, unless the charter provides otherwise.

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In certain cases, the general meeting may also resolve on the contingent increase in the share capital. The nominal value of a contingent increase in the share capital may not be larger than double the share capital as at the date of the adoption of the resolution.

The share capital is reduced by way of an amendment to the charter, a reduction of the nominal value of the shares, an aggregation of the shares or a redemption of some of the shares, and in the case of a division by separation. A resolution on the share capital decrease and the announcement of the convocation of the general meeting must stipulate the purpose of the reduction, the amount by which the share capital is to be reduced, as well as the method of the reduction.

A decrease in the share capital requires the approval of at least three-quarters of the votes cast at a general meeting and is allowed subject to the meeting of certain requirements relating to the protection of the joint stock company's creditors. These requirements include informing those of the joint stock company's creditors that do not agree with the decrease in share capital of their right to voice their objections within a period of three months. The claims of such creditors should either be satisfied or secured by the company.

An obligation to call upon creditors does not apply if:

(i) Despite the share capital decrease, the contributions towards the shares made by the shareholders are not returned to the shareholders, nor are the shareholders released from the obligation to make contributions to the share capital and, simultaneously with its reduction, the share capital is increased at least to the original amount by way of a new issue of shares that are fully paid;

(ii) The purpose of the share capital decrease is to cover losses sustained or to transfer certain amounts to reserve capital; or

(iii) If the company acquires its own shares and these are not disposed of by the deadline.

d. Acquisition of a Company's Own Shares

As a rule, a joint stock company may not acquire or establish a pledge with respect to its own shares. The exceptions to this rule are as follows:

(i) Where the acquisition of the shares is designed to prevent material damage directly threatening the company;

(ii) Where the acquired shares will be offered to employees or other individuals employed by the company or its dependent company for a period of at least three years;

(iii) Where the company is a public company and acquires shares to fulfill obligations under debt instruments convertible into shares;

(iv) Where the acquisition of the shares results from general succession;

(v) Where the acquisition is effected by a financial institution for the remuneration of fully paid-up shares for purposes of resale;

(vi) Where the purpose of the acquisition is to redeem the acquired shares;

(vii) Where the acquisition is effected in the form of execution proceedings to satisfy claims of the company that cannot be satisfied from other property of the shareholders;

(viii) Where the acquisition of the shares, which are fully paid-up, is free of charge;

(ix) Where the acquisition is effected on the basis of and within the scope of an authorization granted by the General Meeting of Shareholders. The authorization must specify the conditions for the acquisition, including: the maximum number of shares to be acquired; the period of authorization, which may not exceed five years; and the maximum and minimum amount to be paid for the acquired shares, if the acquisition is for consideration; and

(x) Where the shares are acquired in other circumstances specified by the Commercial Companies Code.

The acquisition by a dependent entity of shares in its parent is treated as an acquisition by the company of its own shares and is, therefore, subject to the above restrictions.

Shares acquired in contravention of the above rules must be sold within one year from the date of their acquisition. In any event, the company must resell such amount of its own shares as equals the surplus over 20% of the total number of shares in the company within two years from the date of their acquisition. Any member of the management board or liquidator who allows a prohibited acquisition or pledge to be made is subject to a penalty in the form of imprisonment or a fine. A company's own shares must be placed on the balance sheet as a separate item and may not carry voting rights.

In certain circumstances, a joint stock company may, directly or indirectly, finance the acquisition or taking over of its own shares (for example, by making loans, providing security or making advance payments). This rule facilitates, for example, leveraged buy-outs (LBOs) and management buy-outs (MBOs).

e. Management Board

A joint stock company must have a management board consisting of one or more members. The management board represents the company both in and out of court. The legal consequences of this right may not be restricted *vis-à-vis* third parties. The management board is responsible for conducting the business of the company, other than the disposal or leasing of the company's business, establishing a right of usufruct over the company's business, the disposal of the company's production areas and the issuing of bonds.

The members of the management board are appointed for a term of up to five years and may be reappointed. Unless the charter provides otherwise, members of the management board are appointed and recalled by the supervisory board. The management board of a joint stock company may delegate a commercial power of attorney to one or more persons. A commercial power of attorney is a special power of attorney granted within the scope of an activity conducted for gain.

A commercial proxy must be entered in the National Court Register. The registration entry must state whether the procurator may act and sign on behalf of the company individually or jointly with another procurator. Procuration empowers its hold-

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er to conduct all day-to-day operations, but does not include the authority to transfer for free use, lease or dispose of a business, or the authority to sell or encumber real property, unless the procurator is expressly authorized by the governing bodies of the company to carry out such transactions. Procuration may also be limited to the scope of cases entered into a register of a branch of an enterprise ("branch procuration").

f. Supervisory Board/Audit Commission

A joint stock company must have a supervisory board. The supervisory board consists of at least three members, or at least five members in the case of publicly listed companies, who are appointed by the general meeting. The charter, however, may provide for other methods of appointment. The supervisory board is required to exercise constant supervision over the company's activities in all branches of its business. The duties of the supervisory board include, in particular, examining the financial statements and reviewing the management board reports and motions regarding the distribution of profits and the covering of losses, as well as submitting annual written statements containing the results of the above examinations to the general meeting of shareholders.

The supervisory board is competent to suspend all or individual members of the management board for important reasons and to delegate one of its own members to perform the functions of a member of the management board on a temporary basis.

As of 2022, the effectiveness of the supervisory board has been expanded. For instance:

(i) The supervisory board may demand that the management board, proxies, liquidators, employees of the company or persons employed by the company based on a civil law contract (i.e., who perform certain activities for the company on a regular basis under a contract for work, a contract of mandate or any other contract of a similar nature), prepare or provide all information, documents, reports or explanations necessary to supervise the company, in particular those relating to the company's operations or its assets. The request may also relate to subsidiaries and affiliated companies, if the addressee has the necessary knowledge.

(ii) The supervisory board is obliged to notify the key auditor who audited the company's financial statements at least one week in advance about the date of the meeting regarding matters concerning annual reports. The key certified auditor is obliged to participate in the meeting of the supervisory board referred to above, as well as presenting an audit report, discussing the company's ability to continue operations and answering questions from members of the supervisory board.

(iii) Unless the articles of association provide otherwise, the supervisory board may adopt a resolution to have a selected advisor examine, at the company's expense, a specific issue concerning the company's operations or its assets. In the agreement between the company and the selected advisor, the company is represented by the supervisory board.

(iv) The conclusion by a company and its parent company, subsidiary or affiliated company of a transaction whose value exceeds 10% of the total assets of the company within the meaning of the Accounting Act, determined based on the last approved financial statements of the company, requires the consent of the supervisory board, unless the statute provides otherwise. However, this rule does not apply to public companies and groups of companies.

(v) In performing his or her duties, a member of the supervisory board must exercise due diligence resulting from the professional nature of his or her business (duty of care) and maintain loyalty (duty of loyalty) to the company. A member of the supervisory board may not disclose the company's secrets, even after the expiry of his or her mandate.

(vi) The supervisory board may also delegate certain supervisory activities to its members and establish *ad hoc* or permanent committees of the supervisory board, consisting of members of the supervisory board, to perform specific supervisory activities. The exercise by the supervisory board of its ability to delegate certain supervisory activities to its members or to establish *ad hoc* or permanent committees does not relieve the members of the supervisory board of their liability for the supervision of the company. A member of the supervisory board to whom activities have been delegated and any established committee has the right to undertake all supervisory tasks, unless the supervisory board decides otherwise. The relevant members and committees must report to the supervisory board at least once every quarter on the oversight activities undertaken and their result.

(vii) A member of the supervisory board of a company participating in a group of companies may rely on an act or omission in the specific interest of the group of companies if the company has disclosed its participation in the group of companies.

g. General Meeting of Shareholders

An annual general meeting must be held within six months of the close of each fiscal year. The general meeting is convened by the management board. The supervisory board may also convene an ordinary general meeting, should the management board fail to do so, and an extraordinary general meeting, if it finds its convening appropriate. Moreover, shareholders representing at least half of the share capital or at least half of the total number of votes in the company may convene an extraordinary general meeting, in which case the shareholders appoint the meeting chairperson.

A general meeting must also be convened if holders of at least 5% of the company's share capital request a meeting in writing (the charter may provide this right to shareholders representing less than 5% of the share capital). The meeting must be held in Poland at the seat of the company or at such other place as is provided for in the charter.

Only a general meeting may:

(i) Make amendments to the company's charter (with the approval of a specified majority of votes cast);

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(ii) Liquidate the company; cause it to merge; consolidate, or transfer its assets to another entity; or

(iii) Adopt a resolution regarding the issuance of convertible bonds or bonds with a priority warrant and an issue of subscription warrants.

Usually, a decision is adopted by a majority of votes represented at the general meeting, duly convened in accordance with the requirements set forth in the joint stock company's charter. The general meeting has the authority to distribute the profits of the company based on the financial statements prepared by the management board and approved by the supervisory board.

h. Books and Records

The management board must ensure that a joint stock company maintains the books and records required by the commercial and tax laws. Such books and records must be maintained in such a way that an expert third party is able to form a general view of the company's state of affairs within an appropriate period of time.

Books and records must be maintained in a reliable, correct, verifiable and timely manner. All records must be retained for five years. The tax authorities may allow exceptions should the latter requirement cause particular difficulties, provided this does not interfere with the assessment of tax.

i. Financial Statements

The members of the management board are responsible for drawing up the financial statements that have to be submitted to the supervisory board, together with their recommendations regarding the distribution of dividends. Before they are submitted to the supervisory board, the financial statements must be audited by certified auditors. An ordinary general meeting should be held within six months from the end of each financial year to consider and approve the financial statements.

Financial statements must be prepared only in an electronic version. As a result, all members of the management board of the company are required to have a qualified electronic signature or signature confirmed by the trusted profile (ePUAP).

It is also possible for the annual financial statements to be signed electronically by one member of the management board and for the wet-ink confirmatory statements to be signed by the rest of the members.

In addition, at least one of the members of the management board must have or obtain a PESEL number (Polish Resident Identification Number) to be able to file claims in court and tax declarations without the need to involve an attorney in the procedure. This is because filing a claim in court requires the signature of at least one natural person entitled to represent the company whose PESEL number is recorded in the register of business entities.

j. Dividends and Other Forms of Profit Distribution

A company's shareholders have the right to the annual profits of the company, but only if a resolution allocating profit for distribution was passed by the general meeting. The general meeting approves the distribution of the annual profit as shown on the balance sheet.

Shareholders are entitled to dividends out of the net profit (as shown in the financial statements, examined by the auditor and approved by the general meeting for distribution to shareholders) after deduction of the statutory and other reserves. The profit is distributed in proportion to the nominal value of shares held, unless the charter provides differently. All joint stock companies are entitled to distribute interim dividends out of current year's profit if so provided in the charter.

k. Reserves

A company must form a statutory reserve to cover balance sheet losses. A capital reserve fund must be formed by transferring at least 8% of the net annual profits until the fund attains a level equal to at least one-third of the share capital. In addition, amounts received for shares over their par value, as well as amounts paid by shareholders in consideration for preferential rights received, must be transferred to the statutory reserve. The company's charter may provide for the creation of other funds to cover particular losses and expenses. Transfers from the reserve fund and other funds require a resolution of the general meeting.

3. Mergers

A merger involving a joint stock company can be effected in the same way as a merger involving a limited liability company (see III.B.3., above). In some circumstances, it may be necessary to notify the Office for the Protection of Competition and Consumers of an intention to merge joint stock companies. A permit from the Minister of Internal Affairs may also be required for such a merger. For details, see II.A.6. and II.C.2.e., above.

A joint stock company can also merge with a foreign company. For further details regarding cross-border mergers, see III.B.3., above.

4. Dissolution and Liquidation

The reasons for liquidating a joint stock company essentially correspond to those applying in the case of a limited liability company. The liquidation and dissolution procedures, after all the joint stock company's creditors have been satisfied and all its remaining assets distributed to shareholders, are also similar to those applying in the case of a limited liability company. There is a difference with respect to the rules provided for by the CCC concerning the completion of the relevant stages of the liquidation (i.e., these take longer in the case of a joint stock company).

5. Reorganizations

The issues relevant to the reorganization of a joint stock company are very similar to those relevant to the reorganization of a limited liability company. See III.B.5., above.

D. Simple Joint Stock Company

1. Formation

a. Scope of Activities

A simple joint stock company may engage in business activities of all kinds. However, this entity is mainly utilized by

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entrepreneurs and companies developing new technologies that carry high risk, in particular for the establishment of start-ups.

b. Corporate Name

The company name must be sufficiently distinguishable from the names of other businesses operating in the same market. The company name may be freely chosen, but it must include the words "*prosta spółka akcyjna*" at the end of the name. The name may be freely changed at a later date, pursuant to a similar procedure as for limited liability companies.

c. Incorporators

A simple joint stock company may be established by one or more founders (individuals or entities), but it may not be formed solely by another single-shareholder limited liability company.

d. Company Charter

In Polish business practice, the articles of incorporation of a simple joint stock company are referred to as the statute or charter.

The document may be concluded in the form of a notarial deed or using an electronic template (via the S24 system) and must include the following information:

(i) The corporate name, including the abbreviation "P.S.A.";

(ii) The seat of the company;

(iii) The scope of the company's activity;

(iv) The duration of the company (if this is a limited period);

(v) The amount, series and numbers of shares, the rights associated therewith, the shareholders holding the shares and the issue price of the shares;

(vi) If the shareholders make contributions in kind, the object of such contributions, the series and numbers of shares taken up for the contributions in kind and the shareholders who take up these shares;

(vii) If the in-kind contribution is to provide work or services, the nature of the work or services provided and the time taken to provide them);

(viii) The governing and supervisory bodies; and

(ix) The number of members of the management board and the supervisory board (if established), or at least the minimum and maximum number of members of these bodies.

e. Share Capital

The share capital of a simple joint stock company must be expressed in PLN, for which cash and non-cash contributions must be allocated. The minimum share capital required to form a company is only PLN 1.00. The shares do not have a nominal value. The entire share capital need not be paid up in full before the company is registered in the National Court Register; only the nominal minimum share capital has to be paid up prior to registration.

Shares in simple joint stock companies are in dematerialized form and are entered into a register of shareholders that is held by a financial institution authorized to hold securities accounts. The selection of the institution to maintain the shareholder register requires a shareholders' resolution of the general meeting. However, when establishing a company, this choice is made by the founders. The register of shareholders must be kept in electronic form, which may take the form of a distributed and decentralized database.

f. Incorporation Procedure

The incorporation of a simple joint stock company follows steps similar to those for the incorporation of a limited liability company and a joint stock company. First, the statute (or charter) must be concluded in the form of a notarial deed or completed electronically using a universal template via the S24 system.

On execution of the statute, a simple joint stock company "in organization" is created. However, prior to registering with the National Court Register, the company must select a financial institution to maintain the shareholders' register and pay the minimum value of the share capital (PLN 1.00). The statute, along with additional documentation, must subsequently be submitted to the National Court Register. The court will review the documentation and issue its decision relating to the registration.

In addition, a company may be required to:

(i) Update its tax information with the tax authorities;

(ii) Register for VAT purposes;

(iii) Register as a remitter of social security contributions; and

(iv) Register each individual with respect to whom the company acts as a remitter for such contributions.

Moreover, entities such as simple joint stock companies (like other companies incorporated under Polish law) are also obliged to report information about their beneficial owners to the Central Register of Beneficial Owners within 14 days from: (i) their entry in the National Court Register; or (ii) the date of any change in the beneficial ownership data.

g. Cost of Incorporation

The cost of incorporating a simple joint stock company depends on the amount of the company's share capital (as noted, the minimum share capital is PLN 1.00) and the fees and expenses relating to the registration procedure carried out before the National Court Register, which are fixed.

h. Company in Process of Organization

The CCC allows a simple joint stock company to enter into transactions after the company's statute is signed by the founders but before it is registered in the National Court Register.

2. Operation

a. Licenses

As with a limited liability company, generally, under the Commercial Companies Code, a simple joint stock company is not required to hold a license to commence its business activities, but certain activities may require permission (permit/con-

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sent) or a license or concession to be granted under the laws governing the particular business or industry concerned. See II.A.6., above.

b. Charter Amendments

Every amendment to the company's charter requires a shareholders' resolution to be valid. Unless the charter provides otherwise, amendments to the charter require the approval of a majority of three-quarters of the votes cast at a general meeting of shareholders. The relevant resolution must be notarized and filed for registration. An amendment is not effective until it is registered in the National Court Register.

c. Increases and Decreases in Share Capital

The amount of share capital (*kapitał akcyjny*) of a simple joint stock company is not specified in the company's charter and therefore any increase or decrease in share capital does not require an amendment to the charter.

The share capital of a simple joint stock company may be increased in particular:

(i) By way of capital contributions, as specified in the company's charter and resolutions on the issue of shares; and/or

(ii) By distributions made from company profits and other capital assets, i.e., capital assets that may be allocated for distribution among shareholders.

The share capital of a simple joint stock company may be decreased primarily as a result of deductions from the company's capital to cover losses, as well as distributions to the shareholders out of company capital. There are, however, certain limitations placed on the reduction of the share capital, for example, the general prohibition on decreases in the amount of the share capital below PLN 1.00.

For registration purposes, the amount of the share capital of a joint stock company is determined based on a statement of all members of the company's management board.

d. Acquisition of a Company's Own Shares

As a rule, a simple joint stock company may not acquire or establish a pledge with respect to its own shares. The exceptions to this rule are as follows:

(i) Where the purpose of the acquisition is to redeem the acquired shares;

(ii) Where the acquisition is effected on the basis of and within the scope of an authorization granted by the General Meeting of Shareholders;

(iii) Where the acquisition is effected in the form of execution proceedings to satisfy claims of the company that cannot be satisfied from other property of the shareholders;

(iv) Where the acquisition of the shares results from general succession; and

(v) Where the shares are acquired in other circumstances as specified by the Commercial Companies Code.

Where the shares of a parent company are acquired by a dependent company, the transaction is treated as an acquisition by the parent of its own shares and is, therefore, subject to the above restrictions.

Shares that are acquired in contravention of the above rules must be sold within one year from the date of their acquisition.

e. Management Board or Board of Directors

A simple joint stock company may establish either a management board or a board of directors. Each is composed of one or more members or directors, appointed from among the company's shareholders or from other persons by the shareholders, unless the articles of association provide otherwise. If a supervisory board is established, members of the management board are appointed and can be recalled by the supervisory board, unless a company's charter provides otherwise.

In contrast, where a board of directors is formed, the board is responsible for both the management and supervision of the company. Directors of a simple joint stock company may be divided into two categories: executive directors in charge of managing the company; and non-executive directors exercising permanent supervision over the company's activities.

In principle, both Polish citizens and foreigners may serve as members or directors of a simple joint stock company. They do not need to be Polish residents; however, depending on the scope of a company's business activities, sector specific restrictions may apply.

The management board or board of directors conducts the business of the company and represents it in all legal matters. The legal consequences of this right may not be restricted *vis-à-vis* third parties.

The management board or board of directors of a simple joint stock company may delegate a commercial power of attorney to one or more persons. A commercial power of attorney is a special power of attorney granted within the scope of an activity conducted for gain. To become effective, a commercial proxy must be entered in the National Court Register.

The registration entry must state whether the procurator may act and sign on behalf of the company individually or jointly with another procurator. Procuration empowers its holder to conduct all day-to-day operations, but it does not include the authority to transfer for free use, lease or dispose of a business, or the authority to sell or encumber real property, unless the procurator is expressly authorized by the governing bodies of the company to carry out such transactions. Procuration may also be limited in scope to cases entered into a register of a branch of an enterprise ("branch procuration").

f. Supervisory Board/Audit Commission

The formation of a supervisory board is not required in a Polish simple joint-stock company. If the supervisory board is established, it must consist of at least three members, who are appointed and can be recalled by the general meeting of shareholders. The charter, however, may provide for other methods of appointment. A member of the management board, a proxy, a liquidator, a manager of the branch or plant, an accountant and an employee of a simple joint stock company cannot simultaneously be a member of the supervisory board.

The supervisory board is required to exercise ongoing supervision over the company's activities in all areas of its busi-

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ness. The duties of the supervisory board include, in particular, examining the financial statements, reviewing the management board reports and motions regarding the distribution of profits and the covering of losses, as well as submitting annual written statements containing the results of the above examinations to the general meeting of the shareholders. The supervisory board is not entitled to issue binding instructions regarding the conduct of company business to the management board.

The supervisory board is authorized to suspend all or individual members of the management board for important reasons and to delegate one of its own members to perform the functions of a member of the management board on a temporary basis.

g. General Meetings of Shareholders

The general meeting of shareholders of a simple joint stock company is a statutory body that enables the shareholders to manage the company. It adopts resolutions on matters of substantial importance to the company.

There are two types of general meetings: ordinary and extraordinary.

An ordinary general meeting must be held within six months of the close of each fiscal year. The general meeting is convened by the management board. The supervisory board (if established) may also convene an ordinary general meeting, should the management board fail to do so, and an extraordinary general meeting, if it finds it is appropriate. Moreover, shareholders that represent at least 1/20 of the share capital or at least 1/20 of the total number of votes in the company may convene an extraordinary general meeting, in which case the shareholders appoint the meeting chairperson.

Resolutions may be taken by shareholders at a shareholders' meeting or outside of a shareholders' meeting in writing or by electronic means of communication (if such procedure is provided for in the charter or if all shareholders have given their written consent).

The subject matter of the ordinary general meeting of shareholders may cover, among others, the following topics:

- Examination and approval of the report on the company's activities and financial statements;
- Adoption of a resolution on the payment of dividends or coverage of losses; and
- Grant of an acknowledgment of duties by members of the company's governing bodies.

h. Books and Records

The management board of a simple joint stock company must ensure that it maintains the company's books and records as required by the relevant commercial and tax laws. Company books and records must be maintained in such a way that an expert third party is able to form a general view of the company's state of affairs within an appropriate period of time. Books and records must also be maintained in a reliable, correct, verifiable and timely manner.

All records must be retained for five years. The tax authorities may allow exceptions to this rule if it can be shown that this requirement causes particular difficulties and provided that doing so would not interfere with the assessment of tax.

i. Financial Statements

A simple joint stock company is required to file its annual financial statements with the National Court Register, along with a copy of the resolution of the general shareholders' meeting approving the statement, within 15 days of the date on which approval was given. As part of this submission, a report on the company's activity, including the net profit distribution/coverage of losses and the auditor's report (if applicable), must also be provided. The company is required to notify the National Court Register of all changes with respect to the information disclosed therein.

j. Dividends and Other Forms of Profit Distribution

A shareholder in a simple joint stock company is entitled to a share in the profits and to a distribution from the share capital specified in the annual financial statement.

For a simple joint stock company to pay out dividends, two requirements must be met:

(i) The company must have recorded net profits for the period concerned (i.e., profits that do not otherwise have to be allocated for covering business losses); and

(ii) The ordinary shareholders' meeting must adopt a resolution to distribute the profits among the shareholders.

All simple joint stock companies are entitled to distribute interim dividends out of current year profit if so provided in the charter.

The Commercial Companies Code provides specific rules regarding the profits that are designated for the distribution of dividends and advances on dividends.

Optionally, to retain profits within a company, shareholders may decline a dividend distribution.

k. Reserves

A simple joint stock company must have a statutory reserve to cover balance sheet losses. A capital reserve fund has to be formed by transferring at least 8% of the company's net annual profits until the fund attains a level equal to at least 5% of the liabilities based on the approved financial statements for the previous financial year.

3. Mergers

A merger involving a simple joint stock company can be effected in the same way as a merger involving a limited liability company, including one involving a foreign company (see B.3., above). In some circumstances, it may be necessary to notify the Office for the Protection of Competition and Consumers of an intention to merge joint stock companies. A permit from the Minister of Internal Affairs may also be required for such a merger. For further discussion, see II.A.6. and II.C.2.f., above.

4. Dissolution and Liquidation

A simple joint stock company is dissolved following the formal process of liquidation regulated by the Commercial Companies Code, which envisages a simplified process.

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5. Reorganizations

A simple joint stock company can be converted into any commercial company: a registered or professional partnership, a limited company, a partnership limited by shares, a limited liability company or a joint stock company. Likewise, any commercial company can be converted into a simple joint stock company.

The issues relevant to the reorganization of a simple joint stock company are similar to those relevant to the reorganization of a limited liability company. See B.5., above.

E. Limited Partnership

1. Formation

a. Scope of Activities

A limited partnership may generally carry on any business activity under its own name, except for banking or insurance activities. Such limitations are intended to serve the security of economic life and protect the interests of customers.

b. Corporate Name

Each business name must be sufficiently distinguishable from the names of other businesses operating in the same market. The business name of a limited partnership must include the surname of at least one general partner and the words "*spółka komandytowa*". If a general partner is a legal person, the business name must be composed of the full business name of the legal person and the words "*spółka komandytowa*". The surname of a limited partner cannot be included in a limited partnership's business name. In the event the limited partner's surname or the legal person's name is included in the company's name, the limited partner is liable towards third parties as a general partner.

c. Incorporators

Two or more partners may form a limited partnership. There are two types of partners in a limited partnership: partners with unlimited liability for the obligations of a limited partnership towards its creditors (general partners); and partners whose liability is limited (limited partners). A limited partnership must have at least one partner of each type. A limited partner's liability is limited to a specific sum indicated in the articles of association, the "limited partner's share" (*suma komandytowa*), except for an amount equal to the value of the contribution made by the limited partner to the partnership, where the partnership declares profits. The limited partner is liable in proportion to the value of the contributions made by him or her, up to the limited partner's share in the partnership.

d. Articles of Association

The articles of association of a limited partnership must be in the form of a notarial deed and must include the following information: business name; seat; scope of activity; duration of the partnership (if this is a limited period); description and value of the contributions made by each partner; and the amount up to which each limited partner is liable towards the creditors (i.e., the limited partner's share).

e. Capital and Contributions of Partners

A limited partnership is not required to meet any minimum share capital requirements. The capital of a limited partnership consists of contributions made by all partners. Both general and limited partners' contributions may be in cash or in kind. The actual contribution of a limited partner may be lower than the limited partner's share (if not stated otherwise in the articles of association). In this case, the liability of a limited partner towards third parties amounts to the difference between the value of his or her contribution and the value of his or her share. A limited partner is permitted to make a contribution in kind in the form of an obligation to provide work or services, or the remuneration for the services provided, only if the value of other contributions made by the limited partner equals the limited partner's share. A limited partner may not contribute shares in another company that is a general partner in the same limited partnership.

f. Incorporation Procedure

A limited partnership is incorporated in two stages. First, the articles of association are signed by the partners before a notary in the form of a notarial deed. Then, the articles of association, along with additional documentation, are submitted to the National Court Register. The court reviews the documentation and issues its decision on registration in the National Court Register. A limited partnership is incorporated on being registered.

g. Costs of Incorporation

The cost of incorporating a limited partnership consists of the notarial fee, transfer tax and fees relating to registration with the National Court Register. Registration fees amount to PLN 600 when the articles of association is executed in "paper form" or PLN 350 when completed online. The notarial fee and the transfer tax depend on the value of the partners' contributions to the limited partnership. When the value of the contributions is lower than or equal to PLN 5,000, the notarial fee is PLN 160. If the value of the contributions exceeds this amount, the notarial fee is calculated in accordance with a decreasing rate. The tax on civil law transactions is 0.5% of the value of the share capital, reduced by the notarial tax on the articles of association and court fees.

h. Registration of a Limited Partnership Within 24 Hours

The Commercial Companies Code allows the establishment of a limited partnership online in 24 hours. The procedure is available on the creation of an account, the provision of some personal data and the obtaining of an electronic signature consisting of a login and a password or a safe electronic signature verified with a valid qualifying certificate. The articles of association of a limited liability company established online may also be signed using a signature confirmed by the trusted profile ePUAP.

Under this procedure, a limited partnership may be formed without the articles of association having to be executed in the form of a notarial deed, based on an electronic template established and made available by the Ministry of Justice. It should be noted, however, that the wording of the articles of associa-

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tion in this form is rather basic and can be amended online only with respect to the changeable provisions. Any other amendments to it must be made in the form of a notarial deed.

2. Operation

a. Licenses

Polish law does not require any license or permit to be obtained to commence general business activities. However, certain types of activity require a concession or permit in accordance with particular provisions governing that activity, such as manufacturing alcohol or tobacco products and mining. For further details, see II.A.6., above.

b. Amendments to Articles of Association

Unless provided otherwise, amendments to the articles of association of a limited partnership require the consent of all the partners and an act in notarial form. An amendment is effective on its adoption by the partners unless it relates to data being disclosed by virtue of the Commercial Companies Code in the National Court Register. In such a case, prior registration of any amendment in the National Court Register is necessary for the amendment to be valid in dealings with third parties.

c. Management

A limited partnership does not have a separate management board. Unless the articles of association deprive a general partner of the right to represent a limited partnership or require the co-signature of another general partner or commercial proxy (for a definition, see III.B.2.e., above), any general partner may represent a limited partnership both in and out of court. A limited partner may represent a limited partnership only as an attorney in fact. The manner of representation and the names of the general partners representing a limited partnership, and any changes thereto, must be registered in the National Court Register.

The scope of management is understood to encompass the right to adopt internal decisions dealing with operations both in and outside of the ordinary course of business. Each general partner has the right and obligation to manage a limited partnership in the ordinary course of business. The articles of association or a subsequent resolution of the partners may entrust the right to manage a limited partnership to one or more general partners.

The consent of all partners, including general partners excluded from management and limited partners (if the articles of association do not provide otherwise), is required. The management of the partnership cannot be entrusted to third parties to the exclusion of all partners. A limited partner is not required to manage a limited partnership and such a partner may manage a limited partnership only if the articles of association so provide.

A limited partnership may have one or more commercial proxies. The appointment of a commercial proxy requires the consent of those partners that have the right to manage the limited partnership. The action of any partner having the right to manage the partnership is sufficient to revoke the appointment of a commercial proxy. The scope of a commercial power of attorney and the requirements as regards registering in the National Court Register are the same as in the case of a limited liability company.

d. Supervision

A limited partnership does not have a separate supervisory body. A partner's right to supervise the operations of a limited partnership is included in the partner's right to manage the limited partnership. Also, general partners deprived of the right of management have the right to review the books and documents of the partnership personally, as well as to inquire personally about the state of the assets and business of the partnership.

A limited partner has the right to demand a copy of the annual financial statements and to review accounting books and documents. If a limited partnership does not respect this right, a limited partner may apply to the registration court for issuance of an order requiring the limited partnership to provide him or her with the required documents and to allow him or her to review the accounting books and documents. This right cannot be excluded or restricted by the articles of association.

e. Books and Records

Partners that have the right to manage a limited partnership must keep accounting books and records as required by the accounting and tax laws. The books and records must be maintained in such a way that a third party (auditor) is able to form a general view of the financial state of the partnership.

Accounting books and records must be kept in a reliable, correct, verifiable and timely manner. All records must be retained for five years. Furthermore, as of 2023, limited partnerships will be required to keep their accounting books in electronic form. Moreover, the information from these books will have to be provided to the tax office in a structured format in advance of the submission deadline.

f. Financial Statements

Partners authorized to manage a limited partnership must prepare annual financial statements within three months from the close of the limited partnership's financial year. The law contains no requirements as to the consideration or confirmation of the financial statements.

Financial statements must be prepared only in an electronic version. As a result, a financial statement of a limited partnership signed by a qualified signature or a trusted profile (ePUAP) must invariably be submitted to the National Court Register. The obligation to submit financial statements is imposed on the general partner of a limited partnership.

g. Dividends and Other Forms of Profit Distribution

Unless the articles of association provide otherwise, each general partner participates equally in the profits and losses of a limited partnership, irrespective of the type and value of a partner's contribution, and a partner's share in losses is the same as a partner's share in profits. Generally, a limited partner participates in the profits in proportion to the partner's actual contribution. The share of profits of a limited partner for a given financial year must first be used to supplement the partner's contribution up to the value of the agreed contribution specified in the articles of association.

Each partner has the right to demand that the entire profit be divided and distributed at the end of each financial year.

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h. Reserves

The law does not require a limited partnership to maintain any reserves.

3. Mergers

Limited partnerships may participate in mergers with other capital companies or other types of partnership. Such mergers can be effected either:

(i) By establishing a capital company, i.e., a limited liability company or a joint stock company to which the assets of all merging entities are transferred in exchange for shares in the new company (merger by formation of a new company); or

(ii) By transferring all the assets of a limited partnership to another company in exchange for shares that the acquiring company issues to the partners of the limited partnership being acquired (merger by absorption).

Although a partnership may merge with another partnership as well as with a capital company, a limited partnership may not be the surviving entity of a merger with a capital company.

A merger involving a limited partnership may require the terms of the planned merger to be examined by an expert auditor. Such a merger requires the unanimous approval of all general partners and a resolution of the limited partners representing at least three-fourths of the total value of the limited partners' shares, unless the articles of association provide for stricter requirements.

A merger is effected on the day on which it is registered in the National Court Register. On the merger date, the acquiring or newly established entity assumes all rights and obligations of the transferring limited partnership. A merger involving a limited partnership may require that the Office for the Protection of Competition and Consumers be notified or a permit obtained from the Minister of Internal Affairs.

4. Dissolution and Liquidation

A limited partnership may be dissolved for the same reasons as a registered partnership, which are as follows:

(i) For the reasons specified in its articles of association;

(ii) By unanimous resolution of the partners;

(iii) If it is declared bankrupt;

(iv) On the death of a partner or the declaration of a partner's bankruptcy;

(v) On the termination of the articles of association by a general partner or its creditor; or

(vi) Following a court decision.

During liquidation proceedings, a limited partnership must add to its business name the phrase "in liquidation". All partners are liquidators of a limited partnership. However, by unanimous resolution (unless the articles of association provide otherwise) the partners may appoint only some of them or other individuals as liquidators. Liquidators are required to prepare a balance sheet as of the beginning and closing of the liquidation, as well as at the end of each financial year.

Each liquidator has the right and obligation to submit the following information to the National Court Register on the opening of the liquidation:

(i) The names and addresses of the liquidators;

(ii) The manner of representation of the limited partnership by the liquidators; and

(iii) Statements on the acceptance of the appointment of the liquidators and the balance sheet as of the beginning of the liquidation.

The dissolution is effective after the close of the liquidation proceedings.

Opening of the liquidation proceedings results in the expiration of any existing commercial powers of attorney. No commercial proxies may be established during the liquidation procedure.

5. Reorganizations

Reorganizations affecting limited partnerships may be either economic or legal.

Economic reorganizations may consist of:

(i) Dissolution followed by the incorporation of another partnership or company with the assets of the dissolved limited partnership;

(ii) The sale of an enterprise; or

(iii) The contribution of an enterprise to another partnership or company.

Legal reorganizations consist of the conversion of a limited partnership into another type of company or partnership regulated by the Commercial Companies Code, i.e., a registered partnership, a professional partnership, a partnership limited by shares, a limited liability company or a joint stock company.

The conversion process is completed on the date of registration of the converted entity in the National Court Register. On the same date, the limited partnership undergoing conversion is deleted from the National Court Register. A new company or partnership assumes all the rights and obligations of the limited partnership undergoing conversion, in particular the permits, concessions and allowances granted to the partnership prior to its conversion, unless the law provides otherwise.

Unless a change in the new entity's business name consists solely of a change in the additional words that indicate a type of entity, the new entity's name must be its new name together with its old name, as well as the phrase "former name" in parentheses for a period of at least one year from the day of reorganization.

Formal requirements for the conversion of a limited partnership include:

(i) Preparing the terms of the conversion, including a valuation of assets and a financial statement together with an opinion of an expert auditor;

(ii) The adoption of a resolution on conversion by all general partners and by limited partners representing at least three-fourths of the total number of the limited partners' shares (unless the articles of association provide for stricter requirements); and

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(iii) Registering the conversion in the National Court Register.

The conversion must be in the form of a notarial deed.

Under Polish law, a limited partnership cannot be converted into an entity organized under foreign law; this result may be achieved only by means of an economic reorganization.

6. Divisions

The provisions of the Commercial Companies Code do not allow for the division of limited partnerships. However, it is possible to effect such a division by dissolving and liquidating an existing limited partnership and subsequently establishing a new limited partnership with the capital received.

F. Representative Office of a Foreign Entrepreneur

1. Registration

A representative office of a foreign entrepreneur is not registered at the National Court Register, but the establishment of a representative office requires an entry in a record kept by the Minister of Development and Technology following the submission of specified corporate documents. The registration procedure involves the Minister of Development and Technology requesting an opinion on the formation of the representative office from the minister with jurisdiction over the activity of the foreign investor.

2. Liability

A representative office is not a separate and self-contained legal entity, merely an extension of a foreign entrepreneur. Its activities are treated as the activities of the foreign entrepreneur and all the liabilities incurred by the office are treated as liabilities of the foreign entrepreneur. Nevertheless, the operation of an office does not expose the foreign entrepreneur to the jurisdiction of Polish courts generally, but only to such suits as relate to the activities of the foreign entrepreneur in Poland.

3. Books and Records

Under Polish law, the same requirements apply to foreign legal and natural persons conducting business activity in Poland through a representative office as apply to commercial companies, i.e., they are required to maintain accounting books and records. Furthermore, as of 2023, taxpayers are required to maintain their accounting books in electronic form. Moreover, the information from these books will have to be provided to the tax office in a structured format in advance of the submission deadline.

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IV. Principal Taxes

A. *Sources of Authority in Tax*

1. *Organization of Tax Law*

Each of the principal taxes is governed by a specific tax act, for example, the Corporate Income Tax Act (the "CIT Act") or the Tax on Goods and Services legislation, referred to as the Value Added Tax Act (the "VAT Act"). The main body of a specific tax act is devoted to setting out the material provisions (i.e., the taxpayer, the subject matter of the tax and the tax rate). The specific procedural provisions are governed by main procedural act called *Ordynacja podatkowa*. The provisions of this general tax code are further supplemented by a specific act dealing with tax court proceedings (*Prawo o postępowaniu przed sądami administracyjnymi*).

The acts (statutes) enacted in the parliamentary process may include authorizations for the relevant public bodies (for example, the Ministry of Finance) to issue regulations (ordinances) to regulate certain issues generally governed by the acts.

There are two types of taxes: state and local government. The former include VAT, income tax and excise tax. Taxes contributing to the budget of local governments include civil law transaction tax, real estate tax, inheritance and donation tax, certain part of the personal income tax, etc.

2. *Legislative Process*

In the case of tax legislation, as in the case of legislation in other areas, the main and fundamental sources of law are statutes enacted by Parliament. Bills may be introduced in Parliament, for example, by the President, the Government, a group of deputies or the Senate, as well as by a group of at least 100,000 citizens who are eligible to vote. The statutes must be signed by the President and published in the Journal of Laws.

In addition, ministries (Ministry of Finance in the case of tax matters), as well as public authorities, issue administrative regulations/directives with respect to various matters that are intended to be of an internal character and that constitute instructions for subordinated officials.

Regulations/directives do not constitute law, do not bind the courts and are controlled as to their conformity with public law. Court decisions have an important influence on the interpretation of the law; however, case-law does not constitute a source of law in Poland.

EU law is binding in Poland and prevails over Polish statutes, including in tax matters.

3. *Tax Administration*

Taking the criterion of the type of public-law relationship they serve, two divisions of tax authorities can be distinguished — state authorities and local government authorities. This division also follows from the Constitution of the Republic of Poland. Article 146(2) and (3) of the Constitution state that the government administration is headed by the Council of Ministers, and matters of state policy not reserved for other state and local government bodies belong to this body.

The state authorities are as follows: the head of the tax office; the head of the customs and fiscal office; the director of the chamber of fiscal administration; the head of the national fiscal administration; the director of the national fiscal information; and the minister in charge of public finance.

The local tax authorities are as follows: the commune head; the mayor (city president); the *starost* or the *voivodeship* marshal; and the local government appeal board.

Tax proceedings have two stages. This means that the same case is examined by two independent bodies. A taxpayer may appeal a negative decision and the appellate body is obliged to re-examine the case. The appeal procedure consists in resettling the administrative (tax) case that was previously decided by the first instance authority. The purpose of the appeal procedure is reconsideration and resolution of the case in its entirety.

4. *Court System*

There is a two-instance court system for appeal proceedings. Decisions issued by the tax authorities are subject to appeal to the *voivodeship* administrative court, as the court of first instance.

A complaint may be filed after the exhaustion of all means of appeal, i.e., after the completion of proceedings in all instances before the tax authorities. This includes both the first instance authority where the case was initially pending and the appeal body that examined the appeal against the decision of the first authority.

A complaint to the administrative court is lodged through the office that issued the decision. The office must forward the complaint to the court together with the case files and the response to the complaint within 30 days of its receipt. The claim must be paid.

The court of second instance, after the first instance *voivodeship* administrative court, is the Supreme Administrative Court. The judgment issued by a *voivodeship* administrative court may be challenged by submitting a cassation complaint to the Supreme Administrative Court, through the *voivodeship* administrative court. The taxpayer has 30 days from the date of receipt of a copy of the decision with justification to file a complaint. A cassation appeal must be prepared by an advocate, a legal adviser or a tax adviser.

5. *Binding Rulings*

a. *Individual Tax Rulings*

The Director of State Fiscal Information is responsible for issuing binding rulings (individual interpretations). This generally ensures the uniform application of the tax law by the tax authorities. Taxpayers, as well as potential investors interested in carrying on business in Poland, may file a motion for a binding ruling. However, in some cases, a binding ruling will not protect the taxpayer from the payment of tax due, but only from the payment of penalty interest and other sanctions where the interpretation of the relevant tax office differs from the binding ruling obtained by the taxpayer.

A person applying for an individual interpretation is required to describe exhaustively the existing factual situation or a future event, and its standpoint as to the legal evaluation of the situation or a future event. An individual interpretation cannot be issued in relation to situations that are the subject of

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pending tax proceedings, tax controls or control proceedings by a fiscal control authority, or, if the case concerned has been settled, a decision or ruling of a tax or fiscal control authority. The party applying for the individual interpretation must make a statement to the effect that none of these limiting conditions applies. A person making a false statement in this context will face criminal liability for false testimony and the individual interpretation issued will have no legal effect.

An individual interpretation contains an evaluation of the applicant's standpoint with legal grounds for the evaluation. In situations where the applicant's standpoint is negatively evaluated, the correct standpoint on the issue and the legal grounds for it are included. However, where the applicant's standpoint is fully correct, the legal grounds may not be specified. An interpretation also contains instructions on how it may be appealed. Generally, the time limit for issuing individual interpretations is three months; if an interpretation is not issued within three months, the applicant can consider that its standpoint is correct on the day following the day on which the time limit elapsed (a "silent ruling").

Note: The time limit applies to the preparation and signing of the interpretation rather than its delivery to the applicant. Consequently, provided the interpretation is signed before the expiry of the three-month time limit, the fact that it is received after the time limit lapses will not affect its validity.

A fee of PLN 40 for an individual interpretation must be paid within seven days of the filing of the application. Each separate situation or future event requires the payment of a further PLN 40 fee. If the fee is not paid, or if the applicant fails to describe the situation or future event exhaustively, the application will be left unanswered.

Tax rulings are not issued if the tax authorities believe that a transaction or event described may be subject to the general anti-abuse rules or the VAT anti-abuse clause.

Individual interpretations are published in the Public Information Bulletin (*Biuletyn Informacji Publicznej*) following the removal of identifiable information. The application and interpretation are transferred to the tax authorities who deal with the subject matter.

If the applicant relies on an interpretation before it has been overturned by another interpretation or law, the applicant will not be liable for any fiscal offenses, fiscal petty offenses or accrued interest charges. If the applicant relies on an interpretation that has been overturned by another interpretation or law, the applicant will not be liable for any tax obligations if the obligations were not paid due to the application of the original interpretation and the events that were the subject matter of the original interpretation occurred after the publication of the original interpretation.

> *Example:* A potential investor having a question relating to tax considerations can file a motion for a binding ruling. The investor must present the factual events in the potential case, his or her interpretation, and a certified statement that the case is not currently part of any pending proceeding and has not been settled by a court. If this statement is false, the interpretation will not be binding and the investor could face criminal liability. Each individual set of events will require a fee of PLN 40 to be paid within seven days.
>
> If the interpretation is not favorable, the legal grounds for the interpretation will be included, as well as instructions on how to appeal. The interpretation will be provided to the relevant tax authorities and published (without identifiable information) in the Public Information Bulletin. If the investor/taxpayer applies the interpretation and the interpretation has been overturned in the interim, the investor/taxpayer will not be liable for any tax obligation if the obligation was the subject matter of the interpretation and the events that led to the obligation occurred after the publication of the interpretation.

Interested parties may apply for a joint interpretation instead of applying for separate rulings.

A taxpayer may also rely on a well-established line of tax rulings issued by the tax authorities in analogous cases (on the basis of the same provisions of law applying) during the current tax period and the preceding 12-month period, even if the taxpayer does not apply for an individual tax ruling.

b. General Tax Rulings

Individuals and legal entities may also apply for a general tax ruling. The application requires, in particular, presentation of an issue requiring general interpretation and pointing to the non-uniform application of the provisions in question by the tax authorities in decisions, rulings and individual tax interpretations. The non-uniform application has to occur with respect to the same factual situations or future events and in the same circumstances.

As in the case of an individual interpretation, a general tax ruling may not be issued if, on the day on which the application is filed, the transactions presented therein are subject to tax or control proceedings or if an appeal or complaint has been filed with respect to those transactions. The fee for a general tax ruling is the same as that for an individual interpretation. However, the fee is refunded if a general tax ruling is actually issued.

c. Investors Tax Ruling

Investors that plan to make or have made an investment in Poland with a value of at least PLN 50 million may apply for an Investors Tax Ruling.[75]

The Investors Tax Ruling is a form of investment agreement concluded between an investor and the Minister of Finance regarding the tax consequences of the investment concerned. It is intended to provide the investor with certainty as to the interpretation of Polish tax laws in connection with the investment.

In this way, the investor, on request, will receive from the tax authority an explanation of all of the possible tax consequences associated with the planned investment. The initial fee for requesting the ruling is set at PLN 50,000.

d. General Explanations

Under Article 14a§1 of the Tax Ordinance, to ensure the uniform application of tax law rules by the tax authorities and tax control authorities, the Ministry of Finance issues general

[75] Tax Ordinance Act of Aug. 29, 1997, Art. 20zs.

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explanations concerning the application of the relevant provisions of tax laws.

Under Article 14n§4 of the Tax Ordinance, a taxpayer that complies with the explanations of the Ministry of Finance should not bear the risk of being burdened with a tax liability in the event of a change in the interpretation of the regulations. An analogous protection is currently available for general and individual tax rulings issued.

B. Personal Income Tax

Personal income tax is levied on the income of individuals, both resident and nonresident. Resident individuals are subject to tax on income from all categories, wherever derived. In general, income from the various categories is aggregated and subject to tax at progressive rates depending on the level of income (12% and 32%).[76] Certain categories of income (for example, dividends) are not aggregated and are taxed separately at lower flat rates.

Depending on the type of income, the tax is paid either directly by the taxpayer or is collected at source (for example, the tax on dividends) by a withholding tax agent.

In general, nonresident individuals are subject to tax on Polish-source income. The tax is collected at source on the gross amount of income received. In certain cases, however, nonresident individuals may be subject to tax at progressive rates on net income.

C. Corporate Income Tax

CIT is levied on the income or, in some cases, the gross receipts of legal persons and organizations that do not have legal status, with the exception of partnerships (however, limited joint-stock partnerships, limited partnerships and, in some cases, general partnerships are subject to CIT). The provisions governing CIT apply also to a limited liability company (*spółka z ograniczoną odpowiedzialnością* or *sp. z o.o.*) in formation (a *sp. z o.o.* is deemed to be in formation from the date of execution of its articles of association until the date of its registration by the court of registration)[77] and to a joint stock company (*spółka akcyjna* or S.A.) in formation (an S.A. is deemed to be in formation from the date of its incorporation until the date of its registration by the court of registration).

The provisions governing CIT apply also to all corporations that do not have legal status but that have their seat abroad and are subject to CIT in their country of residence. The CIT rate is set at 19% for general taxpayers and 9% for certain new and small taxpayers. The tax on dividends is also imposed at the rate of 19%, but is collected at source by the company paying the dividends.

As of 2018, capital gains are separated from other sources of income. While, ultimately, income tax is payable on the total income from both sources, taxpayers must segregate types of income and must allocate related tax costs to the relevant source. As a result, if the taxable person derives capital gains and incurs a loss with respect to another source of income, income tax will be levied on the capital gains and will not be reduced by the loss incurred with respect to the other source and vice versa. Similarly, tax losses from previous years are deductible only against income belonging to the same source.

In the case of foreign entities, tax may be collected at source on a gross basis. The withholding tax rate depends on the type of income received by the foreign entity and on whether Poland has signed a double taxation agreement with the country in which the recipient foreign entity is resident. In certain cases, however, nonresident taxpayers may be subject to tax on net income.

D. Value Added Tax and Excise Taxes

Value added tax (VAT), which came into force on May 1, 2004, generally implements the EU VAT system into Polish law.[78] There are three main VAT rates. The basic VAT rate is 23%. For certain goods and services reduced rates of 8%, 5% and 0% apply.

Excise taxes are generally borne by producers and importers of excised products, such as alcoholic beverages, cigarettes, passenger cars and fuels. E-cigarette liquid and novelty products (i.e., tobacco warmers) are also subject to tax.

For further research on Poland's VAT system, see the VAT Navigator.

E. Transfer Tax and Stamp Duty

Among the items subject to transfer tax are certain types of civil law transactions such as sales agreements, loan agreements (subject to some exceptions) and company agreements. Some of these agreements are exempt from transfer tax if they are entered into by VAT taxpayers.

Certain types of documents as well as applications, certifications and permits in individual matters of state administration are subject to stamp duty.

F. Inheritance and Gift Tax

The object of inheritance and gift tax is acquisitions, via inheritance, adverse possession or gift, of tangible property and property rights. Only individuals are liable to pay inheritance and gift tax. The rate of tax depends on the degree of kinship between the decedent and the heir, or between the donor and the donee, as the case may be.

G. Industry-Specific Taxes

1. Gaming Tax

The rules for the management and operation of activities in the area of games of chance and mutual betting, the issue of state monopoly in certain types of games and the obtaining of licenses are governed by the Act on Games of Chance of November 19, 2009.[79]

[76] Personal Income Tax Act dated July 26, 1991 (*Ustawa o podatku dochodowym od osób fizycznych*) (consolidated text), Journal of Laws 2021 Item 1128 (the "Personal Income Tax Act").

[77] Corporate Income Tax Act dated Feb. 15, 1992 (*Ustawa o podatku dochodowym od osób prawnych*, commonly abbreviated as "*ustawa o CIT*," "PDOPrU", or "updop") (consolidated text), Journal of Laws 2020 Item 1406 (the "Corporate Income Tax Act,") Art. 1.

[78] Value Added Tax Act dated March 11, 2004 *(Ustawa o podatku od towarów i usług)* (consolidated text), Journal of Laws 2021 Item 685 ("VAT Act").

[79] Act on Games of Chance of November 19, 2009 (consolidated text), Journal of Laws 2016 Item 471.

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The Act also provides for the duty of an entity conducting an activity in the area of games of chance and mutual betting to pay tax on the activity. The basis for taxation and the rate of the tax depend on the type of game, lottery or mutual betting.

2. Mining and Hydrocarbon Taxes

On April 18, 2012, a tax was introduced on the mining of certain minerals.[80] The tax is levied on individuals or entities mining copper and silver and is dependent on the current market value of the minerals. The mining of hydrocarbons — petroleum and natural gas — is also subject to the tax on the mining of certain minerals.

3. Financial Institutions Tax

The Act on Tax on Certain Financial Institutions came into force as of February 1, 2016.[81] The Act imposes a tax obligation on certain financial and insurance institutions to pay a special monthly levy of 0.0366% on the value of the institution's assets, subject to certain exemptions, thresholds and deductions.

4. Retail Tax

As of January 1, 2021, a tax is levied on retail sales to consumers, based on monthly revenue (excluding expenses).[82] Monthly turnover is subject to taxation using a progressive scale: 0.8% applying to revenue exceeding PLN 17 million but below PLN 170 million, and 1.4% applying to revenue exceeding PLN 170 million. Online retailing falls outside the scope of the retail tax. The sale of certain goods, such as medicine, is exempt.

5. Digital Sales Tax

Although there is no typical digital sales tax in Poland, a quasi-tax of 1.5% was introduced in a Cinematography Act as of July 1, 2020. This quasi-tax is imposed on the local revenue generated by certain entities (i.e., cinemas, distributors of tangible carriers of movies, television broadcasters, digital platforms, cable television and providers of on-demand audiovisual media services).

6. Sweetened Beverage and Small Alcoholic Beverage Taxes

On January 1, 2021, an additional tax on sugary drinks was introduced. The new tax applies to products with added sugar, caffeine or taurine.[83]

The sweetened beverage tax is levied on:

(i) Entities selling beverages to retail outlets or conducting retail sales of beverages; and

(ii) Entities ordering beverages, if the beverage ingredients subject to the fee are part of the contract concluded between the producer and the ordering party for the production of such beverages.

Taxpayers must submit a special statement and must calculate and pay the tax by the 25th day of the month following the month to which the statement relates.

Moreover, as of January 1, 2021, an additional tax is imposed on entities supplying stores with alcoholic beverages packed in containers not exceeding 300 ml.

H. Profits of State Treasury and State-Owned Enterprises

Companies in which all the shares are owned by the State Treasury are required to pay into the national budget 15% of their profits (after CIT). Similar payments are also made by state-owned enterprises.

I. Local Taxes and Fees

Local taxes include real property taxes paid by owners of real property, taxes on means of transportation borne by the owners of certain motor vehicles and dog taxes. These taxes constitute income of the respective local commune, rather than income of the state. For this purpose, communes may set the rates of these taxes within a certain range. Local fees, such as market fees and administrative fees, may also be levied.

J. Agricultural and Forest Taxes

Agricultural and forest taxes are paid by the owners or de facto possessors of agricultural land and forests, respectively.

K. Tax Relief in Special Economic Zones

New permits for conducting business activities in a Special Economic Zone (SEZ) are no longer granted. However, permits already granted continue to be valid. As a result of investing in a SEZ, a company may have received an exemption from CIT, with the amount of tax savings being capped based either on the new investment expenditures or two-year labor cost of the newly employed workforce.

As discussed below, a tax incentive for new investments based on a support decision replaced the tax relief offered in SEZs from mid-2018.

L. Incentive Based on Support Decision

From mid-2018, the Special Economic Zone (SEZ) scheme was replaced with a tax relief incentive available throughout Poland. Taxpayers with permits to perform business activities in an SEZ that were granted before the introduction of the Act on Supporting New Investment may continue to benefit from exemption based on the previous rules. However, for new investments, only the new scheme is available.

The Minister for Economic Development may issue support decisions for 10 to 15 years provided the investment meets certain quantitative and qualitative requirements stipulated in the relevant regulation.

Like the SEZ incentives, this incentive is granted in the form of a tax exemption for income generated from activities covered by the support decision. The regulation specifies the quantitative and qualitative conditions to be met. The value of the investment must exceed a certain threshold to benefit from the tax relief. The threshold is higher for taxpayers with high turnover. On the other hand, the threshold is lower for investments in territories with high unemployment.

[80] Act on Tax on Mining of Certain Minerals dated March 2, 2012, Journal of Laws 2020 Item 452.

[81] Act on Tax on Certain Financial Institutions dated January 15, 2016, Journal of Laws 2016 Item 68.

[82] Retail Tax Act of July 6, 2016, Journal of Laws 2016 Item 1155.

[83] Act of September 11, 2015 on Public health, art. 12a – 12j.

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In terms of qualitative conditions, the regulation introduces a scoring system that takes into account a number of factors, such as the level of employee salaries, the presence of R&D, cooperation with scientific organizations, employee training, investment in less developed regions, etc. The investment must obtain a certain score level to receive a support decision and thereby benefit from the exemption.

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V. Taxation of Domestic Corporations

A. What Is a Domestic Corporation?

A business entity that has its seat or place of management in Poland may be classified as a domestic corporation. In practical terms, this means that entities organized under Polish law that, according to the data disclosed in the relevant records, have their seat or place of management in Poland are deemed to be domestic corporations. The relevant records include:

(i) The National Court Register, in which companies organized under commercial law are entered (for example, a limited liability company (*Spółka z ograniczoną odpowiedzialnoscią* or sp. z o.o.) or a joint stock company (*Spółka Akcyjna* or S.A.)); and

(ii) The State-owned Enterprises Register, in which entities organized under the special regulations on State-owned enterprises are entered.

B. Corporate Income Tax

1. Taxation of Worldwide Income

a. In General

An entity that has its seat or place of management in Poland is subject to tax with respect to its entire income, regardless of its source. This is known in Polish law as "unlimited tax liability".[84] The income that constitutes the tax base may be reduced by donations, subject to the limits specified by the CIT Act.

Taxpayers for purposes of CIT are legal persons, for example, commercial law companies having legal personality — sp. z o.o.s, S.A.s, P.S.A.s, foundations, associations and state-owned enterprises, as well as sp. z o.o.s and S.A.s in formation. In addition, all corporations that do not possess legal status, but that have their seats abroad and are subject to CIT in their countries of residence may also be CIT payers.

Until the end of 2020, a civil partnership, a general partnership and a limited partnership (*spółka komandytowa* or sp.k.) were not taxpayers for CIT purposes. However, the situation changed as of 2021 with regard to limited partnerships and, in some cases, general partnerships. The taxpayers are the partners, who/which pay personal income tax (natural persons) or CIT (legal persons).

b. Taxation of Limited Partnerships and Certain General Partnerships with Corporate Income Tax as of 2021

In 2020, limited partnerships and general partnerships were tax transparent companies and the tax on their income was settled by their partners.

As of 2021:

(i) Limited partnerships with their registered offices or places of management in Poland are subject to CIT; and

(ii) General partnerships are subject to corporate income tax if the following conditions are fulfilled: their partners are not exclusively natural persons; and CIT payers participating in their profits are not disclosed to the tax authorities.

Therefore, the new regulations will not apply to general partnerships that disclose the identity of all partners who are income taxpayers (natural or legal persons), to the competent tax office.

A special entity that may also be subject to corporate income tax is "a tax group".[85]

A tax group is a group of at least two commercial law companies having legal personality that are consolidated for income tax purposes. A tax group may be a Polish taxpayer if a series of specific conditions are fulfilled, the most important of which are:

(i) The aggregate amount of the share capital of all the companies constituting the group must be such that the average share capital attributable to each company is no less than PLN 0.25 million;

(ii) One of the companies (the "dominant company") has direct shareholdings of 75% in the share capital of the remaining companies ("subsidiaries"); and

(iii) Prior to the formation of the tax group, the companies that are to constitute the group have no tax in arrears. This condition is also fulfilled if a company pays tax due along with interest within 14 days after submitting an amended tax return or receiving a decision from the tax authorities assessing the tax liability and interest due.

2. Accounting

a. In General

Corporate income taxpayers are required to keep records in accordance with the provisions of the Accounting Act.[86] The provisions of the Polish Accounting Act have been harmonized with the standards in other European Union (EU) Member States, which are based on:

(i) Directive 78/660/EEC of July 25, 1978, on the annual financial statements of companies;

(ii) Directive 83/349/EEC of June 13, 1983, on the consolidated financial statements of companies;

(iii) Directive 86/635/EEC of December 8, 1986, on the individual and consolidated financial statements of banks and other financial institutions;

(iv) Directive 91/674/EEC of December 19, 1991, on the individual and consolidated financial statements of insurance companies;

(v) Council Directive 2003/38/EC of May 13, 2003, amending Directive 78/660/EEC on the annual accounts of certain types of companies as regards amounts expressed in euros;

[84] Corporate Income Tax Act, Art. 3, Para. 1.

[85] Corporate Income Tax Act, Art. 1a.

[86] Accounting Act of September 9, 1994 (consolidated text), Journal of Laws 2016 Item 1047.

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(vi) Directive 2001/65/EC of the European Parliament and of the Council of September 27, 2001, amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies, banks and other financial institutions; and

(vii) Directive 2003/51/EC of the European Parliament and of the Council of June 18, 2003, amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings.

The accounting regulations and the corporate income tax rules provide for different treatment of certain business items of corporate income taxpayers. For example, some expenses incurred by a taxpayer that are not treated as tax deductible costs are treated as costs for accounting purposes (for example, gastronomic expenses). In addition, not all accounting revenues are included in revenue for CIT purposes. To ensure the proper calculation of the amount of income or loss for tax purposes, the taxable base and the tax due, CIT payers must, therefore, adjust the results deriving from their accounting records in accordance with the CIT rules.

b. Tax Year

The tax year is the calendar year, unless a different tax year is stipulated in a company's charter or articles of association and notified to the head of the competent tax office. In such cases, the tax year is a period of 12 consecutive calendar months. If the tax year is changed, the first tax year after the change is deemed to be the period commencing with the first month following the end of the previous tax year to the end of the newly adopted tax year. This period may not be shorter than 12 or longer than 23 consecutive calendar months.[87] A taxpayer elects the choice of a tax year other than the calendar year in the annual return submitted for the tax year preceding the first tax year after the change.

Example:

(i) A taxpayer selected a calendar year tax year.

(ii) The taxpayer decided to change its tax year from the calendar year to the period commencing on July 1 and ending on June 30.

(iii) The taxpayer's first accounting year after the selection of a tax year other than a calendar year will run from January 1, 2023 to June 30, 2024.

(iv) The taxpayer's first accounting period after the selection of a tax year other than a calendar year will, therefore, be 18 months long.

When an activity is commenced for the first time, the first tax year is the period between the date of commencement of the activity and the end of the calendar year or the last day of the selected tax year, which may not, however, exceed 12 consecutive calendar months.

Example:

(i) A taxpayer commenced activity on June 15, 2023, and selected as its tax year the period from April 1 to March 31.

(ii) The taxpayer's first accounting year will run from June 15, 2023, to March 31, 2024.

(iii) The taxpayer's first accounting period will, therefore, be 9.5 months long.

If an activity is commenced for the first time in the second half of a calendar year and a calendar year is selected to be the tax year, the first tax year may run from the date of commencement of the activity until the end of the calendar year following the year in which the activity was commenced.

Example:

(i) A taxpayer commenced its activity on October 15, 2023, and selected a calendar year as its tax year.

(ii) The taxpayer's first tax year will run either from October 15, 2023, to December 31, 2023, or from October 15, 2023, to December 31, 2024.

(iii) The taxpayer's first tax year may, therefore, be 2.5 or 14.5 months long.

c. Tax Year vs. Financial Year

The Accountancy Act defines a financial year as a calendar year or another period of 12 consecutive calendar months that is used for tax purposes. If an entity commences operations in the second half of its adopted financial year, its accounts and financial statements for that period can be combined with accounts and financial statements for the following year. In the event that the financial year is changed, the first financial year following the change should be longer than 12 months. Under the Accountancy Act, taxpayers commencing operations in the second half of their adopted financial year are allowed to combine the accounts and financial statements for the first shorter financial year with the accounts and financial statements for the following year.

d. Accounting Methods

Entities subject to CIT must maintain records to ensure the proper calculation of the amount of profit (loss), the taxation basis and the tax due. The records must be maintained in accordance with the provisions of the Accounting Act, which require compliance with the following principles:

(i) The accruals basis;

(ii) The going concern basis;

(iii) The principle of prudence;

(iv) The corresponding balance sheet principle; and

(v) The "materiality principle" (i.e., all transactions essential to the financial position and results of an entity must be identified in the entity's financial records).

Because certain business items are treated differently under the accounting rules and the corporate income tax rules

[87] Corporate Income Tax Act, Art. 8.

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(i.e., certain expenses incurred by the taxpayer are accounting costs but not costs for tax purposes and not all accounting revenues are included in income for tax purposes), two separate sets of records have to be kept: one for accounting purposes (necessary for the preparation of a balance sheet and a profit and loss account), and the other for tax purposes (necessary for the preparation of annual tax returns and for the calculation of the tax liability).

e. Consolidated Returns

Under the corporate income tax rules, tax groups are treated as a single taxpayer (see 1., above). Accordingly, during and at the end of the tax year, a tax group submits returns that include the tax result of the entire group. It does not submit separate returns relating to each company making up the group. The corporate income tax rules provide for separate tax return forms for tax groups with respect to annual settlements: tax groups submit returns of income derived on form CIT-8AB (annual return).

Under the requirements of the Accounting Act, capital groups (not necessarily registered as tax groups for corporate income tax purposes) must file consolidated financial statements based on the statements prepared by the companies making up the group, subject to certain exceptions.

3. Calculation of Income

a. In General

The corporate income tax is imposed on (net) income, which is the excess of revenue (i.e., gross income) derived by the taxpayer over tax deductible costs. The provisions of the CIT Act do not define the term "revenue," but do specify which kinds of income are covered. These are as follows:

(i) Money and pecuniary value received, including amounts resulting from differences in exchange rates;

(ii) The value of goods or services obtained free of charge (wholly or partially), and benefits in kind;

(iii) The value of obligations waived or barred by limitation, including obligations resulting from loans (credit facilities);[88]

(iv) The value of contributions in kind, other than the enterprise itself or any organized part thereof, to a Sp. z o.o., S.A. or S.K.A., or the market value of such contribution as of the day of transfer to an Sp. z o.o., S.A. or S.K.A., where the declared value of the contribution is lower than market value (until December 31, 2016, the revenue covered the nominal value of shares, or a refund of excise tax under separate regulations, input VAT or refunded excise tax to the extent it was previously recognized as a tax-deductible cost); and

(v) Remuneration received by the taxpayer as a result of the redemption of shares subscribed for in exchange for a contribution in kind in the form of an enterprise or an organized part of an enterprise.

Income is classified into two separate categories, i.e., capital gains and other income, depending on its source. While, ultimately, income tax is payable on the total income from both sources, taxpayers must segregate the two categories and must allocate related tax costs to the relevant category. As a result, if the taxable person derives income from capital gains and incurs a loss with respect to the other source, income tax will be levied on the capital gains and will not be reduced by the loss incurred with respect to the other source and vice versa. Similarly, tax losses from previous years are deductible only from income belonging to the same category.

The capital gains category covers, among other items:[89]

(i) Income from participation in the profits of a legal person, including:

- Dividends and income received by participants in an investment fund or collective investment institution, if the statute provides for the payment of income without units or investment certificates having to be repurchased;
- Income from the redemption of shares (stock) or from a reduction in their value;
- Income from an existing tax-paying partnership or from a decrease in the share of the equity in such a partnership that is effected other than by way of the redemption of shares;
- The value of property received in connection with the liquidation of a legal person or a tax-paying partnership;
- The profits of a legal person or a tax-paying partnership used to increase its share capital or the amounts transferred to share capital from other capital (funds) of a legal entity or company;
- Payments received in a merger or demerger by the shareholders of the company being acquired, merged or demerged;
- Income of a member of a demerged company, if the property of the demerged company (transferred/transferred and remaining) does not constitute a part of the enterprise organized as a separate business unit;
- The value of undistributed profits and capital in excess of share capital where a company is converted into a partnership;
- Interest on a profit participating loan; and
- Certain income derived from the conversion, merger or division of an entity;

(ii) Income from a contribution in kind to a company (unless the contribution is exempt from taxation, as is, for example, a contribution made by an enterprise or an organized unit of an enterprise);

(iii) Income from participation (shares) in a legal entity or a company other than those specified above, including: proceeds from the sale of shares, including sales for pur-

[88] Corporate Income Tax Act, Art. 12, Para. 1.

[89] Corporate Income Tax Act, Art. 7b, Para. 3.

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poses of redemption (buy-back); and income generated as a result of the exchange of shares;

(iv) Income from the sale of all rights and obligations in a partnership that is not a legal person;

(v) Income from the sale of receivables previously acquired by the taxpayer as well as of receivables resulting from income classified as capital gains; and

(vi) Income from:

• Property rights referred to in Article 16b para. 1 points 4–7 of the CIT Act (for example, copyright, licenses, trademarks, patents and know-how), excluding income from licenses directly related to obtaining income other than capital gains;

• Securities and derivative financial instruments, excluding derivative financial instruments used to secure income or expenses, other than capital gains;

• Participation in investment funds or collective investment institutions; and

• A sale, lease, rental or other agreement of a similar nature regarding the rights referred to in the above bullets.

In the case of banks, insurance companies and certain other financial institutions, the definition of what constitutes capital gains is different and includes only:

(i) Dividends and income received by participants in an investment fund or collective investment institution, if the statute provides for the payment of income without units or investment certificates having to be repurchased; and

(ii) Profits of a legal person or partnership that is a taxpayer used to increase share capital or amounts transferred to share capital from other capital (funds) of a legal entity or company.

A minimum tax applies to fixed assets located in Poland with an initial value exceeding PLN 10 million if they are made available for use under a contract of lease, tenancy, leasing, etc. Vacant areas are not subject to the minimum tax.

The taxable base is the revenue that corresponds to the initial value of the asset determined as of the first day of each month less PLN 10 million. Taxpayers calculate the liability for each month and pay the tax by the 20th day of the month following the month for which the tax is paid.

The tax does not apply to real property used exclusively or mainly for the own needs of the taxpayer or to real property for which depreciation was suspended as a result of the suspension or cessation of the business activity for which the property was used.

The tax is called a minimum tax because the obligation arises only if the CIT liability of the taxpayer is low. The tax does not apply if CIT advances exceed 0.035% of the excess of the initial value of the fixed asset over PLN 10 million. (See, also, IX.C.9., below).

The PLN 10 million exemption threshold applies to a taxpayer regardless of the number of buildings owned (i.e., a taxpayer is entitled to only one tax free amount for its entire portfolio of buildings).

In addition, an anti-abuse clause was introduced under which transfers of real estate made with the sole purpose of avoiding the minimum tax will be disregarded by the tax authorities.

b. Capital Gains from the Sale of an Asset

(1) General Rule

Capital gains realized on the sale of an asset are subject to taxation in accordance with the general rules, unless a particular asset is included under a separate source of income, i.e., capital gains (see above).

(2) Capital Gains Realized from the Sale of an Asset

Gains realized on the sale of a fixed asset are taxed as follows:

(i) Expenditure on purchasing the fixed asset, less the depreciation write-offs taken up to the moment of the sale of the asset, is a tax deductible cost;

(ii) The amount received from the sale of the fixed asset is gross income; and

(iii) The difference between the amount obtained from the sale and the expenditure incurred on the purchase of the fixed asset, decreased by the depreciation write-offs, i.e., the capital gain, is subject to tax.

Example:

(i) A fixed asset was bought for PLN 100,000.

(ii) Up to the time of sale, the depreciation taken amounted to PLN 75,000.

(iii) The asset was sold for PLN 50,000.

(iv) The capital gain from the sale of the asset is calculated as follows:

Gross Income:	PLN 50,000
Cost:	PLN 100,000 − 75,000 = 25,000
Capital Gain:	PLN 25,000

A loss on the disposal of a fixed asset (for example, due to *force majeure* resulting from natural forces or theft) is subject to the following tax treatment:

(i) Depreciation taken prior to the loss of the fixed asset continues to be treated as a tax deductible cost;

(ii) The difference between the initial value of the fixed asset and the depreciation taken is a tax deductible cost; and

(iii) Any insurance compensation received is gross income.

Thus, if the amount of the insurance compensation received exceeds the initial value of the fixed asset, the excess of the insurance compensation received over the initial value of the fixed asset is subject to corporate income tax at the normal tax rate.

Comment: It follows from the above that the Polish corporate income tax rules do not provide for the deferral of taxation

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by way of rollover relief, as does the legislation of some other countries (where relief is conditional upon the acquisition of another fixed asset within a specified period).

c. Dividend Income

Dividends and other income from participation in the profits of a legal person are subject to a flat-rate corporate income tax of 19%. In principle, tax is collected by the company paying the dividends or other tax remitter or withholding tax agent (for example, a brokerage office where securities are kept on a securities account and a payment is made via the brokerage office).

The general partners of limited joint stock partnerships may decrease the amount of tax on payments of their share in profits for a given tax year by a proportional amount of corporate income tax paid by the partnership with respect to that tax year.

Dividends and certain other payments with respect to a share in the profits of legal persons having their business seat or management board in Poland, with the exception of income received by a general partner from the profit of limited joint stock partnerships, are exempt from the 19% corporate income tax if all of the following conditions are met:[90]

(i) The entity paying the dividend or other payment referred to above is a company with a registered office or a place of management in Poland;

(ii) The entity receiving the dividend or other payment referred to above is a company liable to tax on the total amount of its income in Poland or another country belonging to the European Economic Area (EEA), irrespective of the place in which the income is earned;

(iii) The entity receiving the dividend or other payment referred to above owns directly, for a continuous period of two years, no less than 10% of the share capital of the Polish entity paying the dividend or other payment; and

(iv) The entity receiving the dividend does not benefit from an exemption from income tax with respect to its income regardless of source.

Certain compliance obligations must be complied with to apply the exemption, in particular, a taxpayer must provide a withholding tax agent with a valid certificate of tax residence and a written statement confirming that the taxpayer does not benefit from an exemption with respect to the income regardless of its source. Moreover, the entities paying dividends are obliged to act with due care when analyzing whether the conditions for applying an exemption from withholding tax or a lower withholding tax rate are fulfilled.

Comment: The term "due care" is not defined in the regulations and, as such, its interpretation may differ depending on the circumstances of a particular case. In practice, the broadest interpretation should be adopted by verifying not only the statutory terms for preferential tax treatment, but also by compiling all available evidence to confirm that the conditions for the preferential tax treatment have been fulfilled, including verifying that the recipient of the payment is engaged in genuine business activity.

The exemption may be denied with respect to dividends and dividend-like income arising from transactions that are lacking justified economic (business) reasons and are performed solely or primarily for the purpose of utilizing the exemption. Such anti-abuse restrictions are applicable to income derived from the first day of a tax year starting after December 31, 2015.

d. Participation Exemption for Polish Holding Companies

As of 2022, Polish CIT payers that hold directly at least 10% of the shares in a subsidiary for at least one year are exempt from tax on gains arising from the disposal of those shares. Further, these taxpayers may also benefit from a 100% CIT exemption with respect to dividends received from subsidiaries. The exemptions are available only to entities that are engaged in genuine economic activity and provided they do not have shareholders located in recognized tax havens.

The tax exemption for the disposal of shares does not apply if at least 50% of the value of the assets of the disposed company, directly or indirectly, constitute real estate located in Poland. Moreover, the disposed subsidiary must not own more than 5% of the shares in the capital of another company. To claim this exemption, it is also necessary for the taxpayer to file a statement of intent at least five days before the date of disposal to be able to apply the exemption.

e. Accrued Income

Revenue earned in connection with economic activity comprises not only revenue actually received by the taxpayer but also revenue due (or accrued) to the taxpayer.[91]

The term "revenue due" means amounts of income due that can be demanded by the taxpayer, regardless of whether they have been received by the taxpayer. This means that tax will be due on accrued income even if the taxpayer waives or does not receive the income. This applies also when the parties concerned postpone the deadline for the payment of amounts due.

The date of recognition of accrued income is, except as provided below, the date of the release of the goods, the sale of the property rights, or the provision or partial provision of the services concerned, but no later than:

(i) The time at which the invoice is issued; or

(ii) The date of payment (settlement) of the amounts due.

Exceptions to the general rule for determining the date of accrual apply in the following cases:

(i) If the parties to an agreement determine that the services (the exception does not apply to the sale of goods) constituting the subject of the agreement will be settled during a settlement period, the date of accrual of the income is the last day of the settlement period provided for in the agreement or on the invoice issued (at least once a year);

[90] It should be noted that the scope of the exemption is narrower than the catalogue of revenues for participation in the profits of legal persons.

[91] Corporate Income Tax Act, Art. 12, Para. 3.

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(ii) In the case of income from the supply of electricity or heat, or the supply of gas in a pipeline, the rule described in the previous paragraph at (i) applies; and

(iii) In the case of income due that is not covered by the general rule or the above two exceptions, the tax date (i.e., the accrual date) is the date of receipt of the payment.

Income in foreign currency must be converted into Polish zlotys at the average rate of exchange announced by the National Bank of Poland (NBP) for the last business day preceding the day on which the income is received.

The timing of any corrections regarding accrued income is regulated by law. In principle, if a correction results from a mistake or a calculation error, the corrected amount must be reflected in the original period (tax year) in which the income was recognized. If the cause of a correction is other than a mistake or calculation error, including a post-transaction event, the corrected amount must be reflected in the current period (tax year).

f. Foreign Exchange Differences

Taxpayers may calculate foreign exchange differences based on provisions in either the CIT Act or the Accountancy Act. In the latter case, provided that, during the specified period (see below), the financial statements prepared by the taxpayer will be audited by entities/auditors licensed to carry out audits. Under the Corporate Income Tax Act, positive and negative foreign exchange differences are deemed to occur if the value of:

(i) Income due expressed in a foreign currency, after conversion into PLN at the average rate of exchange announced by the NBP, is lower (positive differences) or higher (negative differences) than the value of that income on the day it was received, as converted at the exchange rate actually applying on that day;

(ii) Costs incurred (expenses) expressed in a foreign currency, after conversion into Polish zlotys at the average rate announced by the NBP, are higher (positive differences) or lower (negative differences) than the value of the expenses on the payment day, as converted at the rate of exchange actually applying on that day;

(iii) Cash means received or acquired or pecuniary values in foreign currency are lower (positive differences) or higher (negative differences) on the date of their inflow than their value on the day of payment or other form of outflow of these cash means or pecuniary values at the actually applied currency exchange rate valid for these days;

(iv) A loan (credit) expressed in a foreign currency on the day of its granting is lower (positive differences) or higher (negative differences) than the value of the loan (credit) on the day of its repayment, as converted at the exchange rate actually applying on those days; or

(v) A loan (credit) in a foreign currency on the day of its receipt is higher (positive differences) or lower (negative differences) than the value of the loan (credit) on the day of its repayment, as converted at the exchange rate actually applying on those days.

Positive foreign exchange differences increase the amount of revenue; negative foreign exchange differences increase the amount of tax deductible costs.

In calculating foreign exchange differences, the average rate of exchange announced by the NBP must be applied by the taxpayer if it is not possible to use the exchange rate actually applying. The average rate of exchange announced by the NBP is the exchange rate on the last business day preceding the day of receipt of income or the day on which the cost is incurred by the taxpayer.

An incurred cost is a cost appearing on an invoice or evidenced in some other way if no invoice is issued. The day of payment is the day of settlement of liabilities in any form, including the offset of claims.

Taxpayers that select the method of calculating foreign exchange differences provided for in the Accountancy Act may include as income or tax deductible costs the foreign exchange differences shown in the accounting records. A taxpayer opting to use the Accountancy Act method must apply it for a period of at least three tax years, calculated from the beginning of the tax year in which the taxpayer first adopts the method. The election must be notified by the taxpayer in the tax return submitted for the tax year in which they started using this method. Taxpayers ceasing to use this method must so mention it in the tax return submitted for the last tax year in which they applied this method.

g. Income from Particular Sources

Income from the sale of real property, proprietary rights and other assets as well as income from services is considered to be the value represented by the price set forth in the sale agreement. If the price differs considerably from the market value of the assets, rights, or services, the tax authority may, in certain circumstances, adjust the amount of income assessed based on the market value of the assets or rights unless the discrepancy can be reasonably justified. Reasonable justification for a reduction in the contractual price includes the selling off of assets, the need to quickly dispose of given asset components and the sale of goods that are not in demand.

Not every instance of the sale of assets, property rights, or services for significantly below market value will entitle the tax office to adjust the tax base. The tax office may exercise this right only in one of the following circumstances:

(i) Where no response has been received to a call from the tax office;

(ii) Where the change in value provided for in the agreement has not been made;

(iii) Where factors have not been indicated that, in the view of the parties to the agreement, justify setting a price significantly below the market value; or

(iv) Where reasons are given that are deemed insufficient by the tax authority.

If any of the criteria set out above apply, the tax office is entitled to set the market value of the asset being disposed of, taking into account the opinion of an expert or experts. If the value given by an expert or experts differs by 33% or more from the sale price, the seller will be required to pay the cost of the opinion of the expert or experts.

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The market value of real property, proprietary rights and other assets or services is assessed based on the average prices prevailing in a given locality with respect to assets or services of the same kind and sort, taking into account the assets' condition and level of wear, and with respect to legal transactions concerning proprietary rights of the same type, as applicable on the day of the conclusion of the relevant agreement.[92]

A taxpayer settling a debt (including a loan or dividend) in kind is deemed to receive income in an amount equal to the amount of debt settled. However, if the value of the consideration in kind exceeds the amount of debt, the market value of the in-kind consideration must instead be calculated in accordance with the above provisions.

h. Income from Foreign Sources

CIT payers are taxed on income from sources outside Poland. Double taxation is avoided, however, using an ordinary tax credit or the exemption method, depending on whether a double taxation agreement is in effect with the country from which the income is derived and the provisions of that agreement.

i. Exclusions from Income

Amounts received by a company for the establishment or increase of its share capital are tax free. Nor does an increase in the share capital as a result of a debt-equity swap give rise to a corporate income tax liability.

The following items are also not subject to tax:

(i) Additional payments contributed to the company (if contributed in the manner and in accordance with the principles outlined in separate regulations);

(ii) Advances received from contractors;

(iii) Interest accrued and not capitalized;

(iv) The surplus of paid-up capital over the nominal value of issued shares (*agio*) that is transferred to the additional (reserve) capital of an S.A., an sp. z o.o. or a limited joint-stock partnership;

(v) Expenses that are refunded but were not recognized as tax-deductible costs;

(vi) Output VAT (tax on goods and services); and

(vii) Revenues from transfers against consideration, under a contract for the transfer of ownership of an object for purposes of securing a debt, including a loan or credit, until the final transfer of ownership of the object of the contract.

j. Taxation of Investment Funds

Until December 31, 2016, all investment funds defined in the Corporate Income Tax Act were covered by a general tax exemption. From January 1, 2017, this exemption continues to apply to open-ended investment funds and open-ended specialized investment funds, except open-ended specialized investment funds that apply rules and restrictions applicable to closed-ended investment funds.

Other investment funds enjoy an exemption from income tax but only to the extent that the income does not fall into one of the following categories:[93]

(i) Income from participation in partnerships or organizations without legal personality, having a legal seat or place of management in Poland or in another country, if according to the tax law of that country such entities are not treated like legal persons and are not subject to taxation in that country on all their income regardless of where it is generated;

(ii) Income from interest on loans granted to the entities described above, interest on equity holdings in such entities and interest on other receivables from such entities;

(iii) Donations or other free-of-charge benefits made or given by those entities;

(iv) Income from interest on securities issued by those entities;

(v) Income from the sale of securities issued by those entities or from the sale of shares they hold; or

(vi) Income from commercial real property.

k. Exit Tax

An exit tax was introduced in Poland as of January 1, 2019, as a result of the implementation of the EU Anti-Tax Avoidance Directive (Directive 2016/1164/EU).

The exit tax is imposed on all taxpayers, whether entities or individuals, in the case of:

(i) Transfer of assets;

(ii) Change of tax residence; or

(iii) Transfer of a permanent establishment of a taxpayer outside of Poland.

The tax base is the positive difference between market and tax values of the assets. The tax rate is 19%. The tax must be paid by the seventh day of the month following the month in which the market value of the transferred assets exceeded PLN 4 million. A specific tax return must be filed during the same timeframe.

A refund of the exit tax is possible if, within five years from exit, the residence or the transferred assets are returned to Poland.

The deadlines for paying the exit tax have been extended as follows:

- If a "loss"[94] in whole or in part of an asset subject to exit tax occurred before December 1, 2025: to the seventh day of the month following that in which the taxpayer lost, in whole or in part, the asset; and
- In all other cases: to December 31, 2025.

The extension of the deadlines applies to exit taxes resulting from monthly declarations submitted for settlement periods from January 1, 2019 to November 30, 2025.

[92] Corporate Income Tax Act, Art. 14.

[93] Corporate Income Tax Act, Art. 17 Para. 1 Point 57.

[94] The "loss" of an asset is defined as the disposal of the asset, the realization of rights arising from derivative rights or derivative financial instruments or any other event resulting in the loss of ownership or rights to the asset.

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l. Minimum Corporate Income Tax

As of 2024, a minimum income tax rate of 10% applies to CIT payers that, in a given year, report taxable income amounting to less than 2% of their operating revenue other than capital gains or that report a fiscal year tax loss with respect to revenue sources other than capital gains.[95]

The minimum income tax amounts to 10% of the sum of a company's tax base, which, for this purpose, consists of the following elements:

(i) Operating income of 1,5% (other than from capital gains); and

(ii) Related-party expenses derived from:

- Debt-financing costs in excess of 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) above a threshold of PLN 3 million; and
- Intangible services and license fees in excess of 5% of taxable EBITDA.

A taxpayer may choose a simplified method of determining its tax base, i.e., by using an amount equivalent to 3% of the value of the income derived by the taxpayer in the tax year other than capital gains. However, the taxpayer must inform the tax authorities of any such decision in the return referred to in Article 27, paragraph 1 of the CIT Act filed for the tax year for which it has decided to apply the simplified method of determining the tax base.

Adjustments to the tax base may be made to account for certain deductions and allowances, for example, those associated with R&D activities or SEZs.

The amount of minimum tax paid in a given tax year can be credited, based on the existing rules, against a taxpayer's regular annual CIT due in the same year or carried forward to be credited over the next three consecutive years.

The minimum tax regime does not apply to certain taxpayers, including: financial enterprises; companies that report a decrease in revenue of at least 30% from the prior year; start-up companies for their first three years of operations; entities whose profitability in any of the three prior years was no less than 2%; companies placed in bankruptcy or liquidation or under restructuring proceedings; and others.

m. Pillar Two — Global Minimum Tax

The bill implementing the EU Directive on the global minimum tax was adopted in Poland in the end of 2024. It should be noted that the Minimum Corporate Income Tax discussed in V.B.3.l. above does not constitute the implementation of Pillar Two.

(1) Current Status of Legislation and Regulations

The bill implementing the EU Directive on the global minimum tax was adopted at the end of 2024. The bill does not deviate from the Directive in any significant manner.

(2) Application of the Income Inclusion Rule and the Undertaxed Payments Rule

(a) Income Inclusion Rule

The Income Inclusion Rule (IIR) requires Polish parent entities to include in their taxable income the income of foreign subsidiaries that are subject to low taxation. Specifically, the IIR applies to income from jurisdictions with an effective tax rate below 15%. The regulation outlines the detailed methodology for calculating the income to be included.[96]

(b) Undertaxed Payments Rule

The Undertaxed Payments Rule (UTPR) targets payments made to related entities in low-tax jurisdictions, ensuring that such payments are subject to a minimum level of taxation. This rule acts as a backstop to the IIR, addressing situations in which the IIR does not fully capture low-taxed income.

The regulation outlines the detailed methodology for calculating the UTPR. The UTPR is first calculated for all low-taxed entities of a given group ("total UTPR tax") and then "allocated" at the level of a given jurisdiction, i.e., essentially to all entities located in a given jurisdiction. The UTPR calculated at the level of Poland constitutes an appropriate part of the total UTPR tax.[97]

In accordance with the regulation, a UTPR taxpayer is obliged to calculate, for the tax year, both:

(i) The total tax on under-taxed profits (total UTPR tax) in relation to all low-taxed entities of the group; and

(ii) The "share for Poland," i.e. a specified percentage of the UTPR tax allocated to Poland based on the number of employees and the value of assets in Poland.

As indicated in the explanations to the regulation, calculating the above amounts may be difficult, since it involves the results of the entire group and the calculation process requires coordination at the group level.

(3) Covered Taxes and Entities

The regulation covers corporate income tax and applies to MNEs with consolidated revenues in excess of 750 million euros. This threshold refers to the amount of consolidated revenue achieved by a given group, understood as the annual revenue shown in the consolidated financial statements prepared by the ultimate parent entity of the group, amounting to at least 750 million euros. For a given group to be covered by the provisions of the regulation, this condition must be fulfilled in two of the four years immediately preceding the tax year concerned. This threshold ensures that only large MNEs are subject to the new rules, reducing the compliance burden on smaller businesses. [98]

[95] Corporate Income Tax Act, Art. 24ca.

[96] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Sec. II (Arts. 10 et seq.).

[97] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Sec. IV (Arts. 32 et seq.).

[98] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Art. 4.

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(4) Computation of GloBE Income and Loss

(a) Adjusted Covered Taxes

The regulation specifies adjustments to covered taxes to align with the Global Anti-base Erosion (GloBE) rules. These adjustments may include the exclusion of certain tax credits and incentives that are not recognized under the GloBE framework. The regulation provides detailed guidance in this respect.[99]

(b) Effective Tax Rate

The Effective Tax Rate (ETR) is calculated by dividing the adjusted covered taxes by the GloBE income. This calculation ensures that the tax rate reflects the actual tax burden on the income. The regulation includes a formula for calculating the ETR and specifies the documentation required to support the calculation, including financial statements, tax returns, and other relevant records.[100]

(c) Top-up Tax

If the ETR is below the minimum rate, a top-up tax is imposed to bring the ETR up to the minimum level. This ensures that all income is taxed at least at the minimum rate, preventing tax avoidance through profit shifting. The regulation outlines the process for calculating and paying the top-up tax.

(5) Qualified Refundable Tax Credits

The regulation anticipates that the global minimum tax will impact Poland's existing tax incentives, potentially reducing their attractiveness. Qualified refundable tax credits will be considered in the ETR calculation. This approach aims to balance the need for a minimum tax rate with the desire to maintain Poland's competitive tax incentives.[101] The government is working on proposing a new form of the R&D credit, as well as amended rules for the tax incentives based on the Act on Supporting New Investments with a view to minimizing the negative impact of Pillar Two on tax incentives. The draft legislation is expected in quarter three of 2025 and may possibly also cover 2025. The revised incentives are likely to (partially) take the form of cash grants and/or deductions from payroll and related taxes payable on the remuneration of R&D employees.

(6) Transitional Safe Harbor

The regulation includes transitional safe harbor provisions that allow MNEs to use simplified calculations during the initial years of implementation. The regulation introduces a five-year safe harbor that entails top-up tax not being imposed on ultimate parent entities located in Poland that belong to international groups in the initial period of their operations. The exemption is available if the group concerned operates in no more than six jurisdictions and meets certain additional requirements, including not exceeding a certain threshold that refers to the net book value of tangible fixed assets belonging to the group (50,000,000 euros). The five-year safe harbor is counted from the first day of the tax year in which the international group concerned fulfills the conditions (discussed in V.B.3.m.(3), above) for being covered by the regulation referred to in Article 4 of the Act.[102]

(7) Compliance Framework

(a) Local Filing Requirements

The regulation implements Article 44 of the Directive concerning the obligation to submit a GloBE Information return. The GloBE Information return is a tax return, the purpose of which is to provide tax administrations with the data and information necessary to assess the correctness of declared liabilities in the area of top-up taxation. The obligation to submit a GloBE Information return is imposed on an entity in the group concerned (whether international or domestic).[103]

Poland will use the established GloBE Information template, which is a standard template transposed to the national environment at the OECD level. The content and layout of the template is uniform for all jurisdictions to ensure future exchanges between the tax authorities of the individual jurisdictions in which the entities of a given group are located.

The deadline for submitting the GloBE Information return will, as a rule, expire at the end of the 15th month following the end of the tax year concerned. An exception in this respect concerns the first tax year of application of the new regulation by a given group. The GloBE Information return for that year will have to be submitted by the end of the 18th month after the end of the tax year.

Group entities located in Poland may, in certain situations, be exempt from the obligation to submit GloBE Information returns if such returns are submitted by the highest-level parent entity of the group concerned or a designated reporting entity located abroad (the "central filing principle").

(b) Penalties for Non-compliance

Acts related to failure to comply with the new obligations will be penalized based on the general provisions of the Fiscal Penal Code. This Code introduces personal liability for persons responsible for managing the affairs of companies. Consequently, it is individual persons who are personally liable for penalties imposed under the Code, which are primarily financial in nature. The catalogue of penalties is wide-ranging, and the maximum amounts of financial penalties are high. However, the exact amount of the penalty for individual failures depends on the specific case.[104]

(8) Differences in Interpretation and Application

The regulation aligns with the solutions proposed in the Directive but, given the regulation is only at the initial stage of

[99] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Arts. 80 et seq.

[100] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Art. 11.4.

[101] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Art. 64.

[102] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Art. 128.

[103] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Art. 133.

[104] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Art. 142, introducing certain amendments to the Penal Fiscal Code.

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implementation, it is difficult to predict how its application will develop in practice.

(9) Qualified Domestic Minimum Top-up Tax

The regulation provides for the introduction and application of a Qualified Domestic Minimum Top-up Tax (QDMTT), ensuring that domestic income is subject to the minimum tax rate.[105] The regulation provides detailed guidance on how to calculate and pay the tax.

QDMTT is envisaged as a tax levied by the Polish tax administration on entities located in Poland that constitute a type of shield protecting against taxation under the IIR, i.e., taxation imposed in relation to low-taxed entities located in Poland but due from a parent entity located in another jurisdiction to the tax administration of that jurisdiction.

(10) Opinion on the Application of the Provisions

An interested party may submit an application for an opinion on the interpretation of the provisions of the Act implementing the EU Directive on the global minimum tax.[106] The application for an opinion may concern, in particular, planned activities or activities that have been started but have not yet been completed. An opinion will not be issued for elements of activities that:

(i) On the date of submission of the application for an opinion are the subject of ongoing tax proceedings, a tax audit, or a customs and fiscal audit, or if the matter has been resolved in a decision or ruling by a tax authority; or

(ii) Are already covered by an opinion that has not expired.

An opinion is valid for five years from the date of issue. An application for an opinion is subject to an initial fee and a main fee. The initial fee is 15,000 PLN. The main fee may not be less than 15,000 PLN and may not exceed 50,000 PLN. The content of the application, in particular, its degree of complexity, and the number of issues raised and activities presented, as well as the costs of preparing the draft opinion, is taken into account in determining the amount of the main fee. An opinion on top-up taxation is issued without delay, no later than eight months from the date of submission of the application.

The opinion provides protection to the taxpayer that obtained it, meaning that compliance with a valid opinion before its amendment or revocation, or before the delivery to the tax authority of a copy of a final court ruling annulling the opinion, cannot harm the interests of the taxpayer.

(11) Future Developments

The implementation of the global minimum tax is exceptionally complex. The regulation alone comprises over 150 pages. Additionally, an explanatory document detailing the solutions has been published that extends to over 320 pages. Throughout the legislative process, numerous changes and amendments have been introduced. Generally, the implementation mirrors the solutions presented in the Directive. Given the recent implementation of the rules, there is limited practical experience on their application. However, tax authorities and companies are preparing for the new compliance requirements, and it is expected that more detailed guidance and best practices will emerge as the regulations are put into practice.

n. Pillar One

The Polish authorities have been supportive of the Pillar One initiative, but the practical application of these provisions is still in its early stages. The Polish Ministry of Finance indicated in the third quarter of 2024 that it is not currently working on legislation implementing Pillar One Amount B. This suggests that despite a commitment to the goals of Pillar One, specific legislative measures are still to be developed.

4. Business Expenses

a. In General

Expenses incurred for purposes of generating income, or for purposes of preserving or protecting a source of income, are tax-deductible costs (expenses), except for certain expenses listed in the CIT Act.[107] A taxpayer may treat any expense as a tax deductible expense if it is able to document a direct connection between the cost and the business activity it carries on and if the incurring of the expense has or may have a direct influence on the amount of profit derived. Expenses indirectly connected to a business activity are also deductible.

As capital gains have been segregated from other sources of income since January 1, 2018, taxpayers are allowed to deduct a loss only from revenue derived from the same source. As a result, if a taxable person derives capital gains and incurs a loss with respect to other sources of income, CIT will be levied on the capital gains and will not be reduced by the loss incurred with respect to the other source and vice versa.

The amount of deductible expenses incurred in a foreign currency is converted into PLN according to the average exchange rate announced by the NBP on the last business day preceding the day on which the expenses were incurred.

Tax-deductible expenses directly connected to income that are incurred during the current tax year or in the preceding tax year may be set off against the corresponding income in the tax year in which the income is obtained, subject to certain exceptions. In addition, tax-deductible expenses directly connected to income may be set off in the tax year in which the corresponding income is obtained if they relate to income derived in a given tax year and are incurred after that tax year has ended, but prior to:

(i) The day on which the financial statements are drawn up in accordance with separate provisions, but no later than the deadline for filing the tax return, if the taxpayer concerned is required to draw up such financial statements; or

(ii) The day on which the tax return is filed, but no later than the deadline for filing the return, if the taxpayer concerned is not required to draw up financial statements under separate provisions.

Tax-deductible expenses other than those connected directly to income may be set off on the date on which they are

[105] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Art. 24.

[106] Act of November 6, 2024, on the minimum tax for constituent units of international and domestic groups, Art. 140.

[107] Corporate Income Tax Act, Art. 15.

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incurred. Expenses relating to a period that extends beyond the tax year, in cases where it cannot be ascertained which portion of the expenses relates to a given tax year, are tax deductible in proportion to the period to which they relate.

The date on which a tax-deductible expense is incurred is deemed to be the date on which the expense is recorded in the accounts based on an invoice received, or, where there is no invoice, the day on which the expense is recorded on some other basis, except in cases in which this would affect reserves recorded as costs or accruals and deferred income.

The timing of corrections to tax costs is regulated by law. In principle, if a correction results from a mistake or a calculation error, the corrected amount must be reflected in the original period (tax year) in which the tax cost was recognized. If the cause of a correction is other than a mistake or calculation error, including a post-transaction event, the corrected amount must be reflected in the current period (tax year).

Important limitations on the deductibility of intra-group service/license fees were introduced with effect from January 1, 2018 and remained in force until the end of 2021.[108] Beginning in 2022, these limitations were replaced by a limitation described below as a tax on profit shifting.

According to the limitations in force between 2018 and 2021, where the total amount of intangible asset costs exceeded PLN 3 million per annum, a 5% EBITDA limit was imposed on the tax-deductible expenses incurred directly or indirectly by affiliated entities in excess of PLN 3 million for the tax year with respect to:

(i) Consultancy services, market research, advertising services, management and control, data processing, insurance, guarantees and sureties, and similar services;

(ii) All kinds of fees and charges for the use or the right to use a copyright or related property rights, licenses, rights set out in the Industrial Property Law and value equivalent to knowledge-related information in the field of industry, commerce, science or organization (know-how); and

(iii) The transfer of the debtor's insolvency risk relating to loans other than those granted by banks and cooperative savings and credit unions, including liabilities resulting from derivative financial instruments and similar services.

The EBITDA referred to above was calculated as the difference between:

(i) Total revenues decreased by interest revenue; and

(ii) Tax deductible expenses decreased by tax deductible amortization costs and interest expenses.

The restriction did not apply to service costs, fees and charges included in tax-deductible costs directly related to the production of goods or the provision of services, or to re-invoiced costs. Nor did the limitation apply to costs incurred by a company forming a tax capital group for other companies in the group. Furthermore, service expenses, fees and charges were not excluded from tax-deductible costs if they did not exceed a threshold of PLN 3 million per annum. Thus, only taxpayers whose costs, as described above, incurred directly or indirectly for affiliated entities exceeded PLN 3 million in the fiscal year were denied a deduction for any cost surplus in excess of 5% of EBITDA. Excess costs that were not deducted in a given tax year as a result of the limitation could be carried forward for deduction in the following five tax years.

b. Certain Costs Incurred for the Benefit of a Related Party

As of 2022, companies that are tax resident in Poland may be subject to tax on the deemed shifting of profits among related entities.[109] For this purpose, profit shifting is deemed to occur if:

(i) Tax-deductible payments or costs incurred by a Polish taxpayer for the benefit of a related entity constitute at least 50% of the taxable revenue of the benefitting related entity;

(ii) Under the tax laws of the country of residence, management, registration or location of the related entity, the income (revenue) of the related entity derived from one of the deductible costs listed below, is subject to income tax at a rate lower than 14.25%;

(iii) The related entity transfers, in any form, at least 10% of its income to another entity; and

(iv) The sum of the costs incurred by the taxpayer in the tax year for the benefit of related parties and included in the tax year as deductible expenses of the taxpayer is at least 3% of the taxpayer's total deductible expenses for that year.

If these conditions are fulfilled, the deductible costs become subject to Polish tax at source at the rate of 19%.

The deductible costs to which the limitation applies include the following expenses:

(i) Costs incurred for the provision of services, such as, consulting, market research, advertising, management and control, data processing, insurance, guarantees and sureties, and other services of a similar nature;

(ii) Fees and charges for the use of, or the right to use, intellectual property (IP) rights;

(iii) Costs associated with debt-financing, in particular, interest, fees, commissions, bonuses, the interest portion of lease installments, late payment penalties and charges, as well as expenses for securing liabilities, including through the use of derivative financial instruments; and

(iv) Fees and remuneration related to the transfer of company functions, assets or risks.

However, the limitation does not apply to the extent the above costs were incurred for the benefit of a related entity that is subject to taxation on its entire income in a member state of the EU or EEA, provided that the entity is actually engaged in real economic activity in that state.

c. Organizational Expenses

Pursuant to the current practice of the Polish tax authorities (which is supported by verdicts of the administrative courts), only organizational expenses incurred in connection

[108] Corporate Income Tax Act, Art. 15e.

[109] Corporate Income Tax Act, Art. 24aa.

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with the establishment of a sp. z o.o. or an S.A. that are not directly connected with the establishment of the share capital of a company may be recognized as tax-deductible costs. Consequently, the tax authorities have denied the tax deductibility of notarial fees, transfer tax and court fees relating to the establishment of a company.

d. Travel, Advertising and Entertainment Expenses

Travel expenses are fully tax deductible for a legal person if the travel was related to the business activity carried on by that person and intended for purposes of generating income.

All advertising expenses (including advertising of medicinal products), whether public (i.e., advertising in the mass media, such as the press, radio and television) or nonpublic (i.e., advertising targeting a limited audience, such as announcements and billboards) are fully tax deductible.

As a rule, entertainment expenses, specifically catering expenses and the cost of food and beverages, including alcoholic beverages, are not deductible if they constitute "representation expenses". In practice, expenses such as standard business lunches, etc. may be tax deductible (a case-by-case analysis is recommended).[110]

e. Interest and Royalties

Interest is a tax deductible expense to the extent it is paid or capitalized.[111] Accrued but noncapitalized interest may not, however, be treated as a tax deductible expense.

The current rules on thin capitalization were introduced in Poland as of 2018 as a result of the implementation of the EU ATAD Directive. The restriction is applicable not only to related entities, as in the past, but also to non-related taxpayers.

The previous rules (described further below) continue to apply to loans granted before 2018.

The current limit on the amount of interest that can be deducted is calculated by reference to 30% of EBITDA (which constitutes a modified version of this accounting measure). The limitation applies to the excess of debt financing costs, i.e., the amount by which the costs of debt financing incurred by the taxpayer to be included in the tax deductible costs in the tax year exceed the taxable interest income in that tax year.

Pursuant to the Corporate Income Tax Act, a taxpayer must exclude its tax deductible expenses, the costs of debt financing to the extent of the excess over 30% of total revenues from all revenue sources (less interest income) over the total of tax deductible expenses (less depreciation charges recognized in the tax year under tax deductible expenses) and debt-financing costs. The excess of debt financing costs over the described limit is non-deductible.

The definition of debt financing costs covers all kinds of costs related to obtaining financial resources from other entities (including unrelated entities) and the use of such funds, in particular interest (including capitalized interest or interest included in the initial value of an asset), fees, commissions, bonuses, the interest portion of a leasing installment, late payment penalties and fees, and the costs of securing liabilities, including through the use of derivative financial instruments, regardless of the entity they were incurred for.

Interest income includes capitalized interest, as well as other income economically equivalent to interest.

However, until 2022, the general limitation on the deductibility of interest did not apply to the extent the excess of debt-financing costs over interest income did not exceed a threshold of PLN 3 million. As of 2022, the governing regulations were amended so that the respective 30% of EBITDA and PLN 3 million limits, below which the restriction on deductibility does not apply, are not to be applied in aggregate. According to the official justification for the amended rules, the taxpayer will be allowed to choose which limit to apply. As such, it should be possible to benefit from whichever threshold is higher. However, at the moment of writing, the practice of the tax authorities in applying the amended rules remains unclear pending further administrative guidance.

Costs that are not deducted in the current tax year may be carried forward to the next five consecutive tax years, subject to the general rules described above.

The limitation on the deductibility of interest does not apply to financial enterprises, including the following:

(i) Banks;

(ii) Credit unions/institutions;

(iii) Domestic or foreign insurance/reinsurance companies; and

(iv) Open-ended investment funds and alternative investment funds operating under the Investment Fund Act.

Example:
Financial data of the taxpayer for FY 2019:

- Revenue from all revenue sources [r]: PLN 8,000,000
- Interest income [ii]: PLN 200,000
- Tax deductible costs [tdc]: PLN 6,200,000
- Depreciation charges for the tax year [dc]: PLN 100,000
- Debt-financing costs [dfc]: PLN 6,000,000

Thin capitalization limit: [r−ii−(tdc−dc−dfc)]×30% = PLN 2,310,000
Excess of debt-financing costs: PLN 6,000,000 − PLN 3,000,000 (the above-mentioned threshold) − PLN 200,000 = PLN 2,800,000
Amount of non-deductible costs: PLN 2,800,000 − PLN 2,310,000 = PLN 490,000

The previous regulations, which had been in force since January 1, 2015, continue to apply provided the loan amount granted thereunder was actually transferred to the taxpayer before January 1, 2018.

Thin capitalization restrictions applied to interest on loans granted to a company by one or more entities holding (directly or indirectly) at least 25% of the shares in a company contracting the loan if the amount of the company's debt owed to entities holding (directly or indirectly) at least 25% of its shares, including loan debt, exceeded, in aggregate, the amount of the

[110] Corporate Income Tax Act, Art. 16, Para. 1, Point 28.
[111] Corporate Income Tax Act, Art. 16, Para. 1, Point 10.

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company's own capital. Thin capitalization restrictions also applied to interest accrued on loans granted to a taxpayer by another company, if the same entity held (directly or indirectly) at least 25% of the shares in both companies.

The following example illustrates the application of these rules:

(i) A loan is granted by a shareholder holding more than 25% of the shares in the company to which the loan is granted.

(ii) The value of the share capital of the company is PLN 80,000. Additionally, the company also has a supplementary capital amounting to PLN 30,000.

(iii) The shareholder grants a loan of PLN 300,000 to the company.

(iv) Interest on the loan amounts to PLN 60,000.

To calculate the portion of the interest that will be a non-deductible expense, the value of the loan exceeding the company's own capital as a proportion to the whole amount of the loan must be established. The loan interest will be treated as a non-deductible expense in the same proportion, i.e.:

180,000:300,000 = 0.6

60,000 × 0.60 = 36,000

Of the interest of PLN 60,000 paid by the company, PLN 24,000 will be a tax-deductible expense and the remaining PLN 36,000 will not be tax deductible. For reference, in the same example, previously applicable thin capitalization rules resulted in PLN 48,000 being tax deductible and PLN 12,000 constituting non-deductible interest.

Licenses, proprietary rights, rights under trademarks or patents and know-how are treated as intangible assets subject to depreciation, provided it is possible to establish their initial value, that value exceeds PLN 10,000 and the intended period of use of the intangible assets exceeds 12 months. Accordingly, royalties paid, for instance, for software licenses are often not directly deductible as expenses, but are deductible by way of depreciation write-offs on a case-by-case basis. The depreciation period depends on the type of intangible asset (for example, two years in the case of a software license).

Moreover, some specific costs of debt financing are excluded from tax deductible costs, irrespective of thin capitalization. As an example, debt financing costs incurred on financing received from a related entity where such financing was used for capital transactions (in particular, for the acquisition of shares, acquisition of a partnership, additional contributions or the increase of the share capital or the redemption of own shares) are not tax deductible. Exceptionally, such costs are deductible in the following cases:

(i) Financing used for the acquisition/acquisition of shares or total rights and obligations in unrelated entities (within the meaning of the transfer pricing regulations); or

(ii) Financing provided by a bank or SKOK, established in the EU or EEA.[112]

[112] Corporate Income Tax Act, Art. 16 Para 1, point 13f.

However, even where the costs are considered to be deductible under these exceptions, the general limitation on the deductibility of interest (thin capitalization) applies.

Debt financing expenses may also be non-deductible where the debt financing is obtained to acquire shares in a company. A deduction is denied for such expenses to the extent the expenses would otherwise reduce the base for computing the taxable income derived from the continuation of the economic activity of the company whose shares are acquired (this will apply in particular in the context of a merger, a non-cash contribution, a transformation of legal form or the establishment of a tax capital group).[113]

f. Charitable and Other Donations

Under the Corporate Income Tax Act, charitable and other donations are not treated as tax-deductible expenses (with the exception of food donated to charity). However, such donations can be deducted from income subject to certain limits. The deductible amount depends on the type of donation and the level of income derived in the tax year concerned, as follows:[114]

(i) Donations to organizations that act in the public interest, as provided under the Public Benefit Activities Act,[115] are deductible from income, up to a maximum of 10% of the income. Donations to equivalent organizations acting in the public interest, as provided for under binding provisions regulating public benefit activities in other EU Member States or in EEA countries, are also deductible from income up to the limit referred to above.

(ii) Donations to religious organizations are fully deductible from income, up to a limit of 10% of the income.

At the same time, the total deductions for all donations may not exceed 10% of the income derived in the tax year concerned.

Additionally, a taxpayer that deducts the amount of a donation from its income is obliged to provide the competent tax authorities with the following information concerning the donation, whether the donation is made to a Polish, an EU or an EEA organization that acts in the public interest or to a religious organization:

(i) The amount of the donation;

(ii) The amount of the deduction; and

(iii) The name, address and tax identification number of the donee, i.e., the Polish TIN in the case of a Polish donee or the TIN issued in the EU/EEA in the case of a donee resident in an EU/EEA Member State.

These details must be submitted along with the annual tax return (form CIT-8).

g. Rent

Expenses incurred in relation to the renting of office space, buildings or structures in which an entity carries on its business activities, as well as expenses incurred in relation to the renting

[113] Corporate Income Tax Act, Art. 16 Para 1, point 13e.

[114] Corporate Income Tax Act, Art. 18.

[115] Public Benefit Activities Act of April 24, 2003 (consolidated text), Journal of Laws 2020 Item 1057.

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of tangible assets, are tax deductible expenses. Special rules apply to the determination of tax deductible expenses in the case of leasing:

(i) Where the lease agreement meets the following requirements (i.e., it is an operating lease):

- The agreement is entered into for a specific term that corresponds to at least 40% of the prescribed depreciation period (the prescribed depreciation period being the period during which the aggregate value of depreciation write-offs taken using the rates provided for by the applicable law reaches the initial value of the depreciated fixed asset) where the subject matter of the agreement is any movable or intangible property permitted to be depreciated, or the agreement lasts at least five years if it concerns real property permitted to be depreciated; and
- The aggregate fees under the agreement, without taking into account any VAT due thereunder, correspond to at least: the initial value of the fixed asset or intangible concerned; or, where the lessor concludes another lease agreement with respect to the fixed asset or intangible, the market value of the asset as of the day of conclusion of that other lease agreement,

the tax consequences will be as follows: for the lessor, the income will be the fees (rent) paid by the lessee, and the cost will be the depreciation of the initial value of the leased item; and for the lessee the tax-deductible cost will be the fees (rent) paid to the lessor.[116]

(ii) Where the lease agreement meets the following requirements (i.e., it is a finance lease):

- The agreement has been entered into for a specific term;
- The aggregate fees under the agreement, less any VAT due thereunder, correspond to at least: the initial value of the leased fixed asset or intangible; or, where the lessor concludes another lease agreement with respect to the fixed asset or intangible, the market value of the asset on the day of conclusion of that other lease agreement; and
- The agreement contains a provision to the effect that the lessee is to take depreciation write-offs within the basic term of the lease agreement,

the tax consequences will be as follows: for the lessor, the income will be the installments of interest (installments of principal constituting repayment of the value of the subject of the agreement are not treated as income of the lessor); however, in the case of another lease agreement, the income will be the installments of principal to the extent they exceed (given all the previous lease agreements concluded for the same asset) repayment of the initial value of the fixed asset or intangible; and for the lessee, the tax-deductible cost will be the installments of interest (installments of principal constituting repayment of the value of the subject of the agreement are not treated as a tax-deductible cost of the lessee) and depreciation write-offs taken on the initial value of the leased item.[117]

The Polish tax rules governing lease agreements contain several detailed provisions concerning the tax consequences for the parties to such an agreement following its expiration or termination, which may occur as a result of:

(i) An extension of the lease agreement;

(ii) The sale of the leased item by the lessor to the lessee; or

(iii) The sale of the leased item by the lessor to a third party.

h. Repairs and Maintenance

Expenses incurred by an entity to maintain tangible assets in an appropriate condition to enable their use for business purposes are directly classified as tax deductible expenses. Outlays incurred on the repair of tangible assets are also directly classified as tax deductible. Outlays incurred on the improvement of a tangible asset (for example, by way of modernization, development or reconstruction) increase the gross value of the asset, based on which depreciation write-offs are calculated, if the total amount of the expenditure incurred to modernize, develop or reconstruct the tangible asset in a given tax year exceeds PLN 10,000. Outlays on such improvements are, therefore, included in tax deductible expenses indirectly by way of depreciation write-offs.

i. Casualty Losses

The general rule under the Corporate Income Tax Act is that tax deductible costs are expenses incurred for purposes of obtaining revenue, subject to certain exceptions contained in a "negative list". Losses with respect to fixed assets caused by *force majeure* (damage caused by natural forces, burglaries, etc.) are tax-deductible expenses to the extent they are not covered by depreciation write-offs. A loss of goods as a result of irrational actions of the taxpayer or resulting from failure by the taxpayer to exercise due diligence (for example, bad organization of the receipt and release of goods, lack of control and supervision over retail outlets, etc.) cannot be recognized as tax deductible. A loss of goods due to theft is deemed tax deductible if:

(i) It occurred despite the taxpayer having acted with due diligence to avoid such an occurrence; and

(ii) It was appropriately documented (i.e., in a police report).

The "negative list" contains over 70 cases of costs that may not be treated as tax deductible, such as:

(i) Debts written off as being barred by limitations;

(ii) Contractual penalties and indemnities for defects in goods supplied or services performed;

(iii) Debts written off as uncollectible (subject to exceptions); and

[116] Corporate Income Tax Act, Art. 17b, Para. 1.

[117] Corporate Income Tax Act, Art. 17f.

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(iv) Reserves other than those expressly listed as tax deductible under the tax law.

The negative list contains only one case in which a lack of insurance results in non-deductible losses incurred due to theft. Specifically, losses resulting from the loss or liquidation of an automobile or accident repairs may be treated as tax deductible only if the automobile was covered by voluntary (*casco*) insurance. The allowable deduction will depend on the amount that was depreciated on the initial value of the automobile. Thus, where the automobile was covered by voluntary insurance, the losses resulting from its loss or liquidation will be tax-deductible to the extent they have not been covered by depreciation. Thus, a lack of insurance cover for stolen goods does not result in a loss of entitlement to recognize incurred losses as tax-deductible costs, except in the case of uninsured automobiles.

j. Depreciation and Amortization

(1) In General

Only depreciation write-offs calculated in accordance with tax depreciation principles can be included in tax deductible expenses. Depreciation write-offs calculated based on the Accounting Act are not deductible. Tax depreciation write-offs can be taken with respect to both tangible and intangible assets.

Tangible assets eligible for depreciation include the following items, provided they are the property or joint property of the taxpayer, were purchased or produced by the taxpayer, and are complete and ready for use on the date they are put into use:[118]

(i) Buildings and structures, and premises constituting separate property;

(ii) Machinery, equipment and vehicles; and

(iii) Other items with an expected life span of more than one year used by the taxpayer for purposes related to its business activities, or transferred for use based on a lease for rent or other similar agreement.

Items with a gross value of PLN 10,000 or less do not have to be classified as tangible assets (see (2), below).[119]

As of January 1, 2022, the legislator has taken away both personal income tax (PIT) payers' and CIT payers' right to depreciate residential real estate. The depreciation ban stems from amended Article 22c(2) of the Income Tax Act and added Article 16c(2) of the CIT Act. At the same time, a transitional provision was introduced that allowed PIT payers and CIT payers no longer than until December 31, 2022, to recognize as deductible expenses depreciation write-offs with respect to tangible and intangible assets that are, respectively, residential buildings, residential premises constituting a separate property, a cooperative ownership right to a residential unit or a right to a single-family house in a housing cooperative, acquired or created before January 1, 2022. Thus, only until the end of 2022 could taxpayers apply the provisions on the depreciation of tangible and intangible assets in effect as of December 31, 2021 to buildings and dwellings acquired or manufactured before January 1, 2022. This means that this right did not apply to listed tangible and intangible assets that were acquired or manufactured after December 31, 2021.

Intangible assets eligible for depreciation include purchased property rights ready for business use at the moment they are put into use (for example, copyright, licenses and know-how) with an expected life of more than one year of being used by the taxpayer for purposes related to its business activities.[120]

Under the new regulations, as of January 1, 2022, real estate companies (that fulfill the conditions in Article 4a(35) of the CIT Act and Article 5a(49) of the Income Tax Act Act) have lost the ability to depreciate real estate for tax purposes if it is not depreciated for balance sheet purposes.

Under Article 15(6) of the CIT Act and Article 22(8) of the Income Tax Act, depreciation write-offs taken by these companies with respect to fixed assets included in Group 1 of the Polish Classification of Fixed Assets (*Klasyfikacja Środków Trwałych*) (among others, buildings, premises, cooperative right to commercial premises) may not be higher in a tax year than depreciation or amortization write-offs for the wear and tear on fixed assets, determined in accordance with accounting regulations, charged in that tax year in arriving at the entity's financial results.

(2) Basis and Methods of Depreciation

Depreciation write-offs are calculated on the gross value of a tangible or an intangible asset if the value on the date on which the asset is put into use is greater than PLN 10,000. Taxpayers may calculate depreciation write-offs on a monthly, quarterly or annual basis.

Taxpayers may calculate monthly depreciation write-offs with respect to an asset with a gross value of PLN 10,000 or less until the value of the depreciation write-offs equals the gross value of the asset, or deduct the gross value of the asset as an expense in the month in which it is put into use.[121]

Depreciation write-offs may not be taken on the following assets:[122]

(i) Land and perpetual rights of usufruct with respect to land;

(ii) Residential buildings;

(iii) Works of art and museum exhibits;

(iv) Goodwill of a company, subject to certain exceptions; and

(v) Assets which are not used as a result of suspension or discontinuation of business activity.

The gross value of tangible and intangible assets is equal to, among others:[123]

(i) Purchase price, if the assets are purchased (in cases where a taxpayer pays only a portion of the consideration for tangible or intangible assets, the gross value is the price

[118] Corporate Income Tax Act, Art. 16a.
[119] Corporate Income Tax Act, Art. 16d.
[120] Corporate Income Tax Act, Art. 16b, Para. 1.
[121] Corporate Income Tax Act, Art. 16d, Para. 1.
[122] Corporate Income Tax Act, Art. 16c.
[123] Corporate Income Tax Act, Art. 16g, Para. 1.

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paid for the assets as increased by the difference between the market value of those assets and the price paid);

(ii) Cost of production, if the assets are produced by the taxpayer;

(iii) Market value on the date of receipt, if the assets were received as a result of a donation or a transfer for use free of charge, unless a contract of donation or free transfer determines a lower value;

(iv) The value of the individual tangible and intangible assets as determined by the taxpayer on the date of the making of the contribution in kind, if the assets are acquired by way of a contribution in kind (other than a contribution in kind consisting of a whole enterprise or an organized part thereof); however, this value may not be higher than the market value of the assets concerned;

(v) The historical initial value of assets booked in the registers of a natural person's enterprise, if the assets are acquired as a result of the transformation of an entrepreneur who is a natural person into a sole-shareholder sp. z o.o.; or

(vi) The value of the individual fixed assets and intangible and legal assets given by the taxpayer, if the assets are received as a result of the liquidation of a legal person or a limited joint-stock partnership, except as provided in Section 10b of the CIT Act; however, this value may not be higher than the market value of the assets.

The gross value of the goodwill of a company is equal to the surplus of the purchase price of the business as a going concern over the market value of the tangible and intangible assets purchased.[124]

The gross value of tangible assets is increased by total outlays for any improvements to the assets (rebuilding, development, reconstruction, adaptation or modernization), including outlays for the purchase of components with a unit purchase price in excess of PLN 10,000.[125]

The gross value of property rights, including licenses and copyrights, is equal to their purchase price. To the extent remuneration (the fee) arising from a license agreement or an agreement for the transfer of other property rights depends on the level of revenue from the license or rights obtained by a licensee or buyer, and was classified as a tax deductible cost, the remuneration is not taken into account in determining the gross value of the property rights, including the license.

Depreciation write-offs are calculated on the gross value of individual tangible or intangible assets in equal amounts on a monthly, quarterly or annual basis, commencing with the first day of the month following the month in which the asset was first put into use and continuing until the end of the month in which the total value of depreciation write-offs equals the gross value of the asset, or in which the asset is sold or otherwise disposed of.[126]

Depreciation write-offs with respect to tangible or intangible assets that are used on a seasonal basis are calculated solely for periods when the assets are used. In this case, the amount of the monthly write-off is calculated by dividing the annual amount of the depreciation write-offs by the number of months of use.[127]

Entities created as a result of a transformation, split (subject to some exceptions) or a merger, and entities that have taken over all or part of another entity as a result of such a reorganization must take depreciation write-offs taking into account the current level of deductions and continuing to apply the method of depreciation adopted by the transformed, split or merged entity (continuation of write-offs).[128]

The above rule (continuation of write-offs) also applies:

(i) In the case of the acquisition of an enterprise or an organized part of an enterprise by way of an in-kind contribution, if the assets making up the in-kind contribution have been entered into the register of fixed assets and intangible assets of the entity making the contribution;[129] or

(ii) When the fixed assets and intangible assets are obtained as a result of the liquidation of a legal person or a limited joint-stock partnership, and those assets had previously been contributed to that entity as an in-kind contribution in the form of an enterprise or an organized part of an enterprise.[130]

(3) Depreciation Rates

Depreciation write-offs on tangible assets are calculated using depreciation rates set out in an appendix to the Corporate Income Tax Act.

The life span of an intangible asset cannot be shorter than:

(i) 24 months — in the case of a copyright;

(ii) 24 months — in the case of a license for the screening of a motion picture or the broadcasting of a radio or a television program;

(iii) 12 months — in the case of the cost of completed research and development (R&D) work; or

(iv) 60 months — in the case of other intangible assets.[131]

Taxpayers must determine amortization rates for individual intangible assets for the whole depreciation period before beginning to take the write-offs.

(4) Accelerated Depreciation

A taxpayer may take accelerated depreciation with respect to certain tangible assets used in substandard conditions or subject to extremely intensive use. Accelerated depreciation may also be taken where a used tangible asset is purchased (tangible assets are classified as used if, prior to their purchase by the taxpayer, they were used for a period of not less than six months and, in the case of buildings, not less than 60 months).

Taxpayers commencing business activities and taxpayers that qualify as small taxpayers may take one-time depreciation write-offs with respect to tangible assets falling within groups

[124] Corporate Income Tax Act, Art. 16g, Para. 2.
[125] Corporate Income Tax Act, Art. 16g, Para. 13.
[126] Corporate Income Tax Act, Art. 16h, Para. 1, Point 1.
[127] Corporate Income Tax Act, Art. 16h, Para. 1, Point 3.
[128] Corporate Income Tax Act, Art. 16h, Para. 3.
[129] Corporate Income Tax Act, Art. 16h, Para. 3a.
[130] Corporate Income Tax Act, Art. 16h, Para. 3b.
[131] Corporate Income Tax Act, Art. 16m, Para. 1.

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3–8 of the classification of tangible assets, which cover numerous items (including, for example, boilers and power engineering machines, furnaces, machines and equipment, tools, mobile telephones, tractors and trailers and office machines) subject to some exceptions (for example, automobiles).

A one-time depreciation write-off may be taken up to an amount not exceeding in the tax year an equivalent of 50,000 euros in aggregate. This rule does not apply to a taxpayer commencing business activities that has been created by way of transformation, merger or split of taxpayers or the transformation of a partnership or created by individuals who made a contribution in kind to the taxpayer in the form of an enterprise or assets of an enterprise with an aggregate value in excess of 10,000 euros.

Taxpayers may also take one-time depreciation write-offs with respect to newly-acquired, brand-new fixed assets classified in groups 3–6 and 8 of the classification of tangible assets (including, for example, power engineering machines, machines, mobile telephones and technical equipment; means of transport are excluded entirely in contrast to the one-time depreciation write-offs that may be taken by small taxpayers with respect to means of transport).

The one-time depreciation write-off may be taken up to an amount not exceeding PLN 100, 000 in the tax year. This rule applies if the initial value of one fixed asset is at least PLN 10,000 or the total initial value of at least two fixed assets is at least PLN 10,000 and the initial value of each fixed asset exceeds PLN 3,500. A fixed asset may only be depreciated once, based on one of the above one-time depreciation write-offs chosen by the taxpayer.

However, as of 2021, it is no longer possible to reduce or increase depreciation rates:

(i) During the period when a taxpayer benefits from a CIT exemption; or

(ii) In relation to fixed assets used in activities the income from which is tax exempt.

As of January 1, 2024, special rules for determining the individual depreciation rate apply to micro, small and medium-sized entrepreneurs in relation to self-produced fixed assets (non-residential buildings and structures only), entered into the register of fixed assets for the first time, and located in areas with a high unemployment rate and low per capita income.[132], [133]

k. Shares

The cost of purchasing shares for cash is not a tax deductible expense when it is incurred. However, the cost will be a tax deductible expense in calculating the amount of income derived from the sale of the shares.

Until December 31, 2016, the nominal value of new shares issued by a company to a shareholder in exchange for a non-cash contribution (other than an enterprise or a separate part thereof) constituted income in the hands of the shareholder making the contribution. As of January 1, 2017, this income consists of the value of the contribution in kind (other than an enterprise or a separate part thereof). However, if the declared value is below the market value of the noncash contribution, the latter value will constitute income in the hands of the shareholder instead. The following deductible costs will reduce this income:

(i) The initial value of fixed assets or intangible assets contributed minus depreciation write-offs taken before the contribution date; and

(ii) The value of a contribution in kind of another company contributed (where the object of the contribution is shares acquired by way of a contribution in kind).

Example:

(i) Company B acquired a fixed asset for PLN 4,000 in 2012;

(ii) The fixed asset was contributed by company B to company A in 2017;

(iii) The value of the contribution in kind is PLN 1,000 as is the market value of the contribution as of the day of the transfer; and

(iv) Until the date the in-kind contribution comprising the asset was made, depreciation write-offs of PLN 3,200 had been calculated and taken as tax deductible expenses.

The income of company B as a result of receiving the shares from company A will be equal to the value of the contribution in kind minus the net value of the fixed asset contributed, i.e., PLN 1,000 − (PLN 4,000 − PLN 3,200) = PLN 200.

The sale of shares received in exchange for an in-kind contribution is a taxable event:

(i) If the contribution is not in the form of an enterprise or a separate part of an enterprise, the taxable income will be the amount received, reduced by the value of the in-kind contribution on the day the shares were issued; and

(ii) If the contribution is in the form of an enterprise (or a separate part of an enterprise), the taxable income will be the amount received from the sale of shares as reduced by the value of the enterprise (or separate part of an enterprise), in accordance with the accounting books maintained by that enterprise as of the date of the acquisition of the shares, but may not exceed the value of the contribution on the date of the transfer.

l. Bad Debts

(1) Prior Rules

Until January 1, 2020, debts due (for example, for goods sold or services provided) but regarded as uncollectible could not be classified as tax-deductible expenses.

There were four exceptions to this rule for:

(i) Debts previously classified as receivables and appropriately documented as being uncollectible (for example, under a court or bailiff decision);

[132] Personal Income Tax Act, Art. 22j.7–13.
[133] Corporate Income Tax Act, Art. 16j.7–13.

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(ii) Receivables resulting from lost credits (loans) granted by banks, reduced by the value of unpaid interest and the equivalent of reserves for these credits (loans) recognized previously as tax-deductible costs;

(iii) Purchased mortgage bank receivables payable and unrecoverable, less the amount of interest, fees and commissions, and the equivalent of provisions or loan loss write-offs related to claims of the mortgage bank, previously recognized as tax-deductible costs; and

(iv) Losses incurred by a bank with respect to guarantees or sureties for the repayment of loans and advances granted after January 1, 1997.[134]

Example: A bank granted a loan in the amount of PLN 10,000 on February 1, 2009. Interest on this loan was due and payable in the amount of PLN 2,000 for each year. The loan was granted for a period of three years. The bank received interest in the total amount of PLN 6,000. However, as of February 1, 2014, the loan had not been repaid. On February 1, 2014, the bank created a reserve in the amount of PLN 8,000 for this loan. This reserve constitutes a tax deductible cost. Receivables resulting from this loan (PLN 10,000), reduced by the reserve for this loan, which was recognized previously as a tax deductible cost (PLN 8,000), are treated as tax deductible costs. Therefore, the amount of PLN 2,000 is a tax deductible cost.

(2) Current Rules

As of 2020, creditors are allowed to reduce their tax base by the amount of bad debts, defined as claims that have been included in receivables but that are not settled within 90 days from the date of expiry of the payment deadline specified in the relevant invoice or contract. On the other hand, debtors are obliged to increase their tax base by the amount of an unpaid liability (that is included in tax-deductible costs).

If, after the tax base has been adjusted to account for a bad debt, the amount receivable is settled (or disposed of), the creditor must increase its tax base for the period in which settlement occurred.

Relief for bad debts may be granted with respect to a commercial transaction the deadline for paying which expires after December 31, 2019. The bad debts regulations do not apply to liabilities/receivables between related parties.

As of January 1, 2023, taxpayers no longer have to disclose their liabilities or receivables related to bad debts in their tax returns.[135]

m. Reserves

In general, transfers to reserves are not tax-deductible expenses. The only transfer to a reserve that is recognized as a tax-deductible expense is where a taxpayer classifies an amount arising from a sales invoice as income and subsequently creates a reserve for the corresponding receivable, and the amount is subsequently proven to be uncollectible.[136] The CIT Act clearly defines the principles regarding proof of the uncollectibility of receivables. That a receivable is uncollectible is proven in any of the following cases:

(i) Where a debtor has died, has been removed from the commercial register or is the subject of liquidation proceedings or where a debtor's bankruptcy has been announced;

(ii) Where, on a motion of the debtor, conciliatory or composition agreement proceedings have been instituted;

(iii) Where a debt was confirmed by a valid court decision and relevant execution proceedings have been commenced; or

(iv) Where the debt was disputed by the debtor through the institution of court proceedings.

n. Salaries and Wages

The cost of salaries and wages paid to employees, as well as the cost of the remuneration of members of the management board or supervisory bodies for the fulfillment of their functions, is regarded as a tax deductible expense.

o. Research and Development

Taxpayers may deduct from the tax base certain qualified research and development (R&D) expenses. This relief replaced the deduction of expenses incurred to acquire new technology.

Eligible R&D expenses are:

(i) Payroll expenses concerning employees (as well as individual contractors) employed for and engaged in R&D activity in proportion to the time spent by the employee on R&D related activities (as of January 1, 2018 — up to 100%);

(ii) Acquisition costs of materials for the R&D activity (as of January 1, 2018 — up to 100%);

(iii) Expenses incurred on expertise, opinions, advisory services, etc. for the R&D activity rendered by certain scientific units (as of January 1, 2018 — up to 100%);

(iv) Expenses for use of research equipment for the R&D activity, excluding agreements between related entities (as of January 1, 2018 — up to 100%);

(v) Depreciation write-offs on fixed assets and intangible assets used in the R&D activity, with certain exceptions (as of January 1, 2018 — up to 100%); and

(vi) Certain expenses related to obtaining and keeping a patent, design patent or right in registration of a utility model (as of January 1, 2018 — up to 100%).

The relief may be carried forward for six years instead of three. Moreover, a taxpayer who in its first year incurred a tax loss, or derived income in an amount lower than the amount of the relief, is entitled to a refund of the portion of unused relief multiplied by the applicable tax rate. For micro, small and medium-sized entrepreneurs, the refund may also apply in the second tax year.

[134] Corporate Income Tax Act, Art. 16, Item 1, Point 25.

[135] Previously, taxpayers who decided to take advantage of bad debt relief had to attach an appropriate annex to their tax returns.

[136] Corporate Income Tax Act, Art. 16, Item 1, Point 26.

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Excluded from the refund mechanism are entities that were created through transformation, merger, split or transformation of an individual business activity, or that received a contribution in kind in the form of an enterprise or organized part thereof, assets in the amount of at least 10,000 euros, or assets received earlier as a result of a liquidation of an entity that the contributing party had shares in. The refund must be returned if the taxpayer is declared insolvent or put into liquidation within three tax years from the end of the tax year for which the refund was granted.

p. Robotics/Automation, Prototype Development and Business Expansion

Companies that invest in industrial robotics can take an additional deduction equal to 50% of the eligible costs incurred in a tax year for integrating such technology into their operations.[137] The amount of the deduction is limited to the amount of income (other than from capital gains) that is earned by the taxpayer in the same year.

Deductible costs incurred for investments in industrial robotics consist of the following:

(i) The costs of acquiring new industrial robots, machines and equipment and other items similar to industrial robots and functionally related to them that serve to ensure ergonomics and occupational safety with respect to jobs requiring interaction between a human and an industrial robot;[138]

(ii) The costs of acquiring intangible assets that are necessary for the launch and operation of industrial robots and other fixed assets referred to above;

(iii) The costs of training services related to the operation of industrial robots and other tangible or intangible assets referred to above; and

(iv) Fees set forth in finance lease agreements in relation to industrial robots and other fixed assets.

The relief for robotization is available for covered costs incurred over a period of five years from 2021 to 2025. However, eligible expenses can be carried forward and written off over six years, i.e., until 2031.

In addition, taxpayers that, as a result of their R&D activities, create a prototype of a new product and subsequently commercialize the model may also deduct 30% of the costs incurred on the production of the product and its introduction into the marketplace. The amount of the deduction cannot exceed 10% of the income derived by the taxpayer from business activities in the corresponding tax year.[139]

Furthermore, expenses associated with business expansion activities are also eligible for taxpayer relief.[140] The expansion allowance provides an additional deduction from the tax base for costs that a taxpayer has incurred to expand its markets. These are deductible expenses incurred to increase revenue from a boost in product sales, provided the taxpayer can show an increase in revenues over two years. The maximum deduction in a given tax year is PLN 1 million. Eligible costs are those incurred on participation in exhibitions, promotional/informational activities, the adaptation of product packaging, and the preparation of sales documentation and documentation required for project tenders.

q. Health Care Expenses

Health care expenses ("medical packages") incurred by taxpayers for the benefit of their employees are fully tax-deductible provided that they meet the general tax deductibility requirement (i.e., they are incurred to generate taxable revenue or to secure/preserve the taxpayer's sources of taxable revenue).

If an employer-provided medical package exceeds the scope of health care that an employer is required to provide under employment law, the tax authorities deem the value of the excess to constitute employment income "from other sources" in the hands of the employee concerned. See IX.C.1.a.(iv), below.

r. Notional Interest Deduction

The hypothetical costs of obtaining external funds where a company receives funding in the form of additional payments to equity or by using retained earnings or profits may be deducted from the taxable base as of 2019 and 2020, respectively. Capital financing costs may not exceed PLN 250,000 in the tax year.

As of 2021, an anti-avoidance clause is in force preventing taxpayers that act without justified economic reasons from recognizing the amount of notional interest as a deductible cost.[141]

s. Non-Deductible Expenses

In addition to imposing limitations on the inclusion of certain expenditures as tax-deductible expenses, the CIT Act provides that the certain other items cannot be treated as tax deductible expenses, i.e., the negative list referred to in i., above. These include, among others, the following:

(i) Expenses related to the acquisition of land or a perpetual usufruct right, except for perpetual usufruct fees;

(ii) Losses with respect to current, tangible and intangible assets to the extent covered by depreciation write-offs;[142]

(iii) Losses caused by the liquidation of fixed assets not depreciated in full, if those assets are no longer useful commercially due to a change in the type of activities conducted;

(iv) Deductions and payments to various kinds of funds created by the taxpayer (subject to certain exceptions);

(v) Interest on liabilities that is imposed, but unpaid or written off, including interest on loans (credits);

[137] Corporate Income Tax Act, Art. 38eb.

[138] This refers, in particular, to sensors, controllers, relays, safety locks, physical barriers (fences, guards) or optoelectronic protective devices (light curtains, area scanners), machines, equipment or systems for remote management, diagnosis, monitoring or servicing of industrial robots, especially sensors and cameras, human-machine interaction devices for industrial robots.

[139] Corporate Income Tax Act, Art. 18ea.

[140] Corporate Income Tax Act, Art. 18eb.

[141] Corporate Income Tax Act, Art. 15cb, Item 10.

[142] Corporate Income Tax Act, Art. 16, Item 1, Point 5.

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(vi) Interest, commissions and differences in exchange rates on loans (credit) increasing the costs of investment in the period of realization of the investment;

(vii) Interest on equity contributed by the taxpayer at the revenue source;

(viii) Interest on additional payments to the taxpayer in a manner in accordance with the rules provided for in separate regulations, interest on dividends and other revenues gained through participation in the profits of legal persons as well as interest on the capital share of partners in partnerships and limited joint-stock partnerships;

(ix) Donations and contributions of all kinds (other than food donated to charities), except for donations made within a tax group (see 1., above) and payments to the Polish Tourism Organization;[143]

(x) Penalties and fines arising from penal, tax and administrative proceedings and cases prosecuted as petty offences, interest on such penalties and fines and premiums for participating in non-voluntary organizations paid by the taxpayer;[144]

(xi) Payments to members of the supervisory boards, audit commissions or decision-making bodies of legal persons or limited joint-stock partnerships, except for remuneration paid to such persons for the performance of their functions;[145]

(xii) Receivables written off due to expiration of the statute of limitations;

(xiii) Contractual penalties and indemnities for defects in goods supplied, or work and services performed, and delays in supplying goods free of defects or delays in the elimination of defects in goods supplied or work and services performed; and

(xiv) Costs incurred by employees with respect to the use of motor vehicles for purposes of the taxpayer:

- In the case of business trips (out of town journeys), the amount exceeding the amount specified when applying rates per kilometer traveled by the vehicle; or
- In the case of local journeys, the amount exceeding the monthly lump sum payment or exceeding the rates per kilometer traveled by the vehicle, as defined in separate regulations;

(xv) Contributions to organizations in which the membership of the taxpayer is not compulsory (subject to certain exceptions);

(xvi) Expenses connected with making unilateral payments to shareholders who are not employees within the meaning of separate regulations; and

(xvii) Remitted debts unless such debts have previously been appropriated as revenues due.

[143] Corporate Income Tax Act, Art. 16, Item 1, Point 14.
[144] Corporate Income Tax Act, Art. 16, Item 1, Point 18.
[145] Corporate Income Tax Act, Art. 16, Item 1, Point 38a.

5. Capital Expenditure

Expenditure on the purchase or construction of a fixed asset of more than PLN 10,000 may not be treated as a tax-deductible expense. Such expenditure is tax deductible by way of a depreciation write-off.

6. Loss Carryovers and Carrybacks

A taxpayer incurs a loss if, in a particular year, its tax deductible costs/expenses exceed the amount of its gross income derived in that year. Losses may be carried forward and offset against income derived in the subsequent five years. However, the offset in any one year cannot be greater than 50% of the loss. As of January 1, 2018, taxpayers are only allowed to deduct a loss from revenue earned from the same source (i.e., a capital loss may be offset only against capital gains and other losses may be offset only against income from other sources).

Example: In 2020, a company incurs a loss of PLN 5 million and in each of the following five tax years the company derives income of PLN 3 million.

Income of the tax years 2021 to 2025 can be reduced by the amount of the loss in 2020 in the following ways:

(i) Proportionally over the following five years:

Year	Deduction
2021	1 million
2022	1 million
2023	1 million
2024	1 million
2025	1 million

(ii) In two of the following five years:

Year	Deduction
2021	2.5 million
2022	—
2023	—
2024	2.5 million
2025	—

Note: It does not matter in which years the deduction is taken (for example, 2.5 million could be taken in 2021 and 2.5 million in 2022).

(iii) In different amounts in each of the following five years:

Year	Deduction
2021	200,000
2022	300,000
2023	500,000
2024	1.9 million
2025	2.1 million

As of 2019, losses can also be deducted at a faster rate. A taxpayer may deduct losses incurred in 2019 or later years that

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do not exceed PLN 5 million immediately in their entirety or in one of five consecutive years. In the case of losses exceeding PLN 5 million, the taxpayer may deduct the first PLN 5 million in one year and the balance in subsequent years. However, in such a subsequent year, the deduction may not exceed 50% of the amount of the loss originally incurred.[146]

Until the end of 2020, there were no regulations limiting the possibility of settling losses in connection with the transfer of ownership of shares or in connection with the acquisition of assets by a taxpayer settling tax losses.

As of 2021, the ability to settle losses is limited:

(i) Where the taxpayer took over another entity, or acquired an enterprise or an organized part of an enterprise, including where the acquisition is by way of a contribution in kind; or

(ii) Where the taxpayer received a cash contribution subsequently used in the acquisition of an enterprise or an organized part of an enterprise.

The above limitations apply where:

(i) The scope of the core business of the taxpayer will change in whole or in part; or

(ii) At least 25% of the rights to the taxpayer's profits were acquired by an entity not holding such rights prior to the transaction.

Poland's standard corporate income tax rules do not provide for loss carrybacks.

7. Foreign Tax Credit (or Exemption)

Taxpayers that have their seat or management board in Poland and receive income from outside Poland may avoid double taxation by means of an ordinary tax credit if there is no applicable double taxation agreement, or by means of a tax credit or the exemption method if there is such an applicable agreement. For further discussion, see XXII.A., below.

8. Taxation of Controlled Foreign Companies

Polish tax resident direct or indirect shareholders of a non-resident entity that meets the definition of a controlled foreign company (CFC) may be subject to CIT in Poland. The definition of a CFC covers the following companies (and other entities including foundations, trusts, and other fiduciary entities):

(i) A company situated in (or having a place of management in) a country with a harmful tax regime (as identified in a Resolution of the Minister of Finance);

(ii) A company situated in (or having a place of management in) a country with no agreement for the exchange of tax information with Poland or the European Union;

(iii) A company situated in (or having a place of management in) another country if it meets the following tests:

(a) A control test;

(b) A low-tax test; and

(c) One of the following tests:

- A passive revenues test;
- A passive assets test; or
- An operational test.

The control test is met where a Polish taxpayer holds, directly or indirectly with other Polish resident entities, for at least 30 consecutive days, at least 50% of:

(i) The nonresident company's capital;

(ii) The voting rights in the controlling, constituting or managing bodies of the nonresident company;

(iii) Shares carrying a right to participate in the nonresident company's profits.

The test is also considered to be met were a Polish taxpayer exercises factual control over the non-resident company's votes.

The low-tax test is met where the income tax actually paid by the non-resident entity is at least 25% less than the hypothetical CIT that would be payable in Poland applying the standard CIT rate of 19% (i.e., is subject to a tax rate lower than 14.25%).

The passive revenues test is met where at least 33% of the non-resident company's revenue is derived from passive sources, including the following:

- Dividends, interest and royalties;
- Income from sales of shares in companies;
- Receivables;
- Income from the provision of consulting, accounting, market research, legal services, advertising, management and control, data processing, employee recruitment and acquisition services and similar services;
- Income from lease and sublease arrangements;
- Income from copyrights or industrial property rights; and
- Income from transactions with related parties when the company does not generate economic added value or the value is insignificant in relation to those transactions.

The passive assets test is met where:

- Passive revenues (see above) are lower than 30% of the sum of the value of certain passive assets held by the non-resident company, including shares, real estate, movable property, intangible assets; and
- Such passive assets constitute at least 50% of the value of the non-resident entity's total assets.

The operational test is met where:

- The non-resident entity's income exceeds the income calculated according to the formula: (a + b) x 20%, where:
  - a is the balance sheet value of assets increased by accumulated depreciation write-offs;
  - b is the annual employment costs of the entity;

and

- less than 75% of the revenues of the non-resident entity is derived from transactions with unrelated entities having their place of residence, seat, place of management, regis-

[146] Corporate Income Tax Act, Art. 7, Item 5, Point 2.

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tration or location in the same country as the nonresident entity.

If the CFC meets the control, low-tax and passive assets tests but does not meet the passive revenues and operational tests, the CFC income is deemed to be 8% of the value of certain passive assets.

Comment: Due to the complexity and extensiveness of the CFC regulations, particular attention should be paid to this issue and a close analysis would be advisable.

The amount of profits attributable to shares in the CFC held by a subsidiary of the taxpayer may be deducted from the corresponding share of profits of the CFC, provided the subsidiary is also subject to a CFC regime (in Poland or another country) and provided, among other requirements, the subsidiary holds, directly or indirectly, at least 50% of the rights to participate in the profits of the CFC.

The taxable base is the overall income[147] of the CFC (proportional to the taxpayer's share of the CFC's profit) less dividends received by the taxpayer and income from the sale of shares in the CFC. The amount of deductions may be carried forward and deducted in the following consecutive five tax years.

The amount of income is ascertained in accordance with the provisions of the Polish tax law and the taxpayer may be obliged to maintain certain records with respect to the CFC's activities. Losses cannot be carried forward. Tax payable in Poland may be reduced by the amount of any tax paid by the CFC abroad (proportionally to the shares held in the CFC by the taxpayer).

The CFC regime does not apply if the CFC conducts significant, real economic activity in an EU/EEA country where it is subject to taxation on all revenue.[148]

9. Calculation of Taxable Income and Tax Rates

The corporate income tax base is equal to the surplus of worldwide income over tax deductible expenses and donations. The current standard CIT rate is 19%. For small taxpayers and taxpayers commencing their business activities (in their first tax year), the CIT rate is 9%.[149]

The standard tax rate applies in the first and second tax years of taxpayers that were created through transformation, merger, split, or transformation of an individual business activity, or that received a contribution in kind in the form of an enterprise or an organized part of an enterprise, assets in the amount of at least 10,000 euros, or assets received earlier as a result of a liquidation of an entity in which the contributing party held shares.

The lower tax rate does not apply to tax capital groups.

10. Administration — Returns and Payments

a. Monthly Reconciliation

In general, CIT payers must make monthly advance payments equal to the difference between the tax due on the income earned from the beginning of the tax year and the sum of the advances due for the previous months and the respective amount for the month to which the advance payment relates.[150] Tax is, therefore, settled during the tax year on a cumulative basis. Monthly advance payments must be made to the competent tax office by the 20th day of each month for the previous month. The advance payment for the last month in a given tax year must be made by the 20th day of the first month of the following tax year.

However, a taxpayer that:

(i) Submits an annual tax return before this date; and

(ii) Pays in the difference between the tax due for the tax year and the sum of the advance payments for the period from the beginning of the tax year,

does not need to make the advance payment for the last month of the year.

Alternatively, entities may elect to follow the simplified principles regarding settlement of advance payments with respect to income derived in the previous tax years. In such a case, the advance payments for each month of the tax year are equal to 1/12 of the tax calculated and disclosed in the annual tax reconciliation for the previous tax year.

Entities commencing business activities and small entities (defined as entities whose sales revenue (together with output VAT) did not exceed the PLN equivalent of 2 million euros in the previous tax year) may choose to make quarterly advance payments equal to the difference between the tax due on the income derived from the beginning of the tax year and the sum of the advances due for the previous quarters.

b. Annual Reconciliation

The annual corporate income tax return (Form CIT 8) disclosing the amount of income derived in the tax year is submitted within the first three months of the year following the tax year. The taxpayer is required to pay the tax due (the difference between the tax due for the tax year and the sum of the advance payments for the period from the beginning of the tax year) within the same period. Interest for late payment is calculated from the first day after this deadline if the taxpayer fails to pay the tax due based on the tax return submitted.

11. Special Corporate Income Tax Relief

a. In General

The Act on Special Economic Zones (SEZs) provided for special CIT relief for legal persons commencing and carrying on activities in an SEZ.[151] SEZs are areas within Poland where commercial activity can be conducted subject to the terms and conditions defined by the Act. Income from commercial activities carried on in an SEZ may qualify for exemptions from CIT,

[147] For purposes of determining income, allowances and exemptions generally do not apply, under the amendment introduced as of January 1, 2023 in Corporate Income Tax Act, Art. 24a, Para 6c.

[148] Corporate Income Tax Act, Art. 24a, Para. 16.

[149] Corporate Income Tax Act, Art. 19.

[150] Corporate Income Tax Act, Art. 25.

[151] Act on Special Economic Zones of Oct. 20, 1994.

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subject to the fulfillment of the conditions stipulated in the Act and the Ordinance on state aid in SEZs.[152] Currently, there are 14 SEZs. The conditions governing the organization and management of SEZs vary from zone to zone as the rules on the basis of which they are established and organized are regulated under separate Ordinances issued by the Council of Ministers.

Companies with foreign participation are allowed to carry on business activities within SEZs on the same terms as Polish entities.

b. Permits

A permit is generally required to carry on commercial activity within an SEZ and enjoy the associated tax exemptions. Permits were issued by the Minister of Economy (or on his or her behalf by the authority administering the SEZ concerned, which was the most common practice). However, from the entry into force in mid-2018 of the Act on Supporting New Investment, which introduced a new type of relief, it is no longer possible to receive a SEZ permit. Permits issued prior to the entry into force of the Act on Supporting New Investment remain in force and are subject to the rules described below.

c. New Investment Expenditure

A company investing in an SEZ may carry on activities within the territory of the SEZ as provided under the permit obtained and enjoy exemption from corporate income tax, subject to the following principal conditions:

(i) The aid (i.e., the amount of unpaid income tax) cannot exceed a certain ceiling, which is calculated by multiplying the applicable aid intensity index by the total amount of "eligible investment expenditure".

The aid intensity index is currently set at:

- 10% for the city of Warsaw;
- 20% for the Warsaw West county (*powiat*);
- 25% for the administrative districts (*voivodeships*) of dolnośląskie, wielkopolskie and śląskie;
- 35% for the administrative districts of kujawsko-pomorskie, lubuskie, łódzkie, małopolskie, opolskie, pomorskie, świętorzyskie and zachodniopomorskie as well as the following counties of mazowieckie district: ciechanowsko-połocki, ostrołęcko-siedlecki, radomski and Warsaw east; and
- 50% for the administrative districts of lubelskie, podkarpackie, warmińsko-mazurskie and podlaskie.

(ii) No less than 25% of total investment costs must be met from the company's own resources (i.e., resources obtained otherwise than from state aid).

(iii) The investment expenditure that may be taken into account for purposes of the aid is limited to "eligible investment expenditure," which is:

- The purchase price of land or the perpetual usufruct of land;
- The purchase price of, or expenditure on, the self-production of fixed assets, subject to certain conditions;
- Expenditure on the development or modernization of the company's existing fixed assets; and
- The purchase price of intangible assets connected with the transfer of technology in the form of the purchase of patent rights, licenses, know-how or non-patented technical knowledge, subject to certain additional conditions and limits.

Expenditure connected with the purchase of leased assets, other than land, buildings and structures, is taken into consideration only when renting (tenancy) is in the form of financial leasing and includes an obligation to purchase the assets on termination of the rental agreement (tenancy). In relation to the renting (tenancy) of lands, buildings or structures, the renting (tenancy) must last at least five years from the expected termination of the investment project.

(iv) The minimum required amount of expenditure on tangible assets is 100,000 euros.

(v) The investment expenditure must be actually incurred after the date of receipt of a permit authorizing the conducting of the activity in the SEZ and must relate to the investment in that SEZ.

(vi) The relief is generally available from the month in which expenditure is incurred until the aid is exhausted. However, the investor must carry on business activities in the SEZ for a period of not less than five years. Moreover, the investor may not transfer, in any form, the ownership title to assets connected with the investment expenditure for a period of five years from the date of their entry in the register of fixed and intangible assets, under the provisions of the CIT Act.

(vii) The company must achieve the investment expenditure amount and the number of new jobs to be created declared in the application for the permit.

Example: Assuming that a company incurs expenditure of PLN 100 million in a region in which the aid intensity index is 50% of such expenditure, the relief will amount to PLN 50 million. Thus, the company will carry on its activities on a corporate income tax exempt basis until the amount of unpaid tax reaches PLN 50 million.

d. Job Creation

A company investing in an SEZ may carry on activities within the SEZ territory as provided under the permit received and enjoy exemption from corporate income tax on the basis of "job creation," subject to the following principal conditions:

(i) The aid (i.e., the amount of forgiven tax) may not exceed an amount calculated by multiplying the aid intensity index by two years' labor costs (work costs, gross wage costs and other payments connected with employment) with respect to newly employed staff. The aid inten-

[152] Ordinance of Dec. 10, 2008, of the Council of Ministers on state aid granted to entrepreneurs operating on the basis of authorization to conduct business in an SEZ.

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sity index is currently set at levels ranging from 15% to 50% (depending on the region), as discussed in V.B.11.c., above. The aid intensity index may be increased by 20 percentage points for small enterprises and by 10 percentage points for medium-sized enterprises.

(ii) "Job creation" is defined as the net increase in the company's employee headcount as compared to the average headcount prior to its receiving the SEZ permit.

(iii) The employment costs must be related to the company's investment in the SEZ, and the new employees must be hired within the period beginning with the issue of the permit and ending three years after the completion of the investment.

(iv) The relief is generally available from the month in which the expenditure is incurred until the aid is exhausted.

(v) The newly created jobs must be maintained for at least five years from the day the permit is granted.

Example: Assuming that a project company hires 250 persons in two years and that the total labor costs per person employed are PLN 2,000, the amount of the aid will be calculated in the following way: PLN 2,000 × 24 × 250 = PLN 12 million. However, as the aid may not exceed the aid intensity index, for example, where the index is 50% of the labor costs, the amount of relief will be PLN 6 million. Hence, the company will carry on its activities on a corporate income tax exempt basis until the amount of unpaid tax reaches PLN 6 million.

It should be noted that the corporate income tax exemption is strictly limited to the activities covered by the permit that are carried on within the SEZ. For example, if a company produces furniture in an SEZ under a permit and also trades in such furniture, only the sale of furniture produced by it in the SEZ will benefit from the exemption and the trading in products from other sources will be subject to CIT under the general rules.

e. New Investment Incentive (in lieu of SEZ Incentive)

The tax incentive for new investments applicable from mid-2018 replaced the tax relief offered for investments in SEZs described under II.A.5., above and IV.K., above. The relevant authorities issue support decisions for 10 to 15 years provided the investment fulfils certain quantitative and qualitative conditions stipulated in the relevant provisions. Taxpayers' income earned from the economic activity covered by the support decision is exempt from income tax.

The amount of exempt income may not exceed:

(i) The amount of qualifying costs of the new investment multiplied by the intensity factor; or

(ii) Two-years' labor costs with respect to employees employed in connection with the new investment multiplied by the intensity factor.

Qualified costs include, among others, costs related to the purchase of land; acquisition, production or modernization of fixed assets; acquisition of intangible assets; and costs related to renting or leasing of land, buildings and structures.

The intensity factor is 10% to 50%, depending on the region, and may be increased by 20 percentage points in the case of micro-entrepreneurs and small entrepreneurs, or 10 percentage points in the case of medium-sized entrepreneurs. Generally, the poorer the region (eastern Poland is the poorest), the higher the factor.

A support decision will be issued only for investments the qualifying costs of which exceed a threshold that depends on the unemployment rate in the region, the size of the investor and the type of investment.

The threshold decreases with the increase of the unemployment rate. The highest and lowest thresholds are as follows:

(i) If the unemployment rate is equal to or lower than 60% of the average unemployment rate in the country, the qualifying costs of the new investment must amount to at least PLN 100 million (the highest threshold); or

(ii) If the unemployment rate is higher than 250% of the average unemployment rate in the country, the qualifying costs of the new investment must amount to at least PLN 10 million (the lowest threshold).

However, the above thresholds are reduced by:

(i) 95% — in the case of investments in the field of modern business services, i.e., among others, the issuing of software, IT services, IT infrastructure services, accounting and book-keeping services, architectural and engineering services and telephone center services;

(ii) 98% — for activities conducted by micro-enterprises;

(iii) 95% — for activities carried out by small enterprises; and

(iv) 90% — for activities carried out by medium-sized enterprises.

To obtain a support decision, qualitative criteria must be satisfied in addition to exceeding the above thresholds. The qualitative criteria are divided into two categories: (i) criteria in the field of sustainable economic development; and (ii) criteria in the field of sustainable social development.

The first category includes the criteria of investing in projects supporting industries consistent with the current development policy of the country and conducting R&D activities.

The second category criteria include the employment of at least 80% of employees based on a contract of employment, running a business with a low negative impact on the environment, locating investments in a medium-sized city experiencing socio-economic decline, supporting the development of education and professional qualifications, cooperation with schools and taking action in the field of employee care.

A point system applies for purposes of meeting the quality criteria. A point is obtained for each particular criterion met. A total of at least six points must be obtained, but not less than one point for each category. The threshold is reduced to five points in regions where the intensity factor is 40% and to four points in regions where the intensity factor is 50%.

A support decision is issued for a period of 10 to 15 years, depending on the intensity factor in the region. The higher the intensity factor, the longer the validity period of the decision.

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Unlike the tax incentive for investments in SEZs, the tax incentive for new investments may cover the entire territory of Poland. Existing SEZ permits will remain in force, however.

An additional condition for the application of the income tax exemption is the maintenance of ownership of assets or employees for up to three or five years, depending on the size of the investor (i.e., the larger the investor, the longer it must operate).

12. Commercialization of Intellectual Property

A tax incentive for intellectual property is aimed at creators entitled to certain intellectual property (IP) or entitled to license it (commercializing entities). In the case of a commercializing entity, the acquisition of shares in exchange for a contribution in-kind in the form of "commercialized intellectual property" is not regarded as taxable income. Qualifying IP consists of, among other items, a patent, protection rights with respect to a patent and proprietary copyright with respect to software or know-how. It may also take the form of a license of those rights.

13. Innovation Box

Income derived from the commercialization of created, developed or improved IP rights (for example, patents) is taxed at a preferential 5% CIT rate. A special formula that depends on the types of costs incurred for R&D purposes must be used to calculate income subject to such preferential taxation. Furthermore, starting from 2022, the R&D tax relief available to taxpayers (see V.B.4.n., above) may also be applied in combination with the Innovation Box scheme; previously, it was not possible to utilize both forms of relief simultaneously.

To benefit from this incentive, the taxpayer must: (i) monitor whether its business activities are directly related to the creation, commercialization, development or improvement of intellectual property rights, and (ii) keep detailed accounting records of qualified costs and revenues.

14. Tax Deferral for Reinvested Profits

A favorable CIT settlement model was introduced by the Ministry of Finance with effect from financial year 2021 to increase the competitiveness of small and medium-sized enterprises with high development potential that have problems obtaining financing. The main benefit of the regulation is to shift the point of taxation — companies that increase investments are subject to CIT only when they make a profit distribution to shareholders, for example, in the form of a dividend.

Taxpayers may opt for deferral as long as the company increases investments, for a basic period of four years.

Due to the complexity of the new regulations, a careful analysis is necessary to assess whether they can be applied in a given case.

a. Conditions

The list of conditions for applying the regulation is extensive. One of the most important conditions is that the regulation applies only to entities whose shareholders are all natural persons. Moreover, an entity may not hold shares in other entities and must employ at least three employees (based on an employment contract; in the case of new entity, this condition is relaxed) who cannot be shareholders. Once selected, deferral applies for a four-year period.

b. Tax Advantage

The tax base of an entity that fulfills the above conditions is determined by reference to the entity's balance sheet results and not, as in the case of taxation under the general CIT rules, on the difference between tax revenues and costs. The basic result is to shift the moment of taxation.

At the profit distribution stage, the tax rate will amount to 25% in the case of a larger taxpayer (15% for an entity with small taxpayer status). However, the tax paid by the company will be partially deductible from the income tax paid at the shareholder level.

It should be noted that other tax incentives (for example, incentives relating to supporting innovation or a lower CIT rate of 9%) are not available to entities that benefit from the above rules.

c. Investment Fund

Alternatively, a company that satisfies the criteria described in a., above, has the ability to set up a separate special investment fund in the company, which will enable faster depreciation of fixed assets. This solution — unlike the model described above — does not limit the possibility of using other tax incentives. Taxpayers will be able to recognize as tax-deductible costs the write-offs for the fund established for investment purposes, segregated from the reserve capital. This fund is to be created from profits derived in the previous year. The accumulated money must be disbursed for the investment purposes indicated in the Act in the year following the year in which the write-offs were taken (with the possibility of extending this period to three years).

15. Solidarity Contribution in the Coal Sector

A solidarity contribution for companies operating in the coal sector was introduced to partially finance the reduction in electricity prices for households.

Any entrepreneur who, on January 1, 2023, fulfilled both the following conditions is obliged to pay the solidarity contribution:

(i) Conducted at least one of the following business activities:

(a) The exploitation of hard coal or lignite deposits; or

(b) The production of coking coal products in installations; and

(ii) Was not a small or medium-sized entrepreneur in 2022 within the meaning of the Entrepreneurs' Law.

The amount of the solidarity contribution is determined based on the income obtained in 2022. It should cover 33% of the value exceeding 120% of the average income obtained by the taxpayer in the previous four years.[153]

[153] The Act of October 27, 2022 on emergency measures aimed at limiting electricity prices and supporting certain customers in 2023 and 2024, Art. 29.c.

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VI. Taxation of Foreign Corporations

A. What Is a Foreign Corporation?

Corporations without a seat or a management office in Poland are regarded as foreign corporations for corporate income tax (CIT) purposes and the liability of such corporations to CIT is limited in scope.

However, as of 2022, an important change was introduced that expands the scope of the rules for determining what qualifies as a Polish tax resident corporation and would thus be subject to unlimited Polish taxation on a worldwide income basis. According to the general rule, a foreign corporation is tax resident in Poland if it has a registered office or management board in Poland. As of 2022, a foreign corporation will also be considered to have a management board in Poland if its daily affairs are conducted in an organized and continuous manner in Poland.[154]

For the rates of source country taxation applying to investment income, services income and capital gains under Poland's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

B. Determination of Taxable Income

Income derived in Poland by foreign corporations is subject to Polish corporate income tax. This general principle is based on the "limited tax liability rule".[155] The principles regulating the taxation of foreign corporations may vary depending on whether there is a double taxation agreement between Poland and the country of residence of the corporation concerned.

Income derived from the following is deemed to be sourced in Poland:

(i) Any type of activity conducted in Poland, including activity conducted through a permanent establishment in Poland;

(ii) Real property located in Poland or rights to such property, including the sale in whole or in part of the real property or any rights thereto;

(iii) Securities and derivative instruments admitted to public trading in Poland on the regulated market, including sale of securities and derivatives or realization of rights incorporated in derivative instruments;

(iv) The transfer of ownership of shares in a company (including a joint-stock partnership), all rights and obligations in a partnership or certificates in an investment fund, or receivables resulting from such shares, rights or certificates, where at least 50% of the value of the assets of those entities is comprised, directly or indirectly, of real property located in Poland or rights to such property; and

(v) Receivables settled, including making available, paying or setting-off, by individuals, legal persons and entities without legal personality having a place of residence, legal seat or management in Poland, regardless of the place where the agreement was concluded or the place of performance of the underlying obligations.

1. Business Profits

If there is an applicable double taxation agreement, income from business activities carried on in Poland by a person located or domiciled outside Poland is taxable in Poland only if the activities are carried on through a permanent establishment (PE) of that person in Poland, as determined by the relevant agreement. If there is no applicable double taxation agreement between Poland and the country of residence of the foreign corporation, business income derived in Poland is always subject to Polish corporate income tax.

2. Income from Capital Investments

a. In General

A foreign corporation may be liable to Polish income tax even if it does not carry on business activity in Poland, if it derives royalty, interest or dividend income from Poland or income from rendering services, such as management, control, guarantee, advisory or market research or similar services in Poland. The tax obligation may arise in Poland (for example, in the absence of an applicable tax treaty) regardless of whether there is a withholding mechanism in place.

As of January 1, 2022, a pay and refund withholding system came into force for payments of passive income (interest, dividends and royalties) from Polish entities to related foreign entities, according to which a payor remitting such a payment is obliged to withhold tax at the basic rate and pay it to the Polish tax office. A taxpayer then has the right to apply for a refund of the amount of the tax withheld, provided it meets the requirements of the EU Interest and Royalties Directive or Parent-Subsidiary Directive or that it can rely on an applicable tax treaty to apply an exemption or a lower withholding rate. See further under h., below.

b. Royalties

Under the CIT Act, royalty income is income from copyrights, rights to patent designs, trademarks and patterns, including income from the sale of such rights, income due for the disclosure of recipes or production processes, the use or a transfer of the right to use industrial, commercial or scientific equipment and vehicles, and information related to industrial, commercial or scientific experience (know-how).

Royalty income paid to a foreign corporation is subject to income tax at the rate of 20% on the gross amount, unless a double taxation agreement between Poland and the corporation's country of residence provides otherwise.[156]

In most cases, Poland's double taxation agreements reduce the rate of withholding tax below the 20% general rate that applies in the absence of a treaty. To obtain the reduced rate benefit available under the applicable double taxation agreement, the recipient of the royalty payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of its place of residence abroad (i.e., a certificate of residence).

[154] Corporate Income Tax Act, Art. 3, Item 1a.

[155] Corporate Income Tax Act, Art. 3, Item 2.

[156] Corporate Income Tax Act, Art. 21, Item 1.

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From January 1, 2020, the rules described in VI.B.2.h., below, must also be applied. If a certificate of residence does not contain an expiry date, it may be used for a period not exceeding 12 consecutive months from the date of issuance.

c. Interest

Some of Poland's double taxation agreements contain provisions to the effect that interest income is taxable only in the country of residence of the recipient of the interest. Such provisions are included in the Poland-France,[157] Poland-Spain,[158] and Poland-United States[159] tax treaties (however, with respect to the United States, a new tax treaty has been signed that no longer includes this provision; the treaty is undergoing the ratification process). No Polish withholding tax will be imposed on interest paid to a person resident in one of these treaty partner countries.

Under the provisions of Poland's other treaties, the rate of withholding tax on the gross amount of interest is limited to 5%, 10% or 15%. To obtain the reduced rate benefit available under the double taxation agreements, the recipient of the interest payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of its place of residence abroad (i.e., a certificate of residence). Furthermore, from January 1, 2020, the rules described in VI.B.2.h., below, must also be applied. If a certificate of residence does not contain an expiry date, it may be used for a period not exceeding 12 consecutive months from the date of issuance.

The rules outlined in the previous paragraph do not apply where the nonresident receiving the interest income carries on business activities in Poland through a PE as defined in the relevant tax treaty and the loan (credit) with respect to which the interest is paid is in fact related to the activities of the PE. In such a case, the interest income will be taxable in accordance with general principles. Where there is no applicable tax treaty with the country of residence of the recipient of the interest, interest earned in Poland is always subject to Polish corporate income tax at the rate of 20%.

Poland has implemented Council Directive 2003/49/EC of June 3, 2003, on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. On the basis of the Directive and the appropriate provisions of the Corporate Income Tax Act, interest and royalty payments may be exempt from withholding tax in Poland if the following conditions are fulfilled:

(i) The payments are made by a Polish taxpayer having its seat or management board in Poland or by a foreign PE located in Poland (upon fulfillment of certain additional conditions);

(ii) The payments are derived by a company that is taxable in an European Union (EU) Member State other than Poland on all its income irrespective of where it is derived;

(iii) Either:

- The company referred to above in (i) holds directly a share of at least 25% in the capital of the company referred to above in (ii);
- The company referred to above in (ii) holds directly a share of at least 25% in the capital of the company referred to above in (i); or
- The company receiving the payments does not benefit from an exemption from income tax with respect to all its income regardless of its source; and

(iv) The beneficial owner of the payments is:

- A company whose entire income is taxable in the European Union regardless of where it is derived; or
- A foreign branch of a company defined in (i) that is located in the European Union and whose income is taxable in the country in which the branch is located.

The above exemption does not apply to interest paid by a limited joint-stock partnership.

The exemption from withholding tax applies if one of the companies described above holds the minimum share percentage (25%) for an uninterrupted period of two years. This condition is also fulfilled if the two-year requirement is not met until after the date on which the company receives the interest or royalty payments.

The exemption only applies if there is a legal basis resulting from a double taxation agreement or other ratified international agreement to which Poland is a party allowing the Polish tax authorities to obtain information from the tax authorities of the country of residence of the recipient of the interest/royalties. Furthermore, to benefit from the reduced tax rate under the transitional provisions, the company receiving the royalties/interest must provide the paying entity with a written statement to the effect that it does not benefit from exemption with respect to its entire income, regardless of where it is derived, in the country in which it has its seat.

d. Dividends

Withholding tax on Polish-source dividend income received by an entity without a seat or management office (i.e., that is not domiciled) in Poland is imposed at the rate of 19%.[160]

Under most of Poland's tax treaties, the rate of taxation depends on the percentage of the share capital of the entity paying the dividends held by the recipient of the dividends, there being two such rates. If the percentage of the capital of the entity paying the dividends held by the recipient of the dividends exceeds a level fixed by the applicable tax treaty, the lower rate is applied. An additional condition for the application of the lower rate is that the recipient of the dividends may not be a non-com-

[157] Convention between the Government of the French Republic and the Government of the Polish People's Republic for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, signed on June 20, 1975 (the "Poland-France tax treaty,") Art. 11(1).

[158] Convention between the Government of Spain and the Government of the Polish People's Republic for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, signed on Nov. 15, 1979 (the "Poland-Spain tax treaty,") Art. 11(1).

[159] Convention between the Government of the United States of America and the Government of the Polish People's Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on Oct. 8, 1974 (the "Poland-United States tax treaty,") Art. 12(1).

[160] Corporate Income Tax Act, Art. 22.

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mercial partnership. If the percentage of the capital of the entity paying the dividends held by the recipient of the dividends does not exceed the specified level, the higher rate is applied.

To obtain the benefit of the reduced rates available under the double taxation agreements, the recipient of the dividend payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of its place of residence abroad (certificate of residence). Furthermore, from July 1, 2019, the rules described in VI.B.2.h., below, must also be applied. If a certificate of residence does not contain an expiry date, it may be used for a period not exceeding 12 consecutive months from the date of issuance.

Where there is no applicable tax treaty between Poland and the country of residence of the recipient of the dividend, dividend income derived by a nonresident corporation from Poland is always subject to Polish corporate income tax at the rate of 19%.

Poland has implemented the Parent-Subsidiary Directive.[161] Under Poland's implementation of this Directive, dividend income and other forms of income from profit-sharing in Polish companies will be exempt from withholding tax if the following conditions are fulfilled:

(i) The company that pays the dividends or similar payments is a Polish taxpayer with its seat or management board in Poland.

(ii) The entire income of the recipient of the dividends or similar payments, regardless of where it is derived, is taxable in the EU or the European Economic Area (EEA).

(iii) The company referred to above in (ii) directly holds a minimum shareholding in the capital of the company referred to above in (i). The minimum shareholding is 10%.

(iv) The recipient of the dividends is:

- A company of which the entire income, regardless of where it is derived, is taxable in the EU or in the EEA; or
- A foreign branch of the company referred to above in (i) located in the EU or the EEA, provided the income of that branch is taxable in the country in which the branch is located.

To be able to enjoy the exemption from withholding tax, the entity receiving the dividends must hold the shares of the Polish dividend-paying entity for an uninterrupted period of at least two years. This condition is also fulfilled if the two-year requirement is not met until after the date on which that entity receives the dividends.

The exemption applies provided there is a legal basis resulting from a double taxation agreement or other ratified international agreement to which Poland is a party allowing the Polish tax authorities to obtain information from the tax authorities of the country of residence of the recipient of the dividends.

The exemption may be denied with respect to dividends and dividend-like income arising from transactions that are lacking justified economic (business) reasons and are concluded solely or mainly for purposes of obtaining the exemption. Such anti-abuse restrictions are applicable to income derived as of the first day of a tax year starting after December 31, 2015.

e. Capital Gains from the Sale of Polish-situs Real Property and Related Rights

A gain arising to a foreign entity from the sale of real property located in Poland, or rights pertaining to such property, is subject to CIT under general principles at the rate of 19%. The amount of the gain is equal to the amount received for the sale minus the expenditure incurred on the purchase of the real property (reduced by depreciation write-offs) and any capital invested in the real property during the period of ownership.

Prior to 2021, the seller of shares in a real estate company was obliged to settle the tax on the sale. As of 2021, the obligation to settle the tax on the sale rests with the real estate company itself rather than the seller of the shares. This means that the real estate company is now a tax agent with respect to the CIT on the sale of its shares. Moreover, as a result of the introduction, as of 2021, of a definition of a real estate company and clarification of the notion of income obtained from a real estate company, real estate companies are now obliged to provide information about their shareholders to the tax authorities.

f. Management, Control, Guarantee, Advisory or Market Research or Similar Services

Withholding tax on remuneration paid by Polish entities for the provision of management, control, guarantee, advisory, market research or similar services, that is received by an entity without a seat or management office (i.e., that is not domiciled) in Poland, is imposed at the rate of 20%, unless a tax treaty between Poland and the taxpayer's country of residence provides otherwise. To benefit from the provisions of such a treaty, the Polish entity must prove the place of residence of the recipient of the remuneration by means of an appropriate certificate of residence. Furthermore, from January 1, 2020, the rules described in VI.B.2.h., below, must also be applied.

g. Certain Payments to Tax Havens

Payments of certain capital gains are subject to 19% withholding tax (applied on the gross amount paid) if they are made to entities in certain territories that engage in harmful tax competition (according to the list published under the relevant tax laws). Such capital gains subject to withholding tax include gains:

(i) Other than those specified in e., above, from participations (shares) in legal entities or companies, such as proceeds from the sale of shares, including sales made for redemption (buy-back) of shares and revenue generated as a result of the exchange of shares;

(ii) From the sale of any rights in or obligations with respect to partnerships that are not legal persons;

(iii) From the sale of receivables previously acquired by the taxpayer, as well as receivables resulting from revenue classified as capital gains;

(iv) From:

- Property rights referred to in Article 16b para. 1 points 4–7 of the CIT Act (for example, copyright, licenses, trademarks, patents and know-how), excluding rev-

[161] 90/435/EEC of July 23, 1990.

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enues from licenses directly related to obtaining income that is not categorized as capital gains;

• Securities and derivative financial instruments, excluding derivative financial instruments used to secure revenue or expenses, not included in capital gains;

• Participation in investment funds or collective investment institutions; and

• Sale, lease, rental or other agreements of a similar nature regarding the rights referred to in the above bullets.

h. Withholding Tax Collection Rules

As of January 1, 2022, a pay and refund system came into force for payments of interest, dividends, and royalty payments made by Polish entities to foreign related entities. Except in specific cases, withholding tax must be collected by the payor at the full rate (19% or 20%), with no possibility of reduction or tax exemption, on payments exceeding PLN 2 million in a given tax year made to foreign related recipients.

Tax remitters are subject to an obligation to act with due care when analyzing whether the conditions for applying an exemption from withholding tax or a lower withholding rate are fulfilled. Because entities in a capital group have greater access to specific information regarding other entities in the group, in the case of payment of receivables between related entities, higher due care standards are expected as compared to those in relations between unrelated parties, including obtaining of group documents indicating the financial flows between entities in the group and the role of individual entities in the group structure, as well as documents that make it possible to determine the business substance of a related recipient of receivables. The tax authorities have published guidelines dealing with, for example, safe harbors for performing due care standard verification in the case of payments between unrelated parties.

However, a foreign recipient (i.e., the taxpayer or, in certain cases, the Polish tax remitter or withholding tax agent) may file for a refund with the Polish tax authorities if, in addition to documentation supporting the payment, it provides evidence (including, among other items, proof of business substance) that if meets the requirements for benefitting from a reduced rate or tax exemption. The refund must be made within six months from the date on which the application is filed.

If the pay and refund method applies, a tax withholding tax agent may apply a reduced rate or tax exemption at the time of payment if it submits a written statement to the tax authorities (under the threat of criminal fiscal liability) that it holds all the documentation required for it to be able to apply a reduced tax rate/exemption, as well as confirming that all additional requirements have been met (for example, regarding the business substance of the recipient).

Since 2023, the validity of such a statement has been extended from two months to the end of the tax year in which it is filed. The filing of this statement removes the obligation to apply the pay and refund mechanism. If further payments are made based on the statement, a tax remitter must submit a summary statement by the end of the first month of the following tax year. A foreign taxpayer or a Polish tax remitter may also request a special opinion from the tax authorities authorizing the application of a tax exemption or a decreased withholding tax rate (such opinions are generally valid for three years).

C. Method of Assessment — Tax Rates

The taxation of income received through a PE follows the same principles as those applicable to income derived by a Polish entity carrying on an economic activity. This means that income derived by a PE in Poland will be subject to Polish tax. The amount of such income is determined based on the accounting records that the PE is required to maintain under the provisions of the Law on Accounting. Should the income of the PE be impossible to determine based on the financial records maintained by the PE, the amount of the income will be determined by way of an estimate, applying an income indicator in relation to turnover as follows:[162]

(i) 5% in the case of a wholesale or retail trade;

(ii) 10% in the case of construction or assembly activities, or transportation services;

(iii) 60% in the case of agency activities, if earnings are derived in the form of a commission;

(iv) 80% in the case of services or the expertise of an attorney; and

(v) 20% in the case of other sources of income.

The sale of goods to Polish consumers by a foreign entity with a representative in Poland is classified under the category of wholesale or retail trade, regardless of where the relevant agreement is entered into.

D. Subsidiary vs. Branch

1. Scope of Activities

Under the Act on the Principles of Participation of Foreign Entrepreneurs and Other Foreign Persons in Economic Activity in the Territory of Poland,[163] foreign entities may establish branches and representative offices in Poland for purposes of carrying on business activities.

A foreign entity may open a branch in Poland under the rule of reciprocity. The branch of a foreign entity is allowed to carry on only activities that are of the same type as those carried on by the foreign entity.

A foreign entity may also open a representative office. However, the scope of activities that can be carried on by a representative office of a foreign entity is very limited, the only activities that a representative office is allowed to carry on being advertising and the promotion of the foreign entity.

By contrast, a subsidiary established in Poland by a foreign entity may conduct all types of business activities, and not only those within the same scope as those carried on by the foreign entity.

[162] Corporate Income Tax Act, Art. 9, Sec. 2a.

[163] The Act on the Principles of Participation of Foreign Entrepreneurs and Other Foreign Persons in Economic Activity in the Territory of the Republic of Poland of March 6, 2018, Journal of Laws 2021, Item 994.

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2. Method of Taxation

Both a representative office and a branch are obliged to keep their financial records in the Polish language in accordance with Polish accounting regulations. A branch or a representative office that has taxable income must pay corporate income tax at the normal corporate tax rate in the same way as a subsidiary. If the income of a branch or representative office cannot be determined based on the financial records maintained, its income will be determined based on a profit rate computed as a percentage of total gross income. See VI.C., above.

Of course, in considering the taxation treatment of branches and representative offices in Poland, the provisions of an applicable tax treaty will have to be taken into account. Under those provisions, a branch or representative office may be subject to taxation in Poland only if it constitutes a PE within the meaning of the tax treaty concerned. Because of the nature of its activity, a representative office of a foreign entity in Poland should not be regarded as a PE.

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VII. Transfer Pricing

A. Scope of the Provision

The Corporate Income Tax Act (the "CIT Act") provides rules for setting prices in transactions between business entities, based on the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines. These rules apply where a domestic entity is related to a foreign entity or two domestic entities are related. For this purpose, it is first necessary to determine when relationships exist between entities (whether between domestic and foreign entities or only between domestic entities) that could be used to shift income.[164]

Polish transfer pricing regulations set a requirement for additional documentation, apart from general accounting records, if transactions between related parties or tax haven transactions exceed an annual threshold. From tax year 2017, the Polish requirements as to the scope of the compulsory transfer pricing documentation follow the latest OECD guidance.

A foreign company that has a permanent establishment (PE) in Poland must also prepare transfer pricing documentation for intercompany transactions involving the PE. The tax authorities may impose penalties if a company is unable to provide transfer pricing documentation for such transactions within seven days of receiving a request for such documentation from a tax office.

The Polish tax authorities are allowed to estimate a related party's or a PE's taxable income by applying transaction-based transfer pricing methods, such as the comparable uncontrolled price (CUP) method. Income adjustments made by the tax authorities, including those relating to a PE, may be subject to tax at a 50% rate unless transfer pricing documentation is provided.

As of fiscal year 2019 (and, at the taxpayer's option, in relation to transactions concluded in fiscal year 2018), the taxpayer's turnover is no longer relevant in determining the obligation to prepare transfer pricing documentation. The obligation to prepare the Local File is now based on whether the value of the transaction concerned exceeds the following thresholds:

(i) PLN 10 million in the case of commodity transactions and financial transactions; and

(ii) PLN 2 million in the case of service transactions and all other transactions.

Unlike under the previously applicable rules, a benchmarking study is now required for all Local Files.

A Master File must be attached to the Local File developed by taxpayers who belong to a group of companies that prepares consolidated financial statements and, in the previous year (for example, fiscal year 2018 when considering the obligation for fiscal year 2019), derived consolidated revenues of more than PLN 200 million (or the equivalent in a foreign currency). As the deadline for preparing a Master File is extended to 12 months after the end of a tax year of a domestic entity, a parent company with a different year end should not present an issue.

Subject to certain conditions, preparing documentation for domestic transactions (between Polish entities) is not mandatory, provided the parties to the transactions do not benefit from a CIT exemption and do not report a tax loss in the year in which the transactions are carried out.

As of 2019, additional tax liability may be imposed if tax losses are overstated or taxable income is not fully disclosed as a result of incorrect pricing in a controlled transaction. The additional liability is 10% of the amount of the overstated loss or understated income (i.e., the penalty applies in addition to taxation at the standard CIT rate) and applies in lieu of the former 50% tax. In certain cases, the additional tax liability may be doubled or tripled. A penalty applies if additional income has been assessed by the tax authorities with respect to related party transactions, regardless of whether the transfer pricing documentation has been duly presented.

Moreover, persons responsible for the financial management and tax issues of the entity concerned (for example, members of the board and financial directors) who commit certain tax offences, such as failing to submit the documentation on time (for example, the statement confirming preparation of the Local File) or certifying false information, may be subject to fines under the Polish Penal Fiscal Code, that may be as high as:

(i) PLN 3.2 million for 2017 and 2018;

(ii) PLN 21.6 million for 2019;

(iii) PLN 24.9 million for 2020;

(iv) PLN 26.9 million for 2021;

(v) PLN 28.9 million for 2022;

(vi) PLN 34.5 million for 2023;

(vii) PLN 40.7 million for H1 2024;

(viii) PLN 41.2 million for H2 2024; and

(ix) PLN 44.7 million for 2025.

A relationship between an entity — being an individual, corporation or partnership — having its head office or management board in Poland (i.e., a domestic entity) and an entity — being an individual, corporation or partnership — that does not have its head office or management board in Poland (i.e., a foreign entity) exists when:

(i) The domestic entity has a direct or indirect share in the management or control of the foreign entity, or holds shares in the capital of the foreign entity;

(ii) The foreign entity has a direct or indirect share in the management or control of the domestic entity, or holds shares in the capital of the domestic entity; or

(iii) The same corporate entities or individuals simultaneously, either directly or indirectly, have a share in the management or control of both the foreign entity and the domestic entity, or hold shares in the capital of both the domestic entity and the foreign entity.

Domestic entities are related when family, capital or property-based ties exist between the entities or individuals carrying out management, supervisory or control functions. A 25% share in capital is sufficient to create such ties.

[164] Corporate Income Tax Act, Art. 11, and Personal Income Tax Act, Art. 25.

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If, as a result of such ties, the entity concerned fails to return income, or returns income that is lower than what would be expected if the ties did not exist (the arm's-length principle), the income of the entity concerned and the corresponding income tax owed is determined without taking into account the conditions arising from the ties.

Thus, if prices between related parties do not conform to the arm's-length principle, the tax authorities may determine income by way of an estimate using one of the following methods:

(i) The CUP method;

(ii) The resale price method (RPM);

(iii) A reasonable mark-up (cost-plus) method; or

(iv) A transactional profit method, i.e., the profit split method or the transactional net margin method (TNMM).

The Ministry of Finance published extensive guidelines on the application of selected transfer pricing methods (i.e., TNMM,[165] RPM[166] and cost-plus).[167] The guidelines address the most common problems related to the use of the methods, include a comparison of the methods, and provide detailed examples of their correct application. The guidelines are of a technical nature, and it is advisable to refer to them when developing the transfer pricing policy for a group or entity and determining the terms and conditions of individual controlled transactions.

B. Competent Authorities

The bodies competent to examine the accuracy of prices used in transactions between related entities are the Head of the Tax Office and the Director of the Regional Customs-Tax Office. In the event that the entity under examination disagrees with the findings of these bodies, it can file an appeal with a body overseeing the Head of the Tax Office, i.e., the Head of the Tax Chamber and the Director of the regional Customs-Tax Office. A decision issued by the Tax Chamber resulting from such an appeal may in turn be appealed to the Administrative Court (the court of first instance) and, subsequently, to the High Administrative Court (the court of final instance).

C. Advance Pricing Agreements

A taxpayer may request an advance pricing agreement (APA) from the tax authorities in order to agree on a tax compliant transfer pricing approach to its related party transactions. The competent authority with respect to APAs is the Minister of Finance. The Minister of Finance acts at the request of the taxpayer named in the motion, based on the motion as supported by additional documentation (for example, a detailed description of the transactions concerned). APAs may concern present and future transactions between related entities. The regulations provide for the possibility of concluding unilateral, bilateral and multilateral agreements.

A taxpayer applying for an APA must provide the following information:

(i) An indication of the suggested method to be applied in determining the transaction price from among the methods referred to in the income tax provisions for legal or natural persons, as appropriate.

(ii) A description of the manner of application of the suggested method with respect to the transaction that is to constitute the object of the APA, in particular:

- The principles for calculating the transaction price;
- Financial forecasts on which the transaction price calculation is to be based; and
- An analysis of the comparison data used to calculate the transaction price.

(iii) Any circumstances that may affect a correct fixing of the transaction price, in particular:

- The type, object and value of the transaction that is to be the subject of the arrangement;
- A description of the course of the transaction, including analyses of assets, functions and risks of the parties thereto, and a description of the economic strategy of the parties to the transaction and other circumstances if the strategy or circumstances affect the price of the object of the transaction;
- Data concerning the economic situation of the branch of industry in which the taxpayer pursues its activity, including data concerning business transactions carried out by unrelated subjects that were used in calculating the transaction price; and
- The organizational and capital structure of the taxpayer and related parties that are parties to the transaction, and a description of the financial accounting principles applied by those related parties.

(iv) Documents that have an important bearing on the amount of the transaction and, in particular, copies of agreements, arrangements and other documents indicating the intentions of the parties to enter into the transaction.

(v) The suggested period of validity of the APA.

(vi) A list of the related parties with which the transaction is to be concluded, including their consent to submit the APA to the competent authority along with any documents concerning the transaction and to provide necessary explanations.

The APA procedure is subject to a fee corresponding to 1% of the value of the transaction. In practice, the fee ranges from PLN 5,000 to PLN 50,000 for APAs relating to transactions between domestic entities, from PLN 20,000 to PLN 100,000 for transactions involving a foreign entity, and from PLN 50,000 to PLN 200,000 for bilateral and multilateral agreements (i.e., those in which the tax authorities of other countries are involved).

A taxpayer may also apply to the Minister of Finance for an APA concerning a PE.

An APA may remain in effect for up to five years.[168]

[165] TNMM guidelines on the Ministry of Finance website.
[166] RPM guidelines on the Ministry of Finance website.
[167] Cost plus guidelines on the Ministry of Finance website.
[168] Tax Ordinance Act of Aug. 29, 1997, Art. 20i.

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D. Transactions Subject to Reporting

1. Prior Rules

Corporate taxpayers are required to prepare transfer pricing documentation in relation to certain transactions with related companies or with companies located in countries on the list of harmful tax competitor jurisdictions ("harmful tax jurisdictions"). The transfer pricing regulations have been modified several times in recent years.

The Polish requirements as to the scope of the obligatory transfer pricing documentation follow the latest OECD guidance. Thus, a Local File must be prepared by taxpayers with annual turnover exceeding 2 million euros and a Master File must be prepared by taxpayers with annual turnover exceeding 20 million euros.

Furthermore, a benchmark analysis constitutes an obligatory part of transfer pricing documentation, initially, for taxpayers with annual turnover exceeding 10 million euros.

2. Current Rules

A Local File must be prepared for transactions that exceed the following thresholds:

(i) PLN 10 million for commodity and financial transactions; and

(ii) PLN 2 million for service and all other transactions.

All Local Files must contain a benchmarking study.

A Master File must be attached to a Local File developed by taxpayers that belong to a group of companies that prepares consolidated financial statements and in the previous year (for example, fiscal year 2022 in relation to fiscal year 2023) derived consolidated revenues of more than PLN 200 million (or the equivalent in a foreign currency).

Subject to certain conditions, the preparation of documentation for a domestic transaction (between Polish entities) is not mandatory. To take advantage of this option, the parties to the transaction concerned may not benefit from a CIT exemption and may not report a tax loss in the year in which the transaction is carried out.

Additional reporting obligations are imposed under the Tax Code, i.e., the Tax Ordinance Act of August 29, 1997, regarding:

(i) Agreements concluded with a related nonresident, depending on the value of the transaction; and

(ii) Nonresident individuals working for a Polish entrepreneur but employed/hired through a nonresident entity, where such individuals may be subject to taxation in Poland.

As of 2022, several changes to the transfer pricing rules were introduced that applied for the first time to documentation prepared for fiscal year 2022. First, the deadline for preparing local transfer pricing documentation has been extended. The documentation must now be prepared by the end of the 10th month after the end of the tax year. The Transfer Pricing Report described below must be filed by the end of the 11th month after the end of the tax year. The Master File must be prepared by the end of the 12th month after the end of the tax year.

The deadline for submission of the local transfer pricing documentation at the request of the tax authorities has also been extended (documentation is only submitted to the tax office on official request). Prior to January 1, 2022, taxpayers had seven days to submit the documentation after receiving the request. As of 2022, this period has been extended to 14 days. Moreover, as of 2022, the local transfer pricing documentation must be submitted to the tax office in electronic form.

a. Scope of Local File

The Local File must include the following main sections:[169]

(i) A description of the related entity;

(ii) A description of the transaction, including an analysis of functions, risks and assets;

(iii) An analysis of transfer prices, including:

- A comparability analysis; or
- An analysis demonstrating the compliance of the conditions under which the controlled transaction was concluded with unrelated party conditions (a "compliance analysis") if a comparability analysis is not appropriate in the light of a given transfer pricing method or where it is not possible to prepare a comparability analysis; and

(iv) Financial information.

In addition, the regulations of the Minister of Finance specify the exact elements to be included in the documentation, which correspond to the information listed in Annex II to Chapter V of the BEPS Action 13 Final Report.

b. Scope of Master File

The Master File must include the following main sections:[170]

(i) A description of the group;

(ii) A description of the significant intangible assets held by the group; and

(iii) A description of the significant financial transactions entered into by the group.

In addition, the regulations of the Minister of Finance specify the exact elements to be included in the documentation. The scope of information largely corresponds to the information listed in Annex I to Chapter V of the BEPS Action 13 Final Report.

c. Transfer Pricing Report (Form TPR-C)

The Polish Ministry of Finance is collecting data on transactions concluded between related parties in order to more effectively target entities for tax audits. All CIT payers obliged to prepare local transfer pricing documentation are required to submit, within nine months from the end of the tax year, a special form reporting any controlled transactions concluded (TPR-C form).

[169] CIT Act, Art. 11q.
[170] CIT Act, Art. 11q.

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The TPR-C form requires taxpayers to provide general financial information on the entity for which the form is submitted, including values of financial indicators measuring the financial situation (for example, operational margin, return on assets and return on equity).

Taxpayers submitting the TPR-C form are also required to submit a range of information on their controlled transactions. Apart from the subject (category) of a controlled transaction and its value, taxpayers must provide the following information:

(i) The country in which the counterparty's registered office or management board is located;

(ii) The method chosen to verify the transfer price; and

(iii) Profit indicators, if applicable.

The TPR-C form also includes information on the benchmarking study, such as:

(i) The method used;

(ii) Details of sources of information relied on;

(iii) The tested parties and the selection criteria used; and

(iv) The final benchmarking study results.

The TPR-C form requires a wider scope of information for controlled transactions concerning the granting or obtaining of financing and those involving the provision or use of intangible assets.

Some changes were introduced with respect to the transfer pricing reporting regime with effect from 2022. The amended rules are applicable for the first time when TPR-C forms for fiscal year 2022 are filed. Most significantly, the Transfer Pricing Statement described in VII.D.2.e., below need no longer be submitted as a separate document, as the contents of the statement are included in the transfer pricing report. TPR-C, as a rule, should be signed by one of the members of the company's management board. By way of an exception, it may be signed by an attorney who is an advocate, a legal advisor, a tax advisor or a certified auditor.[171]

The Ministry of Finance publishes regularly updated answers to frequently asked questions on the technicalities underlying the preparation and submission of the TPR-C Form.[172]

d. Country-by-Country Reporting

Where the turnover of a capital group for the preceding tax year exceeded 750 million euros, a Country-by-Country report (CbCR) must be filed in one of the EU Member States or in a country that imposes the CbCR obligations and has concluded an agreement on the exchange of information with Poland. The CbCR must contain a wide range of information about the whole group, including such information about every entity in the group as basic financial data and the scope of business activity. If the CbCR is not filed in the applicable country, the obligation to file the CbCR rests with the entity in Poland starting from fiscal year 2017. While the CbCR must be filed within 12 months from the end of a tax year, the Polish entity must notify the Polish Ministry of Finance of which group company which will file the CbCR within three months from the end of the tax year (CBC-P notification).

The CbCR and CBC-P are submitted to the Ministry of Finance electronically using a special official form.

Taxpayers that do not comply with the CbC reporting obligations may be punished by a fine of up to PLN 1 million. Specifically, the penalty may be imposed for either failing to submit a CbCR or a CBC-P notification on a timely basis or for providing an incomplete or inconsistent CbCR or CBC-P.

e. Transfer Pricing Statement

Related entities that are obliged to prepare local transfer pricing documentation in Poland must submit a statement on the preparation of such documentation to the tax office. The statement must declare that the local transfer pricing documentation was prepared and that the transfer prices with respect to controlled transactions covered by the documentation were set on terms that would be agreed on between unrelated entities. Since the fiscal year 2022, the Transfer Pricing Statement[173] has formed an integral part of the transfer pricing report (form TPR-C; see VII.D.2.c., above), which, as a general rule, should be signed by one of the members of the company's management board.

It should be noted that the members signing the TPR-C including the transfer pricing statement can be held personally responsible in case, during a transfer pricing audit, it is concluded that the transfer prices did not correspond to market conditions.

[171] CIT Act, Art. 11t.5.

[172] Answers are available on the Ministry's website: TPR-C FAQ — link (5th edition issued in September 2024).

[173] CIT Act, Art. 11t.2.7.

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VIII. Taxation of Partnerships

A partnership is not a taxpayer for income tax purposes (except for a limited joint-stock partnership, limited partnership and, in some cases, general partnership). Instead, the partners are liable to income tax. Income from a partnership that is not a legal entity is taxed in the hands of each partner. Any gross income, tax deductible costs/expenses, non-deductible costs/expenses, losses, tax relief, etc. are attributed to each partner in proportion to his or her distributive share in the partnership. In the absence of evidence to the contrary, the partners' shares are presumed to be equal. By contrast, for purposes of value added tax (VAT), it is the partnership and not its partners that is the VAT taxpayer. Thus, a partnership liable to VAT is required to register for VAT purposes in Poland and maintain appropriate VAT registers, including data on amounts of input and output VAT. A partnership is obliged to submit VAT returns. A partnership must also maintain appropriate books of account.

On the other hand, the provisions governing corporate income tax (CIT) also apply to any foreign partnership that, although it does not have legal personality, has its seat abroad and is subject to CIT in the country in which that seat is located.

Limited joint-stock partnerships (beginning from 2014), limited partnerships and, in some cases, general partnerships (beginning from 2021) are CIT payers (like, for example, limited liability companies or joint-stock companies). Therefore, the gross income, tax deductible costs, etc., are attributed to the joint-stock partnership and taxed at the level of the joint-stock partnership. Furthermore, generally, the transfer of gains from the limited joint-stock partnership to the partners will be subject to income tax in the hands of each partner. However, with respect to the so-called general partners, the Corporate Income Tax Act provides for a specific tax credit, thereby avoiding double taxation with respect to general partners.

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IX. Taxation of Resident Individuals

A. Scope of Taxation

Persons residing in Poland are subject to unlimited tax liability, i.e., they are subject to taxation in Poland on their entire income, irrespective of the source of that income (worldwide income taxation).[174]

B. Residence

Article 3(1a) of the Personal Income Tax Act defines "place of residence" (i.e., the criterion for determining tax residency in Poland). Pursuant to these rules, a person is deemed to have a place of residence in Poland if:

(i) His or her center of personal and economic interests (center of vital interests) is located in Poland; or

(ii) His or her stay in Poland exceeds 183 days in a given tax year.

Additionally, tax residence status in Poland will be determined in accordance with an applicable tax treaty if a person remains a tax resident of his or her home country and Poland has concluded a treaty with that country.

Under Article 28 of the Civil Code, an individual may only have one place of residence at a time.

C. Determination of Income

The way in which revenue (gross income) is determined depends on the type of income concerned. It is generally accepted that income is money received or made available to a taxpayer during the calendar year, the monetary value of benefits received in kind and other benefits for which the recipient has not paid or has not paid in full.[175]

Where income is earned in a foreign currency, the amount thereof is, as a rule, converted into PLN at the average exchange rate announced by the National Bank of Poland (NBP) on the last working day before the income was earned.

This average exchange rate is used to determine in PLN amounts of income earned in foreign currencies characterized as:

(i) Income from business activities;

(ii) Income from the disposal for consideration of shares and securities;

(iii) Income from the disposal for consideration of financial derivative instruments or from the realization of rights incorporated in financial derivative instruments; and

(iv) Income earned from subscribing to shares for a contribution in kind.

In the case of income derived from business activity, as well as income from the alienation of shares, securities or derivative instruments, or the realization of rights incorporated in derivative instruments, amounts owed are also included in income even if not actually received.

However, with effect from January 1, 2025, an optional method for cost accounting available to entrepreneurs is the cash method. The cash method allows income tax to be paid only when payment from the contractor for the issued invoice is received. An entrepreneur can choose the cash method if its revenues from the relevant activity in the previous tax year did not exceed 1 million PLN. Entrepreneurs can benefit from the cash method if:

(i) They are taxed according to the tax scale, flat tax, IP BOX rules, or lump-sum tax;

(ii) Their revenues from the independently conducted activity in the year preceding the tax year did not exceed 1 million PLN;

(iii) They do not keep accounting books; and

(iv) They submit a written statement to the competent head of the tax office regarding their choice of the cash method.

Under the Personal Income Tax Act, income is classified into the following categories:

(i) Remuneration from employment or dependent personal services;

(ii) Income from independent personal services;

(iii) Income from business activities;

(iv) Income from special types of agricultural production;

(v) Income from rental, lease or similar agreements;

(vi) Income from capital and property rights, including income from the sale or exchange of property rights;

(vii) Income from the sale or exchange of real property, specific rights and movables, if the sale or exchange does not take place during the performance of a business activity and takes place within a specified time period from the date of acquisition of the property concerned, depending on the object of the sale (six months in the case of movables or five years in the case of real property, shares in real property, the right to premises with regard to cooperatives, the right to a single-family home in a housing cooperative and the right to a perpetual usufruct of land);

(viii) Income from activities of a controlled foreign corporation (CFC) attributable to a direct or indirect shareholder under certain conditions, beginning with the tax year of the CFC starting after December 31, 2014, or the taxpayer's tax year starting after December 31, 2014; and

(ix) Income from other sources.[176]

Income from agricultural activities (with the exception of revenue from "special types of agricultural production") and forest management is not subject to personal income tax, but to agricultural and forestry taxes respectively. Similarly, income subject to inheritance and gift tax (for example, donations) is not subject to income tax.

Taxable income subject to income tax is, generally, the difference between gross income and the tax deductible costs/expenses in a given calendar year. Generally, tax deductible

[174] Personal Income Tax Act, Art. 3.1.

[175] Personal Income Tax Act, Arts. 11.1 and 11.2a.

[176] Personal Income Tax Act, Art. 10.1.

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expenses must be appropriately documented by the taxpayer, although, occasionally, the provisions of the Personal Income Tax Act allow for the deduction of expenses as a fixed amount without the expenses having to be itemized. In certain situations, the Personal Income Tax Act provides for taxation based on gross rather than net income (i.e., without allowing for the deduction of expenses).

The possibility of taxation based on revenue (gross income) is also recognized by the Act on Fixed-Rate Taxation of Certain Revenues of Natural Persons.[177] This legislation provides for the fixed-rate taxation of gross income as reported in a simplified book or register (i.e., registered revenue) and for payment of the fixed-rate tax.

Fixed-rate taxation is available to taxpayers that carry on small-scale business activities. Such taxpayers operate using simplified documentation or no documentation at all. Taxpayers may waive fixed-rate taxation and elect to be subject to regular taxation, which is calculated on net income, but in that case, must maintain extensive bookkeeping records, which requires the itemization of both income and expenses in a consistent manner.

1. Salaries and Wages

a. Definition

All types of monetary payments and in-kind benefits with monetary value, or their equivalent, received by an employee are deemed to be income from an employment relationship, in particular: basic compensation; overtime pay; various types of bonuses; awards; compensation for unused leave; monetary consideration tendered on behalf of the employee; and other benefits for which the employee has not paid or has not paid in full.

Examples of these are:

(i) Payments made as a result of redundancy for reasons attributable to the employment establishment. Payments made to an employee according to special rules regarding the termination of employment relationships with employees for reasons attributable to the employment relationship, for example, a staff reduction for financial reasons, are subject to personal income tax.

(ii) Participation by an employee in joint events organized (and financed) by the employer, such as a Christmas party. In this respect, the tax authorities tend to claim that in such a case the employer should divide the costs of organizing the event by the number of participating employees and allocate to each employee the revenue in the amount corresponding to the cost attributable to each participant. Court decisions on these issues are not uniform and various judgments have disallowed taxation with respect to such events.

(iii) Training. As a rule, the costs of employee training paid for by the employer in the form of courses, studies and traineeships constitute income of the employee resulting from the employment relationship. According to the explanations provided by the Ministry of Finance, to determine the correct amount of income tax due, employee training should be divided into two categories, as follows:

- Training that raises professional qualifications with respect to skills applicable to daily duties, i.e., seminars, lectures or training conferences that do not constitute systematic academic study; and
- Training that raises the general level of professional knowledge, for example, study in private and state education facilities, higher education institutions, postgraduate studies, etc.

In the first case, if the training is necessary for the employee to carry out his or her duties, the costs borne by the employer do not constitute income of the employee. In the latter case, as a rule, any expenses borne by the employer for the employee in connection with training of this kind constitute income earned by the employee from the employment relationship. However, such income is generally exempt from taxation under a specific provision of the law.

(iv) Health care services. Payments towards medical services (medical packages) for employees are deemed to be income from the employment relationship. Because in the past this issue was controversial and subject to contradictory administrative court decisions, in 2011, the Supreme Administrative Court in Warsaw issued two resolutions confirming that medical packages constitute income derived from the employment contract. In addition, some tax authorities are of the opinion that, when the employer-provided medical package covers not only employees but also family members, the employee is deemed to receive taxable income from the employment relationship.

(v) Income earned from derivative rights or financial derivative instruments (i.e., types of income that are normally characterized as capital gains) that were acquired by a taxpayer as a free of charge benefit within or in relation to the employment relationship, is characterized as income from employment.

The value of a benefit received by an employee but for which the employee has not paid depends on the origin of the benefit, as follows:

(i) If the benefit is in the form of services that fall within the scope of the employer's business activity, the value is the price used in relation to purchasers of such services other than employees;

(ii) If the benefit is in the form of services purchased by the employer, the value is the purchase price;

(iii) If the benefit is in the form of access to residential accommodation, the value is equal to the rent that would be charged under a lease in line with the market value; and

(iv) In other cases, the value of the benefit is its market price.[178]

[177] Act on Fixed-rate Taxation of Certain Revenues of Natural Persons (*Ustawa z dnia 20 listopada 1998 r. o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne* Dz. U. 2020,1905) dated November 20, 1998.

[178] Personal Income Tax Act, Art. 12.3.

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Note: The taxable value to an employee of a benefit in kind from the private use of a company car will be simplified by using a lump sum method. For cars with an engine of up to 60 kW engine power and for electric and hydrogen cars, the monthly lump sum is PLN 250 and PLN 400 for cars with an engine above 60 kW engine power (prorated based on the number of days used in a month if a car is used for private purposes for only part of a month).

If an employee has partly paid for the benefit, the amount included in the employee's income is the difference between the value of the benefit, established in accordance with the principles set out in (i) to (iv), and the amount paid by the employee. For example, if a bank provides preferential low-interest loans to its employees, the amount of the benefit is the difference between the interest charged on loans provided by the bank to other persons, and the interest charged on the loans provided by the bank to the employees.

The issue of the taxation of benefits received by employees has been controversial and subject to contradictory administrative court decisions. In a decision dated July 8, 2014 (K 7/13), the Constitutional Tribunal made an attempt to clarify the issue and to determine criteria for the interpretation of the concept of "other gratuitous benefits" or "partially gratuitous benefits" as taxable income derived from the employment relationship. Under the guidelines provided by the Tribunal, the following criteria must be satisfied for benefits to be taxable:

(i) The benefits were accepted by an employee voluntarily;

(ii) The benefits were provided in the employee's interest rather than in the interest of the employer;

(iii) The benefits resulted in an increase of the employee's assets or saved expenses that the employee would otherwise have had to bear; and

(iv) The benefit is measurable and attributable to the individual employee (i.e., actually received).

Revenues from employment and dependent personal services are exempt up to an annual limit of PLN 85,528 in the hands of employees or contractors up to the age of 26. As of 2022, there are additional exemptions for income earned (up to the same limit but applied on a joint basis) by certain individuals who relocate to Poland, parents of families with four or more children and senior employees (who are entitled to but do not benefit from state retirement benefits).

The provisions of the Personal Income Tax Act and the executive regulations thereto provide for a range of employee benefits that are exempt from income tax.

Examples of these are:

(i) The value of professional attire or uniforms, if these are mandatory for employees, or their monetary equivalent;

(ii) The monetary equivalent of tools, materials or equipment used by employees to perform their duties, if the tools, etc. are owned by the employees;

(iii) Amounts received by employees as reimbursement for expenses related to obligatory secondment (only under a public service contract, which is different from an employment agreement), and allowances for furnishing and settlement expenses arising due to obligatory secondment of up to 200% of the salary payable for the month in which the obligatory secondment takes place;

(iv) Allowances and other amounts due during business trips undertaken by employees, or travel by persons who are not employees, up to the amount specified in separate laws or regulations;

(v) The value of payments made by the employer for employee accommodation amounting to no more than PLN 500 per month; and

(vi) The value of monetary and non-monetary benefits received by employees that are financed in full from the company's social fund or trade union funds and amount to no more than PLN 1,000 in any given tax year. Coupons, vouchers and other items exchangeable for goods or services are not tax-exempt benefits.

The tax-deductible costs arising from an employment relationship are defined by law as a fixed amount. Currently, the fixed amount is PLN 250 per month, but no more than PLN 3,000 per year. If an employee earns income from more than one employment relationship, the total cost of earning income from these employment relationships may not exceed PLN 4,500. For an employee residing outside the area in which the workplace is located, monthly costs are PLN 300, but no more than PLN 3,600 a year. Employees who are able to demonstrate (with tickets bearing their name) that their annual cost of travel on public transportation was higher than the statutory fixed costs can recognize such actual costs of earning income.[179]

Tax-deductible costs with respect to remuneration for the use of an author's copyright or related rights or the disposal of such rights amount to 50% of income less social contributions, but may not exceed the upper limit for the first income bracket (i.e., PLN 120,000). Only explicitly listed types of creative activities qualify for this deduction.

b. Withholding at Source

It is a general principle that an employer, as a withholding tax agent, has a duty to calculate and collect advance payments of income tax on the earnings of its employees throughout the year, and to deposit these advance payments with the appropriate tax office. These advance payments must be transferred to the tax office not later than the 20th day of the month following that in which they were collected. For purposes of calculating the tax to be collected by way of advance payments, the taxable income of the employee is his or her remuneration reduced by the deductible costs discussed in a., above, and further reduced by:

(i) Employer-deducted contributions towards retirement insurance (9.76% of earnings);

(ii) Disability insurance (1.5% of earnings); and

(iii) Sick leave insurance (2.45% of earnings) borne by the employee.

To the extent an employee's earnings exceeded an amount corresponding to 30 times the forecast average monthly earnings (as defined in the budget law, i.e., PLN 260,190 in 2025),

[179] Personal Income Tax Act, Art. 22.

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they were not subject to contributions for disability and retirement insurance. Earnings exceeding this limit thus increased in actual terms and the income base for the collection of advance payments of personal income tax on the employee's earnings also increased. This limitation, however, ceased to apply from January 1, 2019, when all earnings became subject to the above contributions.

The advance payments collected by the employer are subsequently reduced by the amount of the employee's health insurance contributions. Currently, the health insurance contributions amount to 9% of the contribution base. Until the end of 2021, a part of health insurance contributions amounting to 7.75% of the contribution base (i.e., the employee's earnings after deductions of contributions for retirement, disability and sick leave) was tax deductible. As of 2022, health insurance contributions are no longer tax deductible. The advance payment is calculated based on rates deriving from the tax scale in force during the year concerned (currently 12% and 32%), depending on the amount of income received by the employee.

In the case of an employee who is married and whose spouse receives no income, the employer has the option, at the employee's written request, of collecting smaller advance payments of income tax, if the employee submits a declaration that in the year concerned he or she intends to be taxed jointly with his or her spouse. This system effectively allows for the joint taxation of married couples throughout the year, rather than only at the end of the year, and an employee is able to avoid progressive taxation of his or her earnings over the year. Otherwise, earnings would be subject to the higher general progressive taxation rates (currently 12% and 32%), depending on the amount of the earnings, as described above.

In 2023, the free amount has been raised to PLN 30,000 and the second tax threshold has been raised to 120,000.

The annual tax return of an employee who submits an appropriate declaration to his or her employer certifying that he or she receives no income apart from his or her earnings from the employment relationship, does not take any deductions from tax or income, as provided for by provisions of the tax law, and does not file returns jointly with his or her spouse or child, is prepared and filed with the tax office by the employer. The employer must also refund to the employee any tax overpayment declared in an annual tax return or pay to the tax office any tax due as declared in the annual tax return (and set off such tax refund/due tax against its liabilities towards the tax office or taxpayer respectively).[180]

In other cases, for example, if the employee intends to file jointly with his or her spouse, the employer is required to inform the employee, before the end of February of the following year, of the amount of his or her income and of the amount of tax deducted by the employer.

If the employee receives income from an employment relationship abroad, the employee is required to make advance payments on account of his or her income tax liability throughout the tax year.[181]

2. Income from Independent Personal Services

a. General

Revenue (i.e., gross income) from personal services includes:

(i) Income from artistic, literary, scientific, training or journalistic work, or from sporting activities;

(ii) Income from the activities of priests received from sources other than an employment agreement;

(iii) Earnings received by members of supervisory bodies, management boards, commissions and other corporate authorities;

(iv) Income from personal services performed on the basis of service agreements or agreements for the performance of specific work, or professional services, if the income is received exclusively from corporations, entrepreneurs and non-corporate entities and the services are not performed for the benefit of individuals who are not entrepreneurs; and

(v) Income earned from management contracts, including contracts for managing an enterprise and similar contracts.

Expenses incurred in earning such income can generally be deducted based on fixed percentage rates rather than the actual expenses incurred, unless the taxpayer can provide evidence of the fact that the actual expenses were higher than the fixed percentage amount. For example, 20% of earnings received under a service agreement or an agreement for the performance of specific work are deductible expenses, unless the taxpayer can demonstrate that actual expenses were higher.[182] No similar standard expense deduction has been set in the case of earnings received by members of management boards.

Tax-deductible costs with respect to remuneration for the use of an author's copyright or related rights or the disposal of such rights amount to 50% of income less social contributions, but may not exceed the upper limit for the first income bracket (i.e., PLN 120,000). Only explicitly listed types of creative activities qualify for this deduction. Income derived from derivative rights or financial derivative instruments (i.e., types of income that are generally characterized as capital gains) are now characterized as income from personal services if such derivative rights or financial derivative instruments were acquired by a taxpayer as a free of charge benefit pursuant to a personal services relationship.

In general, persons paying income to individuals performing personal services are required, as withholding tax agents, to collect advance payments of income tax. Such advance payments are set at 12% of the amount paid minus the appropriate tax-deductible costs. If the taxpayer is liable, because of the amount of income received in the year concerned, to pay a higher tax amount of in accordance with the tax rates currently in force, the taxpayer will be required to pay the difference. As a rule, income from personal services is subject to taxation at the progressive tax rates (12% and 32%). However, income from personal services performed on the basis of service agree-

[180] Personal Income Tax Act, Art. 37.

[181] Personal Income Tax Act, Art. 44.

[182] Personal Income Tax Act, Art. 22.9.

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ments or agreements for the performance of specific work is taxed at the flat 12% rate on the gross amount received rather than on net income if gross income earned from one tax remitter under one contract does not exceed PLN 200.

b. Income from Personal Activities Under a Management Contract

The Personal Income Tax Act does not provide a definition of a "management contract". In the absence of a legal definition, the term is to be interpreted, in accordance with its dictionary definition, to mean a form of management of an enterprise (institution), or a division or department of an enterprise.

On the other hand, the Civil Code states that management contracts fall into the category of "unnamed" agreements, which are generally regulated by Article 750 of the Civil Code. Under this article, agreements for the performance of services not regulated elsewhere are subject to regulations relating to commissioned work (service agreements), as appropriate.

Whether a taxpayer's income is treated as income derived under a management contract will in each case depend on the wording of the particular civil law contract. Therefore, whether, in light of the interpretation discussed above, management activities, i.e., the management (direction) of an enterprise, institution, division, department, team, etc., are performed by a taxpayer can only be determined based on the wording of the specific agreement.

Income derived from an enterprise management or similar agreement, including income derived under similar agreements concluded as part of non-agricultural commercial activity conducted by a taxpayer, is treated as income derived through personal activity. This does not apply to income derived by persons on management boards, supervisory boards, committees or other legal bodies, regardless of the manner in which such boards, etc. are appointed. Similarly, income derived by a manager through an agreement for the supply of services based on an entry in the commercial activity register is deemed to constitute income derived through a personal activity.

Classification of a particular agreement as a management contract has significant consequences with respect to its personal income tax treatment and the rules relating to the payment of social security contributions. Thus, a company commissioning management services must, as the withholding tax agent, withhold the following from income derived under a management contract:

(i) An income tax advance payment of 12% of the due amount, less the aggregate tax-deductible costs (PLN 250 per month and no more than PLN 3,000 per tax year); and

(ii) Social security contributions under the rules applicable to service agreements, as provided for in the Social Security Act.

3. Income from Business Activities

Under the statutory definition set out in the Personal Income Tax Act, the term "business activity" is understood to mean an activity aimed at earning profits conducted on a taxpayer's own behalf in an organized and continuous manner. The earnings may not be classified as being derived from other sources defined in the Personal Income Tax Act. The Personal Income Tax Act also introduces a negative definition of "business activity," under which an activity carried on by a taxpayer is not treated as a business activity if all of the following conditions are fulfilled:

(i) The person performing the services concerned is not liable towards third parties for the results of the activity, except to the extent of criminal liability;

(ii) The activity is performed under the supervision of, and at a time and place specified by, the person ordering the taxpayer to perform the activity; and

(iii) The person performing the activity does not bear the economic risks connected with the activity performed.

a. Determination of Gross Income

Gross income from business activities includes amounts due, even if such amounts are not in fact received, and excludes the value of goods returned and discounts granted.[183] Value added tax (VAT) received by a taxpayer who is VAT taxpayer is not included in income.

Individuals deriving gross income from business activities must maintain the appropriate bookkeeping records (revenue and expenditure books), showing both gross income and tax deductible costs/expenses. Net income from business activities is the difference between gross income derived and tax deductible expenses, increased by the difference between the value of closing inventory and the value of opening inventory (commercial goods, materials, finished products, losses and spoiled goods) if the value of closing inventory is higher than that of opening inventory, and decreased by that difference if the value of opening inventory is higher than that of closing inventory.

The following also constitutes income from business activity: income from the sale, in whole or in part, of assets connected with the carrying on of business activities; exchange rate differences; interest on bank accounts received in connection with the activities carried on; the value of written-off or overdue debts, including debts resulting from loans made; the value of consideration received in kind; and other unpaid consideration. Income in foreign currency is converted into PLN using the average rate of exchange on the last business day preceding the day on which the income was derived or otherwise put at the disposal of the taxpayer, as published by the NBP.

Generally, both cash and assets remaining after liquidation of business activity (conducted individually or in the form of a partnership) or from withdrawal of a partner from a partnership, are not subject to Personal Income Tax upon liquidation/withdrawal. Only an alienation of assets remaining after liquidation/withdrawal is considered as income, except where the assets are alienated after six years from the first day of the month following the month during which the liquidation/withdrawal occurred and the alienation is not done in the course of business activity. Nevertheless, the income may be exempt from taxation, provided that the assets are transferred to a partnership by way of a contribution in kind.

b. Business Expenses

As a general principle, tax-deductible expenses include all expenses incurred for purpose of deriving income from busi-

[183] Personal Income Tax Act, Art. 14.1.

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ness activities or maintaining/securing source of revenues, with the exception of expenses that are expressly not recognized as deductible expenses under the relevant provisions. Thus, for an expense to be deemed deductible, there must be a cause and effect connection between the incurring of the expense and the deriving of income by the taxpayer, i.e., the fact that the expense was incurred must have had an influence on the generation of the income or at least on the possibility of the taxpayer deriving the income.

Expenses incurred for purposes of preserving or protecting the source of income are also deductible. Taxpayers may also treat costs that are only indirectly connected to a business activity as deductible expenses (for example, the cost of annual subscriptions and professional fees).

If deductible expenses are incurred in a foreign currency, the amount is converted into PLN at the average exchange rate announced by the NBP on the last business day preceding the day on which the expenses are incurred.

As a rule, tax-deductible costs are set off in the tax year in which they are incurred. However, tax deductible costs directly connected to income that are incurred during the current tax year or in a preceding tax year may be set off against the corresponding income in the tax year in which the income is obtained, subject to certain exceptions. On the other hand, taxpayers who keep a revenue and expenditure book are allowed to use an optional and simplified method according to which costs are tax deductible in a month in which an invoice, a bill or other document evidencing the cost was issued.

For the deductibility of expenses directly connected with income derived in a given tax year and incurred once that tax year has ended, as well as expenses other than those directly connected with the derivation of income, see V.B.4.a., above.

Taxpayers may not claim expenses as tax-deductible costs if they involve a payment to another entrepreneur (business to business) with respect to a transaction the amount of which exceeds PLN 15,000 and the payment was made without the use of a bank account.

c. Advance Payments of Tax

Taxpayers conducting business activities must make advance payments of income tax. The amount of the advance payments depends on the amount of income derived and is determined in accordance with the tax rates in force for the year concerned (currently 12% and 32%). The advance payments are reduced by a significant portion of taxpayer's health insurance contributions. The advance payments are made on a monthly basis by the 20th day of each month for the preceding month.

Taxpayers carrying on business activities may elect to be taxed at a flat rate of 19%. An application to pay tax in this way must be submitted to the relevant tax office by January 20 of a given year and is valid until the taxpayer revokes the election (a taxpayer who commences business activities after January 20, must file an application for taxation at the flat rate before the first revenue is earned). Taxpayers who are employed by an employer at any time in a particular tax year and who wish to provide services (of a nature similar to their employment duties) to the same employer in that same year, either while still being employed or before or after such employment commenced or ended, are not allowed to use flat-rate taxation (but are allowed to opt for flat rate taxation as of the following year).

Taxpayers are no longer required to file monthly tax returns but are required to file an annual tax declaration by the end of April of the year following the tax year on Form PIT-36 or PIT-36L with the relevant attachments.

4. Income from Real Property

Income from real property includes rental income received by the owner for the rental or leasing of real property or parts thereof. Deductible expenses include all expenses incurred in connection with securing the rental income. Taxpayers receiving income from the rental of real property are required to calculate and make appropriate advance payments of income tax on the same basis as taxpayers carrying on business activities (see 3.c., above).

An entity that receives real property free of charge, in whole or in part, for its own use is deemed to receive a benefit-in-kind constituting taxable income in the same way as in the case of any other gratuitous benefits received, under Article 11.1 of the Personal Income Tax Act.

A taxpayer who derives rental income but conducts the rental activity outside of his or her business activity is subject to flat-rate taxation on income arising from a lease agreement. Consequently, the taxpayer may not take into account any costs connected with the lease (for example, the cost of repairs, decoration, etc.). The main characteristics of this form of taxation are as follows:

(i) The taxpayer does not have to submit monthly tax returns connected with income from lease agreements. The tax return is submitted by January 31 of the year following the tax year. The taxpayer is required to pay the flat rate tax on a monthly basis without having to comply with any other formalities.

(ii) The tax rate is 8.5% if the rental income received by the owner does not exceed PLN 100,000, or 12.5% if the rental income received by the owner equals or exceeds PLN 100,000.

(iii) Income from lease agreements is not combined with income from other activities.

5. Investment Income and Capital Gains

This category of income comprises:

(i) Interest on loans;

(ii) Interest on savings deposits, bank accounts and other forms of saving or investing, with the exception of interest derived in connection with business activities;

(iii) Interest (discount) on securities;

(iv) Dividends and other income from participation in the profits of a legal entity (actually received), such as:

- Dividends on stock paid by members of pension funds to "quantity accounts";
- Income from redemption of shares;

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• Current income of a corporation (legal entity) used to increase share capital or supplementary or capital reserves of a corporation (legal entity);

• Interests in the balance surplus of a cooperative;

• Proceeds from a liquidation of a company (legal entity);

• The value of free services or benefits provided to shareholders by a corporation (legal entity); and

• Income from a decrease of capital participation in a joint-stock limited liability partnership ("SKA") or exit from such partnership;

(v) Income from participation in capital funds;

(vi) Accrued income (i.e., income due but not received) from:

• The sale of shares, stocks or other securities; and

• The execution of rights with respect to securities;

(vii) Income from the assignment of subscription rights for consideration, including income from the sale of rights to subscribe to stock newly issued by an employee retirement fund in the name of a member of the fund;

(viii) Income of members of employee retirement funds resulting from the transfer of shares held on account to the assets of such funds;

(ix) The value of a contribution-in-kind made to a company (including a joint stock partnership) or to a cooperative in exchange for shares or the market value of such contribution as of the day of the transfer, where the declared value of the contribution is lower than market value; and

(x) Income from the sale of derivatives or the execution of rights with respect to derivatives.[184]

Income derived from derivative rights or financial derivative instruments is characterized as income from personal services or income from employment if such derivative rights or financial derivative instruments were acquired by a taxpayer as a free of charge benefit within or in relation to a personal services relationship or an employment relationship.

Interest on loans, except when the granting of loans is part of a business activity, is taxed at a flat rate of 19% of the income derived. Discounts and interest on securities are also taxed at a 19% rate. Such income is not aggregated with income derived from other sources.

Interest on saving deposits and bank accounts is taxed at a flat rate of 19%. However, interest on saving deposits and bank accounts connected with a business activity is taxed in accordance with the general principles.

Dividends received by an individual are not aggregated with other income derived by the individual and are taxed as a lump-sum at the rate of 19%. The tax on dividends is collected at source by the company paying the dividends, which is required to remit the tax to the appropriate tax office.

Taxpayers deriving income from the sale of shares, stocks, bonds and other securities must pay income tax at the rate of 19% of the income derived.

6. Gains from the Sale or Exchange of Real Property and Certain Property Rights

As a rule, gains from the sale or exchange of real property or part thereof, cooperative property rights to dwellings, premises used for other than housing purposes, property rights to single family homes in housing associations, rights to a permanent usufruct and rights over "other property" are subject to personal income tax if the sale or exchange is made before five years have elapsed from the end of the calendar year in which the purchase or construction of the real property or the acquisition of the property rights took place, and if the sale or exchange is not made in the course of a business activity.

The specific rules on the taxation of gains realized on the sale or exchange of real property have changed quite frequently in recent years. Different sets of rules apply depending on when the acquisition or construction of the real property concerned took place.

Generally, gains realized on the sale or exchange of immovable property are subject to tax only if the sale or exchange takes place before five years have elapsed from the end of the calendar year during which the property was acquired or built. Thus, for example, the sale of immovable property acquired in 2016 and sold in 2022 is not subject to personal income tax.

Separate rules apply to the taxation of certain gains realized on the sale or exchange of real property acquired or constructed on or after January 1, 2007, as follows:

(i) Gains from the sale of real property acquired between January 1, 2007 and December 31, 2009 may be exempt from personal income tax if the taxpayer was a registered resident of the property for a period of at least 12 months preceding the date of sale.

(ii) Gains from the sale of real property acquired on or after January 1, 2009 may be exempt from personal income tax if, within two years from the end of the tax year in which the property was sold, the taxpayer reinvests the proceeds of the sale in the purchase of residential real property (or its redecoration, etc., or to repay a bank loan drawn for such purposes) located in a European Union (EU) or European Economic Area (EEA) Member State, or Switzerland. If the entire sale proceeds are not reinvested in the purchase of residential real property, the gains derived from the sale will be exempt in the same proportion as the amount so reinvested bears to the entire proceeds. The non-exempt portion is subject to a flat tax of 19%.

A sale or exchange relating to movable property is not subject to personal income tax, if the sale or exchange is made after six months from the end of the month during which the property was purchased, and the sale or exchange is not made in the course of a business activity.[185] If the sale takes place prior to the expiration of the six-month period, the income derived by the taxpayer is added to other income derived by the taxpay-

[184] Personal Income Tax Act, Art. 17.

[185] Personal Income Tax Act, Art. 10.2.3.

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er during the tax year, and the aggregated amount is subject to income tax under the general rules, i.e., at progressive rates up to a maximum rate of 32%.

Gains from the sale of real property are calculated as the price specified in the sale agreement minus the costs of sale (such as stamp duty and notary's fees), and documented expenses incurred that resulted in an increase in the value of the property disposed of. The price must be a market price, that is, the average price prevailing in the location concerned, taking into account the condition and age of the real property as of the date of the sale agreement. If the price differs significantly from market value, the tax office will ask the parties to the agreement to alter the price or provide reasons justifying the lower price used.

As a last resort, if the parties do not respond to the tax office, do not alter the price or do not provide reasons in support of a price that differs substantially from the market value, the final price will be set by experts appointed by the tax office. If the price set by this method differs from the contract price by 33% or more, the seller must bear the cost of the expert opinion.

The tax must be paid by the taxpayer by April 30 of the year following the tax year in which the sale took place (the deadline for submission of the annual personal income tax return).

7. Income from Undisclosed Sources

Income from undisclosed sources, for example, black market earnings (covered by the Personal Income Tax Act) and income not included within disclosed sources is subject to income tax. After the provisions regulating such income were deemed unconstitutional by the Constitutional Tribunal, the income definition and the assessment procedure have been entirely rewritten as of January 1, 2016.

The amount of such income is established based on the expenses incurred and the amount of taxed and untaxed (i.e., free of taxation, exempt, barred by limitation, etc.) income or revenue derived before incurring those expenses.

This deemed income is assessed under a special procedure if, during an audit, the tax authorities suspect that the expenses incurred by a taxpayer in connection with property acquired in that tax year or previous years are inconsistent with his or her declared income. The burden of proof with respect to the amount of taxed and untaxed income or revenue lies with the taxpayer. Income from undisclosed sources cannot be combined with income from other sources and is subject to income tax at the rate of 75%.

8. Taxation of Small Business Owners

A taxpayer, including a civil law partnership, that derives income from business activities may be taxed at a flat tax rate calculated on gross income rather than on net income (i.e., generally without allowing the deduction of expenses), provided the taxpayer's gross income during the preceding tax year did not exceed 2 million euros. A taxpayer who begins to carry on activity during the tax year may be subject to the flat tax on gross income irrespective of the amount of his or her income during the first year of activity.

Depending on the type of activity, the rate of tax is 2%, 3%, 5.5%, 8.5%, 10%, 12%, 14%, 15% or 17% of gross income.[186]

Taxpayers subject to the flat tax are only required to maintain simplified accounting records consisting of:

(i) Documentation of gross income;

(ii) Itemization of fixed assets; and

(iii) Valuation of legal intangible assets.

Such taxpayers must also keep records of goods purchased. Specific types of activity are excluded from this tax treatment, including: the operation of pharmacies; the practice of some independent professions, for example, that of a lawyer; the provision of specific services; the production of products subject to excise taxes; pawn-broking activities; and the purchase and sale of foreign currency.

Apart from the taxpayers referred to above, a flat rate income tax, calculated as a fixed amount rather than as a percentage, may be paid by taxpayers who conduct a simple business activity involving the provision of a service, such as taxi drivers and persons providing handicraft services, irrespective of the amount of their turnover. To take advantage of this tax treatment, such taxpayers must submit an appropriate application to, and obtain a positive decision from, the head of the tax office.

9. Minimum Tax on Commercial Real Estate

A minimum tax applies with respect to fixed assets that are located in Poland and have an initial value exceeding PLN 10 million if they are:

(i) Commercial or service buildings classified as shopping centers, department stores, independent shops or boutiques, or other trade or service buildings; or

(ii) Buildings classified as office buildings.

The taxable base corresponds to the initial value of the asset determined as of the first day of each month less PLN 10 million. Taxpayers calculate the liability for each month and pay the tax by the 20th day of the month following the month for which the tax is paid.

The tax does not apply to real property used exclusively or primarily for the own needs of the taxpayer or to real property for which depreciation was suspended as a result of the suspension or cessation of the business activity for which the property was used.

The tax is called a minimum tax because the obligation arises only if the CIT liability of the taxpayer is low. The tax does not apply if CIT advances exceed 0.035% of the excess of the initial value of the fixed asset over PLN 10 million.

As of January 1, 2019, the minimum tax rules are no longer limited to commercial buildings, but apply to all buildings (or parts thereof) that are given for use under a contract of lease, tenancy, leasing, etc. Vacant areas are not subject to the minimum tax.

Application of the PLN 10 million exemption threshold is no longer based on the value of one building, but will apply to

[186] Act on the Flat Income Tax on Certain Revenue Received by Natural Persons of Nov. 20, 1998, Art. 12.

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the taxpayer regardless of the number of buildings owned (i.e., only one tax free amount per taxpayer for the entire portfolio of buildings).

In addition, an anti-abuse clause will be introduced under which transfers of real estate made with the sole purpose of avoiding the minimum tax will be disregarded by the tax authorities.

10. Exit Tax

An exit tax was introduced in Poland as of January 1, 2019, as a result of the implementation of the EU Anti-Tax Avoidance Directive (Directive 2016/1164/EU).

The exit tax is imposed on every taxpayer, whether an entity or individual, in the case of:

(i) A transfer of assets;

(ii) A change of tax residence; or

(iii) A transfer of a permanent establishment (PE) of a taxpayer outside Poland.

The tax is levied at the rate of 19%. See V.B.3.k., above.

D. Calculation of Taxable Income, Allowances, Deductions and Exemptions

All types of income not exempted from income tax are subject to income tax. Thus, if a taxpayer receives income from several sources, the basis of taxation is the total aggregated income from all such sources, except specific income that is subject to a flat tax (for example, the tax on dividends or the tax on interest not connected with a business activity), which is taxed separately and is not aggregated with other income.

In general, taxable income from each category is arrived at by deducting from the gross income earned in that category during a tax year any tax deductible costs incurred in obtaining that income. The tax-deductible costs for a particular category of income are all expenses incurred for purposes of obtaining that income, with the exception of expenses listed in the Personal Income Tax Act as being non-deductible. With respect to certain categories of income, expenses are deducted based on fixed percentage rates rather than actual expenses, unless the taxpayer can provide evidence to demonstrate that actual expenses incurred were higher than the fixed percentage amount.

If the tax deductible expenses exceed the amount of gross income, the particular category of income will reflect a loss to the extent of the excess. Subject to certain exceptions, such losses may be carried forward and set off in equal parts against income from the same category earned during the subsequent five tax years.

1. Deductions

A taxpayer has the right to reduce his or her tax liability by way of deducting certain expenses from his or her income.

Examples of expenses that may be deducted from income are:

(i) Contributions to retirement, pension, sickness and accident insurance, as specified in the provisions on the social insurance system, if these contributions have not been incorporated into the costs of obtaining income. Mandatory contributions to retirement and sickness insurance systems paid by the taxpayer under provisions applicable in another EU or EEA Member State, or Switzerland, are also deductible if certain requirements are met (for example, the contributions may not be deductible by the taxpayer in any other country).

(ii) Expenditure incurred for designated rehabilitation purposes by a taxpayer that is disabled or has disabled dependents.

(iii) Gifts for purposes of religious worship, or for purposes provided for under the Public Benefit Activities Act[187] or blood donation units.[188] The total amount of the deduction may not exceed 6% of the taxpayer's income.[189] Regulations deal in detail with matters relating to these deductions, for example, the documentation required and the conditions for and amounts of the deductions.

(iv) Expenditure incurred in connection with Internet usage. The total amount of the deduction cannot exceed PLN 760 in the two following years, subject to certain limitations.

In addition, the tax due may be decreased by "child relief".[190] A taxpayer who has one or more children is entitled to decrease his or her tax due by the amount obtained by multiplying the number of children by up to approximately PLN 1,112.04 (as of 2022). The amount is higher for larger families: PLN 2,000.04 for a third child and PLN 2,700 for the fourth and following children. This amount applies to both parents jointly and to a single, divorced or separated parent with whom the children reside. In the case of joint custody, the amount is prorated based on the time the children spend with each parent. With respect to a taxpayer who has only one child, certain income limits apply. Starting with 2014 income, child relief that remains unused (due to low income) may be subject to refund in certain circumstances. In addition, as of 2022, parents with four or more children are entitled to a tax exemption on income up to PLN 85,528.[191]

2. Research and Development

Entrepreneurs may deduct from the tax base certain qualified research and development (R&D) expenses.[192] This relief replaced the deduction of expenses incurred to acquire new technology.

Expenses that qualify for the relief are:

(i) Payroll expenses concerning employees engaged in R&D activity — up to 200%;

(ii) Acquisition costs of materials for the R&D activity — up to 100%;

(iii) Expenses incurred in relation to expertise, opinions, advisory services, acquisition of research results, etc. for the R&D activity — up to 100%;

[187] Journal of Laws 2020, No. 234, Item 1057.
[188] Journal of Laws 2020, Item 1777.
[189] Personal Income Tax Act, Art. 26.
[190] Personal Income Tax Act, Art. 27f.
[191] Personal Income Tax Act, Art. 21.1.153.
[192] Personal Income Tax Act, Art. 26e.

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(iv) Expenses for the use of research equipment for the R&D activity, excluding under agreements between related entities — up to 100%;

(v) Depreciation write-offs on fixed assets and intangible assets used in the R&D activity, subject to certain exceptions — up to 100%; and

(vi) For micro, small and medium-size entrepreneurs, certain expenses related to obtaining and keeping a patent, design patent or right in registration of a utility model — up to 100%.

The relief may be carried forward for six years. In addition, a taxpayer who, in its first year, incurred a tax loss or derived income in an amount lower than the amount of the relief is entitled to a refund of the relief to the extent of the amount of unused relief multiplied by the applicable tax rate. For micro, small and medium-sized entrepreneurs, the refund may also be available in the second tax year.

Individuals who conducted individual business activity within two years from the end year in which the activity related to the relief started, or who were partners in a partnership at that time, do not qualify for the refund. The refund will also not apply where the activity was conducted by the spouse, provided that the spouses owned joint marital property at that time. The refund will be recaptured if the taxpayer is declared insolvent or put into liquidation within three tax years from the end of the year for which the refund was granted. A taxpayer who cannot utilize the full amount of the R&D credit in a given year may use it through a reduction of payroll tax obligations withheld on the remuneration of R&D employees (subject to certain conditions and limitations).

3. Robotics/Automation, Prototype Development and Business Expansion

As with corporate taxpayers, entrepreneurs that invest in industrial robotics can take an additional deduction equal to 50% of the eligible costs incurred in a tax year for integrating robotics into their operations. The amount of the deduction may not exceed the amount of income other than income from capital gains derived by the taxpayer in the tax year.[193]

Deductible costs incurred for investments in industrial robotics consist of the following:

(i) The costs of acquiring new industrial robots, machines and equipment similar to industrial robots and functionally related to them, equipment and other things functionally related to industrial robots that serve to ensure ergonomics and occupational safety with respect to those jobs where there is human interaction with an industrial robot;[194]

(ii) The costs of acquiring intangible assets that are necessary for the proper launch and operation of industrial robots and other fixed assets;

(iii) The costs of training services related to the operation of industrial robots and other tangible or intangible assets;

(iv) Fees established in financial lease agreements with respect to industrial robots and other fixed assets.

The relief for robotization is available for covered costs incurred over a period of five years from 2021 through to 2025. However, eligible expenses can be carried forward and written off over six years, i.e., until 2031.

In addition, taxpayers who, as a result of R&D activities, create a prototype for a new product and subsequently commercialize the model may also deduct 30% of the costs incurred for the production of the product and its introduction to the marketplace. The amount of the deduction cannot exceed 10% of the income earned by the taxpayer from the business activity in a tax year.[195]

Expenses that are associated with business expansion activities are also eligible for taxpayer relief.[196] The expansion allowance provides an additional deduction from the tax base for costs that a taxpayer has incurred to expand its markets. These are deductible expenses incurred to increase revenue from a boost in product sales, provided the taxpayer can show an increase in revenues over two years. The maximum deduction in a given tax year is PLN 1 million. Eligible costs for this deduction are those incurred for participation in exhibitions, promotional/information activities, the adaptation of product packaging, and the preparation of sales documentation and documentation required for project tenders.

4. Exemptions

The provisions of the Personal Income Tax Act and its implementing regulations provide for multiple tax exemptions for specific types of income, including the following:

(i) Compensation or satisfaction received pursuant to a court decision or court settlement, if the amount or the rules for determining the compensation directly result from the provisions of separate acts or implementing provisions issued by virtue of these acts, excluding, among other items:

- Severance payments and compensation provided for under labor law for the shortening of the specified period of notice of termination of an employment contract;
- Compensation granted under provisions on the prohibition of competition; and
- Indemnities for damage to component assets connected with the economic activity carried on.

(ii) Other indemnities or satisfaction received under a court decision or agreement in court, up to the amount stated in the judgment or agreement, except for indemnities or satisfaction received in connection with the economic activity carried on or related to the benefits the taxpayer could have obtained if the damage had not been inflicted on him or her.

[193] Personal Income Tax Act, Art. 52jb.

[194] This refers, in particular, to sensors, controllers, relays, safety locks, physical barriers (fences, guards) or optoelectronic protective devices (light curtains, area scanners), machines, equipment or systems for remote management, diagnosis, monitoring or servicing of industrial robots, especially sensors and cameras, human-machine interaction devices for industrial robots.

[195] Corporate Income Tax Act, Art. 18ea.

[196] Corporate Income Tax Act, Art. 18eb.

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(iii) Proceeds received from property or personal insurance.

(iv) Winnings from games of chance and mutual betting operated and conducted in accordance with the laws of EU or EEA Member States.

(v) Welfare payments, family and home-care benefits, compensation paid where the payment of alimony cannot be effectively enforced and childbirth benefits.

(vi) Designated income from the sale of real property if the income is reinvested within a specified time period in real property used for residential purposes.

(vii) Academic scholarships and scholarships for academic performance.

(viii) Social welfare benefits, benefits for lodging in student housing and subsistence that are awarded based on separate legal provisions relating to students.

(ix) Revenue obtained by a taxpayer if:

- The revenue is derived from a foreign government, an international organization or an international financial institution in the form of non-returnable aid, including funds, under an EU program such as the Framework Program of the European Community for research, technical development and demonstration activities, or from a North Atlantic Treaty Organization (NATO) program, and is allocated base on a unilateral declaration or a treaty concluded with the relevant country, organization or institution by the Council of Ministers or the competent minister or government agency, including cases in which the funds are supplied via an entity authorized to distribute funds as non-returnable aid; and

- The taxpayer is using the non-returnable aid to carry out a finance program, except for aid received for a project under a twinning agreement concluded in accordance with EU law, where a Polish public administrative body is an implementing institution. The exemption does not apply with respect to the income of natural persons engaged directly by the taxpayer to achieve the goal of the program — irrespective of the type of agreement — or the performance of specific activities related to the program.

(x) Winnings from competitions and games organized and broadcasted/announced in the mass media (press, radio and television) and competitions in the areas of science, culture, art, journalism and sports, and prizes connected with premium sales, if the value of such winnings or prizes does not exceed PLN 760 per event. However, prizes obtained by the taxpayer in connection with non-agriculture-related business activities do not qualify for the exemption and constitute revenue from those activities.

(xi) The value of promotional/marketing gifts received from an entity conducting marketing efforts, up to an amount of PLN 200.

5. Special Economic Zones and New Investments

Special Economic Zones (SEZs) are designated areas of Poland that are subject to specific tax rules. However, as the SEZ scheme was replaced with an incentive regime based on obtaining a decision of support with effect from mid-2018, tax relief previously connected with SEZs is now available only to those taxpayers who obtained a special permit before the new regulations came into force. As of mid-2018, new investments may benefit from tax relief throughout the entire territory of Poland; relief is no longer limited to the SEZs.

To benefit from the tax relief based on a decision of support for new investment, various quantitative and qualitative conditions have to be fulfilled. For further discussion, see IV.K., above.

Tax relief in SEZs and tax relief more generally are discussed in further detail at V.B.11., above.

6. Commercialization of Intellectual Property

A tax incentive for intellectual property (IP) is aimed at creators entitled to certain IP or entitled to license it (commercializing entities). A contribution-in-kind of "commercialized intellectual property" in exchange for shares in a company or a joint-stock partnership is not considered to constitute taxable income in the hands of the commercializing entity. Commercialized intellectual property includes, among others, a patent, a protection right on a pattern, proprietary copyrights on software or know-how, and may also take the form of a license of those rights.

7. Innovation Box

Income derived from the commercialization of created, developed or improved IP rights (for example, patents) is taxed at a preferential 5% CIT rate. A special formula, which broadly depends on the types of costs incurred for R&D purposes, must be used to calculate income subject to this preferential tax rate. See V.B.13., above.

E. Tax Rates

In general, income derived by a taxpayer is aggregated and subject to tax (in 2022) as follows:[197]

Income		Tax Due
From	To	
PLN 0	PLN 120,000	12% of the taxable base minus tax-free amount of PLN 5,100
PLN 120,000		PLN 15,300 + 32% of excess over PLN 120,000

Certain types of income that are subject to a flat tax, however, are not aggregated with the above income for purposes of calculating income tax and are taxed separately. Examples of such income are:

(i) Dividend income, subject to a 19% flat tax;

[197] Personal Income Tax Act, Art. 27.1.

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(ii) Interest on loans (except where providing loans is part of a business activity), subject to the same 19% flat tax rate; and

(iii) Income received by small-business operators, who are subject to various flat tax rates, depending on the type of activity carried on.

Interest on, or other revenue from, funds deposited in a taxpayer's account and income from shares in investment funds are also subject to a 19% lump-sum tax.

As of 2022, the mechanism for calculating the tax-free income amount was replaced by a fixed tax-free amount of PLN 30,000. The first income tax threshold, above which the 32% tax rate applies, has also been increased, from PLN 85,528 to PLN 120,000.

F. Assessment and Filing

Depending on the type of income concerned, income tax is either paid directly by the taxpayer (for example, on income from carrying on a business activity) or collected at source by the withholding tax agent (for example, in the case of capital gains). Certain types of income, such as income derived from an employment relationship, are subject to advance payments of income tax instead of a final tax at source. Advance payments collected in this way are later credited against the taxpayer's final tax liability as calculated by the taxpayer when filing his or her annual tax return with the tax office managed by the head of the tax office.

Special tax computations apply to spouses electing to file joint returns and taxpayers who, single-handedly, have raised one of the following during the entire tax year (see IX.G. and IX.H., below), with respect to income derived (or loss incurred):

(i) Children under the age of 18;

(ii) Children, regardless of their age, for whom a home-care (allowance) benefit or social allowance is collected; or

(iii) Children up to the age of 25 who are students in schools in Poland or abroad, as well as fulfilling other conditions, and who, during the tax year in question, did not receive income subject to personal income tax based on the provisions of Article 27 (income subject to taxation based on the tax scale) or Article 30b (for example, income from the sale of securities) of the Personal Income Tax Act totaling an amount of PLN 21,371.52 in 2024, without taking into account family allowances.[198]

This special tax computation applies also to a nonresident who single-handedly raises children throughout a tax year, if the nonresident meets all of the following conditions:

(i) The nonresident has a place of residence for tax purposes in another EU or EEA Member State, or Switzerland;

(ii) The income subject to tax in Poland amounts to at least 75% of all the nonresident's income derived in a given tax year; and

(iii) The nonresident holds a certificate of residence documenting his or her place of residence for tax purposes.[199]

Annual returns, based on the amount of income derived (or loss incurred), must be filed by the taxpayer by April 30 of the year following the tax year. By the same deadline, taxpayers must pay the difference between taxes owed on income as shown on the annual return and the sum of advance payments collected during the year in question.

Small taxpayers (defined as taxpayers whose sales revenue (together with output VAT) did not exceed the PLN equivalent of 2 million euros in the previous tax year), taxpayers commencing business activities and taxpayers with income from business activities taxed at the flat 19% rate may pay quarterly tax advances.

The National Revenue Administration provides all individual taxpayers with automatically prepared annual tax returns made available on its official platform e-Tax Office. Taxpayers must review and confirm whether the automatically prepared tax return is correct and add any reliefs, deductions and/or additional information they wish to include. If all the information contained in the automatically prepared tax return is correct, taxpayers do not need to complete any additional applications to settle their taxes. However, they are always free to prepare and file their own tax returns. In this instance, the tax return made available via the "Your e-PIT" service will be cancelled automatically and only the tax return submitted by the taxpayer will be available to the tax office.

G. Joint Taxation of Spouses

1. General

Spouses may opt to pay tax jointly if all of the following conditions are fulfilled:

(i) Both spouses are subject to unlimited tax liability;

(ii) The spouses own property jointly (as a rule, joint property of spouses arises by law with respect to property acquired on or after marriage is entered into);

(iii) An application to pay tax jointly has been submitted in a joint annual declaration by April 30 of the year following the tax year concerned (this condition is deemed to be fulfilled in the event of death of one of the spouses during the tax year for which the tax declaration is submitted if the surviving spouse who pays the tax submits the application once the tax year has ended but before the tax declaration is submitted); and

(iv) Neither of the spouses is subject to tax at the flat rate of 19% on income from non-agricultural activity or a lump-sum tax payment, except in cases in which the only income taxable as a lump sum is income earned under a lease, sublease, tenancy, sub-tenancy or other similar agreement by one or both spouses who do not conduct non-agricultural activities.

Spouses are also eligible to pay tax jointly if one of them did not derive income from a source subject to the progressive

[198] Personal Income Tax Act, Art. 6.4e.

[199] Personal Income Tax Act, Art. 6.4g.

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tax rates or earned income below the ceiling for triggering tax liability.

With respect to income derived (or loss incurred) by spouses, joint taxation of spouses may also be applied if:

(i) The spouses have a place of residence for tax purposes in another EU or EEA Member State, or Switzerland; or

(ii) One of the spouses is subject to unlimited tax liability in Poland and the other spouse has a place of residence for tax purposes in another EU or EEA Member State, or Switzerland, provided at least 75% of the total income derived by both spouses in a given tax year is income subject to taxation in Poland and the spouses hold certificates of residence documenting their place of residence for tax purposes.

2. Benefits of Joint Income Tax Settlement

The benefits of opting for joint taxation result from the method applied to calculate the tax in such cases. Under this method, the income of each spouse is first determined pursuant to the general rules and then aggregated to determine total income. Total income is divided by two to arrive at taxable income, which determines the applicable tax rate. The tentative tax is reduced by any applicable tax credits and then multiplied by two, to determine the actual tax due.

The application of this method may give rise to a lower tax liability in certain situations, in particular when it results in the total income of the spouses falling into a lower tax bracket. This would be the case if one of the spouses:

(i) Did not earn any income in the tax year;

(ii) Did not earn enough income to trigger any liability; or

(iii) Earned income that was exempt from income tax or fell into a lower tax bracket.

Example: During the taxable year, Mr. Kowalski earned PLN 200,000 (after deduction of applicable social security premiums), while his wife earned no income subject to personal income tax. The spouses may opt to submit a joint tax declaration. The tax rate is applied to one-half of their total income, i.e., 200,000 ÷ 2 = 100,000. This taxable amount falls within the first tax bracket of 12%. The tax levied in the case of individual taxation would amount to PLN 36,400, whereas in the case of joint taxation it would decrease to PLN 16,800.

H. Family Foundation

As noted in III.A.9., a special kind of foundation, the family foundation, was introduced with effect from May 2023. The main goal of a family foundation is to protect the assets of a family enterprise and ensure multi-generational succession. The regulations governing family foundations introduce tax advantageous provisions and have been positively received. Only individuals (natural persons) can establish and become beneficiaries of family foundations.

The establishment of and the transfer of assets to a family foundation is not subject to tax (i.e., no transfer tax or corporate income tax is payable). Similarly, a family foundation will not pay corporate income tax on chargeable capital gains it realizes (for example, dividends received or sale proceeds from a share sale will not be subject to tax) or interest received on loans made to the beneficiaries or connected companies during the course of an economic activity that is permitted by the statute.[200]

However, family foundations are subject to corporate income tax at a rate of 15% on the transfer of funds to their beneficiaries. It is not possible to deduct the costs of obtaining income or depreciation.

The benefits to natural persons and the release of property to beneficiaries in connection with the dissolution of a family foundation are also subject to personal income tax as income from "other sources".

Beneficiaries are exempt from personal income tax on any transfer of funds made to them if they are part of the immediate family of the founder(s) (i.e., the founder's spouse, ascendants, descendants, siblings, stepchildren, stepfather or stepmother).

Members of the founder's extended family belonging to tax group I or II of the Inheritance and Gift Tax Act (i.e., sons-in-law, daughters-in-law and parents-in-law, descendants of siblings, parents' siblings, descendants and spouses of stepchildren, spouses of siblings and siblings of spouses, spouses of spouses' siblings and other descendants' spouses) are subject to personal income tax at a rate of 10%. Beneficiaries not belonging to any of these relative groups are subject to personal income tax at a rate of 15%. The first year in which the above provisions applied provided evidence that family foundations have become a popular solution and an appreciated method for successions in the context of family businesses.

[200] The Act on Family Foundations of January 26, 2023. Income from activities other than those permitted by the Act is subject to 25% corporate income tax.

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X. Taxation of Nonresident Individuals

A. General

A nonresident is subject to tax in Poland on the following types of income deemed to be income earned in Poland:

(i) Income from work performed in Poland based on, for example, an employment relationship, regardless of the place of payment of the remuneration;

(ii) Income from activities carried on personally in Poland, regardless of the place where the remuneration was paid;

(iii) Income from business activity conducted in Poland, including through a foreign establishment located in Poland;

(iv) Income from real property or rights to such property located in Poland, including the sale of the property in whole or in part or the sale of any rights to such property;

(v) Income from securities and derivative financial instruments other than securities admitted to public trading in Poland within the regulated exchange market, including income derived from the sale of such securities or instruments or the exercise of rights arising therefrom;

(vi) Income from the transfer of ownership of shares (stock) in a company, rights and obligations in a partnership or shares in an investment fund, collective investment institution or other legal person, or receivables that are a consequence of ownership of such shares, rights and obligations or participation titles — if at least 50% of the value of the assets of the company, partnership, investment fund, collective investment institution or legal person, directly or indirectly, consists of real property located in Poland or the right to such real property;

(vii) Income from receivables settled, including put at the disposal of the nonresident, paid or set off by natural persons, legal persons or organizational units without legal personality, having their residence, registered office or management in Poland, irrespective of the place where the contract was concluded or performed. This relates to the following types of payments or receivables earned:

- Income from personal services rendered;
- Interest income; income from copyright or related rights, rights to inventive designs, trademarks and decorative designs, including income from the sale of such rights; payments for a secret recipe or production process, for the use of, or the right to use an industrial or commercial device or scientific data, including a mode of transportation or for know-how in the industrial, commercial or scientific fields;
- Fees for spectacles, entertainment or sports activities performed by natural persons residing abroad and organized through natural or legal persons operating in the artistic, entertainment or sports event fields in Poland;
- Fees payable for the transportation of cargo and passengers accepted for carriage in Polish ports by foreign commercial shipping enterprises, except for cargo and passengers in transit;
- Income obtained in Poland by foreign air navigation companies, excluding revenue obtained from scheduled air passenger transport for which passengers must have a ticket; and
- Income from consulting, accounting, market research, legal services, advertising services, management and control, data processing, employee recruitment and recruitment services, guarantees and sureties and similar services.

B. Business Income

Under the rule of reciprocity, foreign individuals are, in principle, allowed to carry on economic activity subject to the same conditions as Polish individuals.

If, under existing laws, business activities were to be conducted notwithstanding existing legal restrictions, the taxation treatment would depend on whether there was an applicable tax treaty between Poland and the country of residence of the nonresident. If there were such a treaty, the taxation of the business activities would depend on whether the foreign individual had a permanent establishment (PE) in Poland. In the absence of an applicable treaty, the foreign individual would be subject to tax in Poland.

C. Income from Personal Services

1. Salaries and Wages

The taxation treatment of employees' salaries depends on the location of the registered seat of the employer paying the salaries.

If the employer's seat is in Poland, compensation derived by a nonresident employee is taxed in the same manner as that derived by a Polish resident employee, i.e., it is subject to tax at progressive rates (12% and 32%). The employer is required to withhold the appropriate personal income tax advance payments.

If the employer's registered seat is in a country with which Poland has signed a tax treaty, in to most cases, the employee's salary will not be taxable in Poland, provided the employee's stay in Poland does not exceed 183 days in a year and that the employee's compensation is not charged to a Polish employer or to a PE of the foreign employer in Poland. In other cases, salary derived by a foreign nonresident employee is taxed in the same way as compensation derived by a Polish employee (i.e., it is subject to tax at progressive rates (12% and 32%)), and the employee is required to make estimated advance individual income tax payments during the tax year concerned.

2. Income from Independent Services

In the absence of an applicable tax treaty, a nonresident individual is subject to tax on his or her Polish-source income from the provision of independent services (for example, fees received from contracts for services or for the performance of a specific task). If there is an applicable treaty between Poland and the individual's country of residence, the individual will only be subject to taxation in Poland if the treaty allows for

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it, for example, if the individual has a fixed establishment in Poland (such as an office, etc.) used to provide such services or, under the provisions of some treaties, when he or she is deemed to be a Polish tax resident.

Conversely, if there is no fixed establishment in Poland or if the duration of the individual's stay in Poland is less than contemplated in the relevant tax treaty, income from the provision of independent services will not be taxed in Poland.

If there is a fixed establishment in Poland or if the individual's stay in Poland exceeds the time limit specified in the relevant treaty, the nonresident individual will be liable to income tax, i.e., he or she will have to make advance payments of tax every month and file an income tax return together with payment of any tax due after the end of the tax year.

In principle, individuals deriving income from artistic or sporting activities in Poland are subject to tax in Poland, regardless of how long they remain in Poland. Such income is subject to tax at a flat rate of 20%, withheld at source by the person or entity paying the compensation.

Tax at a flat rate of 20% is also imposed on nonresidents who are subject to limited tax liability on the fees received for serving on the management or supervisory board of a legal entity. In the case of nonresident individuals subject to unlimited tax liability in Poland, management or supervisory board fees and income from contracts for services or for the performance of a specific task are taxable in accordance with the same rules as apply to Polish residents.

An individual who has a place of residence for tax purposes in another Member State of the European Union (EU) or the European Economic Area (EEA), or in Switzerland, who can document his or her place of residence for tax purposes with a residence certificate and who derives income from artistic or sporting activities in Poland[201] may file an election with his or her annual tax return and be taxed on his or her Polish-source income on a net basis based on the tax scale provided under Article 27 of the Personal Income Tax Act (i.e., at 12% and 32%). In the absence of such an election, a nonresident is taxed at a flat 20% rate on gross income derived from such sources.

D. Investment Income

1. Interest

Income tax on interest is levied at the flat rate of 20% of the gross amount paid. However, interest on loans, securities, savings deposits, bank accounts and other forms of savings or investment (with the exception of interest derived in connection with business activities) is subject to tax at a flat rate of 19% of the gross amount paid. The tax is collected at source by the entity making the payment.

The rate of tax may be reduced under the terms of a tax treaty concluded between Poland and the recipient's country of residence.[202] To obtain the reduced rate benefit available under a Polish treaty, the recipient of the payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of his or her place of residence abroad (certificate of residence).

However, as of 2019, the rules on withholding tax collection were significantly amended and the reduced rates may be applied only on fulfilment of certain conditions.

For a discussion of the withholding mechanics, see X.G., below.

2. Dividends

The Polish domestic tax rate on dividends derived by individuals is 19%.

If the recipient of the dividends is a natural person residing in a country with which Poland has a tax treaty, this rate is usually reduced to a lower rate that, depending on the provisions of the relevant treaty, is usually 10% or 15%. The tax is collected by withholding at source by the company distributing the dividend.[203]

To obtain the reduced rate benefit available under an applicable treaty, the recipient of the payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of his or her place of residence abroad (certificate of residence).

However, as of 2019, the rules on withholding tax collection were significantly amended and the reduced rates may be applied only on fulfilment of certain conditions.

For a discussion of the withholding mechanics, see X.G., below.

E. Royalties

Income tax on license fees derived from Poland is levied at a flat tax rate of 20%. This rate may be reduced under the terms of Poland's double taxation agreements. Some of Poland's tax treaties also classify income from the rental of industrial, commercial and scientific equipment as royalties and thus as qualifying for a reduced rate.

To obtain the reduced rate under an applicable treaty, the recipient of the payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of his or her place of residence abroad (certificate of residence).

However, as of 2019, the rules on withholding tax collection were significantly amended and the reduced rates may be applied only on fulfilment of certain conditions.

For a discussion of the withholding mechanics, see X.G., below.

F. Capital Gains

1. Sale of Shares in a Polish Company

Gains derived by a nonresident from the sale of shares in a Polish company are generally taxable in Poland (see X.A., above). However, under the provisions of most of Poland's tax treaties, gains from the sale of shares in a Polish company are not taxable in Poland. An exception to this rule is that certain treaties allow Poland to tax income from the sale of shares in Polish companies, the assets of which primarily consist of real property located in Poland.

[201] Personal Income Tax Act, Art. 29.1.

[202] Personal Income Tax Act, Art. 29.

[203] Personal Income Tax Act, Art. 41.4.

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2. Other Capital Gains

The rule under both Poland's domestic law and its tax treaties is that capital gains from the sale of real property located in Poland are taxable in Poland. The same applies to gains from the sale of movable property constituting part of a PE located in Poland. Income derived from the sale of other property is taxable in the country in which the transferor resides or has its seat. Where an applicable treaty allows Poland to tax such gains, the method of taxation is identical to that applicable to gains of Polish residents.

G. Method of Taxation

Tax on dividends, interest and royalty income is collected by withholding at source by the person or entity making the payment. The same treatment applies to fees derived by individuals subject to limited tax liability from serving on the management or supervisory board of a Polish company, as well as from contracts for services or the performance of specific tasks.

Employment compensation derived by a nonresident individual from a Polish employer is taxable at source, i.e., the Polish employer is required to withhold advance payments of personal income tax. A nonresident individual deriving employment income from abroad is required to make advance payments of personal income tax, unless he or she is exempted from tax in Poland under the terms of an applicable tax treaty (such exemption usually depends on the duration of the individual's stay in Poland).

However, beginning January 1, 2022, the pay and refund system came into force for payments of passive income (interest, dividend and royalties) between Polish and foreign related entities. Except in specific cases, from July 1, 2019, withholding tax must be collected by the payor at the full rate (19% or 20%), with no possibility of reduction or tax exemption, on payments made to a foreign recipient exceeding PLN 2 million in a single tax year.

Foreign recipients (i.e., the taxpayer or, in certain cases, the Polish tax remitter or withholding tax agent) may file for a refund from the Polish tax authorities if, in addition to documentation supporting the payment, evidence is provided that the conditions for benefitting from a reduced rate or tax exemption (including, among others, proof of business substance) are fulfilled. The refund must be made within six months from the date on which the application is filed.

In specific cases, the Polish withholding tax agent may apply a reduced rate or tax exemption at the time of payment by:

(i) Submitting a written statement to the tax authority (under threat of criminal fiscal liability) providing that it holds all documents required to apply the reduced tax rate or exemption as well as confirming that all additional requirements have been met (for example, regarding the business substance of the recipient) or

(ii) Obtaining a special opinion from the tax authority authorizing the application of a tax exemption (such opinions are generally valid for three years).

Comment: If the key factual circumstances underlying a transaction remain unchanged, obtaining a special opinion could enable a remitter to transfer a secured payment without withholding the tax or applying the lower rate and this opinion would remain valid for the following 36 months. Importantly, the special opinion concerns a specific payment between two specific entities; thus, the factual circumstances related to the payment and the characteristics of the entities concerned become the basis for issuing the opinion. In Poland, this is the crucial difference between a special opinion and a tax ruling. The latter is based on a description of a hypothetical situation and a taxpayer benefits from protection if the taxpayer's factual situation corresponds to that described in the application for the tax ruling.

As part of the process for obtaining a special opinion on withholding, the tax authorities seek comprehensive verification to the effect that the requirements for applying an exemption or lower withholding tax rate are met; a key part of this is an analysis of the taxpayer's beneficial owner status. It should be noted that currently there is a broader definition of "beneficial owner" in the Polish tax rules, which among other things require a taxpayer to demonstrate sufficient business substance (i.e., in the form of personnel, equipment, office space, etc.).

The special opinion application is of a formal character. The applicant is obliged to submit an application using the WH-WOZ/WH-WOP form, along with various documents confirming the position of the taxpayer, including supporting evidence and documents that are formally required. The application must be submitted electronically via a special Ministry of Finance internet portal. Any further explanations or documentation to address additional requests from the tax authorities also have to be submitted via the WH-WOZ/WH-WOP form in the same way as the original application.

H. Preferences for Individuals Moving to Poland

The lump sum regime (LSR) is available to a High Net Worth Individual (HNWI) who was not tax resident in Poland in at least five out of the six calendar years preceding his or her move to Poland.[204] To be eligible for the regime, a taxpayer must also incur annually PLN 100k of expenses "for economic growth, the development of science and education, the protection of cultural heritage or the promotion of physical culture".

A taxpayer must notify the tax authorities about his or her change of tax residence by the end of January of the year following that in which the move takes place and prove that he or she was previously tax resident outside Poland. The LSR applies to income earned outside Poland and may be applied by a taxpayer for no more than ten consecutive years.

Foreign income subject to the LSR does not have to be reported in tax books or tax returns, though income earned by Polish tax residents that is taxable under the controlled foreign company (CFC) rules is excluded from the scope of LSR and must therefore be reported under the standard rules.

The annual tax due under the LSR regime is PLN 200k (approximately US$ 50,000) irrespective of the value of the foreign income earned. LSR may also apply to close family members of the taxpayer: the annual tax due is PLN 100k annually per family member.

[204] Personal Income Tax Act, Art. 30j and the following articles.

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As a rule, Polish-sourced income of a taxpayer availing him or herself of the LSR regime (for example, income from work, personal services or business activities performed in Poland) is taxed under the standard rules. However, a four-year tax exemption of up to PLN 85,528 (approximately US$ 22k) annually for Polish-source employment or business income may additionally be available.[205]

[205] Personal Income Tax Act, Art. 21.1.152.

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XI. Shares

Where shares are purchased for cash, the cost of purchasing the shares is not a tax deductible expense when it is incurred. However, the cost will be a tax deductible expense in calculating the amount of income derived from the sale of the shares. Individuals are taxed at a rate of 19% on such income.

If a company issues new shares to a shareholder who is an individual in exchange for a non-cash contribution (other than an enterprise or a separate part of an enterprise), the individual will be deemed to receive income in the amount of the value of the contribution-in-kind (other than an enterprise or a separate part of an enterprise) unless the declared value of the non-cash contribution is below market value, in which case the income of the shareholder will be the market value (before January 1, 2017, the nominal value of the newly-issued shares constituted income in the hands of the individual making the contribution).

The income is reduced by the following deductible costs:

(i) If the contribution is of fixed assets or intangible assets, the initial value of such assets, minus depreciation write-offs made before the contribution date; and

(ii) If the contribution is of shares of another company, the value of in-kind contributions in the form of movables, immovables or rights.

Example:

(i) An individual acquires a fixed asset for PLN 4,000 in 2012.

(ii) The fixed asset is contributed by the individual to company A in 2017.

(iii) The value of the non-cash contributions is PLN 1,000.

(iv) Until the date the in-kind contribution comprising the asset was made, depreciation write-offs of PLN 3,200 had been calculated and taken as tax-deductible expenses.

(v) The income of the individual resulting from receiving shares from company A will be equal to the value of the contribution in kind minus the net value of the fixed asset contributed: 1,000 – (4,000 – 3,200) = PLN 200.

The sale of the shares received in exchange for the in-kind contribution is a taxable event (taxed at a flat rate of 19%):

(i) If the contribution was not in the form of an enterprise or a separate part of an enterprise, the taxable income will be the amount received reduced by the value of in-kind contributions in the form of movables, immovables or rights.

(ii) If the contribution was in the form of an enterprise or a separate part of an enterprise, the amount received from the sale of shares will be reduced by the value of the enterprise (or the separate part of the enterprise), in accordance with the books of account of that enterprise on the date the shares were acquired, which may not, however, exceed the value of in-kind contributions in the form of movables, immovables or rights.

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XII. Value Added Tax and Excise Tax

A. Scope of Taxation

The VAT Act, in force as of May 1, 2004, is generally consistent with EC Directives concerning the VAT system, although there are some discrepancies with EC regulations.

The VAT is imposed at a limited number of rates and is ultimately charged to the final consumer. VAT that is levied at one stage in the production and distribution chain ("input VAT") is recovered at the next stage in the chain (by crediting it against "output VAT"). To recover input VAT, taxpayers participating in the stages of a production and distribution chain with respect to goods or services must be VAT registered in Poland and must obtain appropriate VAT invoices from their suppliers.

> *Example:* The manufacturer of a specific product sells it to a distributor. The distributor in turn sells it to a purchaser. The manufacturer sells the item at a net price of 100 plus 23, which is the output VAT due (the VAT rate of 23% on 100). The manufacturer pays output VAT of 23 to the tax office. The distributor pays the manufacturer the gross amount, i.e., 123, including the VAT charged by the seller and sells the same item to a subsequent purchaser for 150 net plus 34.5 (23% × 150), i.e., for a total of 184.5. The distributor pays 11.5 to the tax office, which is the difference between the amount of the output VAT on the sale of the item (34.5) and the input VAT on its purchase (23). The subsequent purchaser pays the distributor 184.5.

The manufacturer confirms the sale by issuing a VAT invoice, the original of which is delivered to the distributor and a copy of which is retained for the manufacturer's records. The distributor follows the same procedure. The original invoice received from the manufacturer serves as the basis for the distributor's reduction of the output VAT (stated on the invoice issued to the subsequent purchaser) by the input VAT shown on that invoice.

If the subsequent purchaser is not registered for VAT or is VAT exempt, it is that purchaser that bears the financial burden of the VAT.

Note: As a consequence of large-scale fraudulent activity in certain sectors of the Polish market in past years, the supply of certain kinds of goods may be subject to a reverse-charge mechanism, under which the purchaser is required to settle VAT due. A list of such sensitive goods includes, for example, smartphones, laptops, various types of metals and waste.[206]

The VAT Act provides for four main tax rates: a basic rate of 23%; and reduced rates of 8%, 5% and 0%. In addition, a 5% rate applies to certain agricultural and forestry products. Certain goods and services are VAT-exempt.

There is a fundamental difference between the taxation of goods (or services) at a 0% rate and the exemption of goods (or services). A taxpayer selling items subject to 0% VAT is entitled to a deduction of the input VAT charged on the goods and services that it purchases for the purpose of selling those items. This right is generally not enjoyed by a taxpayer that is exempt from VAT. In such instances, the VAT imposed on purchases may (for income tax purposes) be treated as a deductible expense (either directly or by way of depreciation) but may not be credited (as input VAT) against output VAT.

The sale of an enterprise or of an organized part of an enterprise is not subject to VAT. The same applies to activities involving transactions that may not be the subject of a legally binding contract.[207]

As a result of the high level of inflation in Poland, the Polish Minister of Finance reduced the VAT rates with respect to certain food items until March 31, 2024. The reduction was not extended and the rates were increased to the standard level with effect from April 1, 2024.

For further information on Poland's VAT system, see also the VAT Navigator.

B. Taxpayers

Only the supply of goods or the provision of services by a VAT taxpayer is subject to tax. VAT taxpayers are entities that:

(i) Operate as legal persons;

(ii) Operate as organizational units not having legal personality (for example, general partnerships);

(iii) Operate as natural persons; and

(iv) Perform a business activity independently irrespective of the purpose or result.[208]

The term "business activity" includes all activities of producers, traders or service providers, including entities that seek natural resources and farmers, and also the activities of persons in freelance professions. It also includes transactions consisting of the use of goods or nonmaterial and legal assets in a permanent fashion for purposes of obtaining profit.

> *Example:* A company opens a wholesale cosmetics warehouse. Unfortunately, as a result of poor economic conditions, upon completion of one large order (more than PLN 100,000), the company is forced to liquidate its business activity. This does not, however, change the fact that the transaction concluded by the company was the supply of goods and was subject to VAT. The company is required to register as a VAT taxpayer for purposes of that single transaction and pay tax due on the transaction carried out. Foreign individuals or entities, generally, are also VAT taxpayers if they perform business activities in Poland, either directly or through authorized representatives, utilizing employees or an establishment.

It is extremely important for taxpayers to register for VAT purposes with the appropriate tax authority, since — as a rule — a registered VAT taxpayer can reduce its output VAT by the amount of input VAT charged on the purchase of goods and services.[209] The VAT Act provides that certain taxpayers *must* register for VAT and that others *may* register for VAT purposes (for example, taxpayers that carry on only VAT exempt activities).

[206] VAT Act, Art. 17.1.7, Schedule No. 11.

[207] VAT Act, Art. 6.

[208] VAT Act, Art. 15.

[209] VAT Act, Art. 88.

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A foreign entity that is a Polish VAT taxpayer that does not have its seat or a fixed establishment in Poland or in another European Union (EU) Member State must have a fiscal representative in Poland. The fiscal representative will be jointly and severally liable for the tax obligations of the foreign entity. It must be emphasized that only certified tax advisors, certified accountants (as well as tax advisory firms or firms entitled to provide accounting services) and, in some cases, duty agencies may be appointed as fiscal representatives of foreign entities that do not have their seat or a fixed establishment in Poland.

State government authorities are not treated as VAT taxpayers with respect to the tasks for which they are created under separate regulations (for example, the Act on Municipal Self-Government),[210] except with respect to transactions performed under civil law contracts.

There are several cases in which transactions performed by various entities will not be deemed to be performed as an independent business activity, and will, therefore, not be subject to VAT. Among these are the following activities performed by natural persons under an employment agreement: activities performed in person (for example, under an agreement for a specific task or a service agreement) on the condition that there are legal ties creating a legal relationship between the principal and the contractor specifying the terms and conditions for performing those activities, the remuneration and the liability of the principal towards third parties.

C. Taxable Activities

The taxable activities listed in the VAT Act are discussed in XII.C.1. to XII.C.5., below.

1. Supply of Goods

The transfer of the right to dispose of tangible property as an owner (for example, as a result of the sale or exchange of goods) is a taxable activity. The following are also considered to constitute a supply of goods:

(i) A transfer ordered by a public authority or an entity acting in the name of such an authority, or a transfer *ex officio* of the right of ownership of goods in exchange for compensation.

Example: Company X has been issued an administrative decision stating that it is obliged to surrender part of a plot that it holds to the municipal authorities. This expropriation is due to the need to construct a bypass. The company will receive remuneration in exchange for the transfer of the ownership right to the plot and the amount of the remuneration will be calculated by experts. Such a transaction may, in certain situations, be considered to constitute a supply of goods and services subject to VAT.

(ii) The release of goods on the basis of a tenancy agreement, lease agreement or other similar agreement concluded for a specific period of time, or a sale agreement with deferred payment, if the agreement provides that ownership is transferred as a result of normal events envisaged in that agreement or as of the moment of payment of the final installment.

Example: On June 20, 2023, a company concludes an agreement for the leasing of machines for the production of motor vehicle components. The agreement is concluded for 10 years and provides that upon payment of the final installment the company becomes the owner of the machines that are the object of the agreement. The user is entitled to take depreciation write-offs connected with the leased machines. The invoice is issued on June 26, 2023.

The transaction will be treated as a supply of goods under the VAT rules. In this case, the tax obligation arises with respect to the entire value of the machines on the date they are passed to the purchaser (i.e., by June 20, 2023). However, if the leasing agreement does not provide for the transfer of ownership of the machines to the company, the transaction is classed as the performance of services. In this case, the tax obligation generally arises on the date of issue of each invoice documenting the installments, but no later than on the date for payment of each of the installments specified in the agreement.

(iii) The release of goods on the basis of a commission sale agreement between the commissioning party and the commission agent, as well as the release of goods by the commission agent to a third party.

(iv) The release of goods to the commissioning party by the commission agent on the basis of a commission sale agreement, if the commission agent has the obligation to acquire items on the account of the commission agent.

(v) The establishment of a housing cooperative's tenancy right to an apartment, the establishment of a housing cooperative's ownership right to premises, the conversion of a housing cooperative's tenancy right to an apartment into a housing cooperative's ownership right to premises, the establishment of separate ownership for a member of a housing cooperative of an apartment or premises designated for other purposes, and the transfer of ownership of premises or a single-family house to a member of a housing cooperative.

(vi) The establishment of a perpetual usufruct right to land.

The fact that the transfer of the right to dispose of goods as the owner is classified as the supply of goods means that this term should be interpreted as encompassing more than the mere transfer of an ownership right as a result of a sale agreement. For this reason, in addition to the sale or exchange of goods, other transactions having a similar result are also deemed to constitute a supply of goods, i.e.:

(i) The release of goods in exchange for receivables;

(ii) The transfer of goods by their owner-like possessor;

(iii) The exercise of the right to transfer an ownership right to goods arising due to transfer as security (for a debt); and

(iv) The release of goods in exchange for a release from debt.

Under the VAT Act, the following constitute "goods":

(i) Movables;

[210] Act on Municipal Self-Government of March 8, 1990 (consolidated text), Journal of Laws 2021 Item 1372.

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(ii) All forms of energy;

(iii) Buildings, structures or parts of buildings and structures; and

(iv) Land.

Only material items can be movables,[211] for example, motor vehicles, furniture, numismatic coins, motor vehicle components, etc. Bonds and shares cannot be treated as goods. Trading in such rights cannot, therefore, be treated as the supply of goods, but in certain situations it can be deemed to constitute a supply of services, subject to VAT.

In cases where several entities supply the same product in such a way that the product is passed directly from the first entity to the last entity, while the legal title is transferred in multiple separate transactions, each entity involved in the transactions (except for the last one) will be deemed to have supplied goods.

Under the VAT Act, the transfer of goods free of charge constitutes the supply of goods, in particular:

(i) Transfer or consumption for personal purposes or for the purposes of employees, including former employees, shareholders, partners, housing cooperative members and household members, member of bodies that are legal persons, or association members; and

(ii) The transfer in any other form of goods for no remuneration, in particular, donations, if the transferor is entitled to deduct input VAT, in whole or in part.

If an entity only carries out the delivery of goods for no charge or the supply of services for no charge, such activities will not be subject to VAT.[212]

2. Supply of Services

Any performance of services that does not constitute the supply of goods by a natural person, a legal person or an organizational unit that does not have legal personality is deemed to be a supply of services.

This means that, as a rule, all activities performed by entities as part of their business activity are subject to VAT. Transactions that do not constitute a supply of goods will be treated as constituting a supply of services.

The following transactions, in particular, will constitute a supply of services:

(i) The transfer of rights to nonmaterial and legal values.

All licenses are generally subject to VAT, whatever the nonmaterial values to which they relate.

(ii) An undertaking to refrain from the performance of activities or the acceptance of activities or a situation. A typical transaction in this category is a real property easement (for example, an easement of passage). In such cases, an entity undertakes to tolerate a particular set of circumstances (for example, cars crossing its plot), usually in exchange for compensation. Such a transaction constitutes the performance of services if the entity is a VAT taxpayer and the transaction is connected with its business activity. An undertaking not to sell specific goods or not to sell them in a specific territory will also constitute performance of services, as will refraining from exercising a preemption right, if the refraining entity receives remuneration.

(iii) The supply of services at the order of a public authority.

It is worth emphasizing that, under the VAT rules, compliance with an order of an administrative authority cannot be treated as the provision of services in every case. For an activity performed at the instruction of administrative authorities to be deemed to constitute the supply of services, there must be a consumer of the services in question. The renovation of an energy grid used by residents of a municipality that is carried out following an order will constitute the supply of services. Refraining from performing certain actions in exchange for compensation, however, might not constitute the supply of services. In one court opinion, the Court of Justice of the European Union (CJEU) accepted that the limitation by a farmer of his production of milk in exchange for compensation from a public administrative authority did not constitute the provision of services.[213]

Whether a cross-border transaction connected with the supply of services is taxable in Poland is determined by reference to rules in the VAT Act concerning the place of supply. For example, as the VAT rules provide that the place of supply of advisory services is the place where the recipient of the services is established, where a Polish taxpayer acquires such services from a German supplier, the services will be subject to taxation in Poland (on a "reverse-charge" basis).

3. Intra-EU Acquisition of Goods

The following are subject to VAT under the VAT Act:

(i) The intra-EU acquisition of goods; and

(ii) The intra-EU supply of goods.

Both types of transaction concern commercial relations between Polish entities and their business partners in EU Member States.

The intra-EU acquisition of goods is the acquisition of a right to manage or dispose of goods as the owner if, as a result of the supply, the goods are sent or transported to the territory of an EU Member State other than the State in which the shipment originated.[214] Intra-EU acquisition occurs when the acquiring entity is a VAT taxpayer or a legal person that is not a VAT taxpayer, and the supplier is a VAT taxpayer. If the object of the transaction is a new means of transportation, there will always be an intra-EU acquisition even if the supplier is not a VAT taxpayer.

The movement of goods by a Polish taxpayer from an EU Member State other than Poland to Poland is also treated as an intra-EU acquisition of goods. However, the movement of goods by a Polish taxpayer from another EU Member State to Poland will not be an intra-EU acquisition if:

[211] Civil Code, Art. 45.

[212] European Court of Justice (ECJ) ruling in *Hong Kong Trade Development Council v. Staatssecretaris van Financiën*, Case No. 89/81.

[213] *Jûrgen Mohr v. Finanzamt Bad Segeberg*, Case No. C-215/94.

[214] VAT Act, Art. 9.

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(i) The goods are installed or assembled in Poland, whether or not an attempt is made to activate the goods.

(ii) The goods are transferred in the context of a "distance sale" in Poland.

(iii) The goods are transported by a ship, an aircraft or a train in the process of transporting passengers in the EU, and are designated to be supplied on board that vehicle.

(iv) The goods are intended as the object of activities that are the equivalent of export effected by the taxpayer.

Example: Goods are supposed to be exported from Lithuania to Serbia. The goods are transported through Poland. The movement of goods from Lithuania to Poland will not be treated as an intra-EU acquisition of goods in Poland.

(v) The goods are intended to be the object of activities that are the equivalent of an intra-EU supply of goods performed in the EU Member State from which they are transported to Poland.

Example: Goods are supposed to be transported from Lithuania to Germany. The goods are transported through Poland. The movement of goods from Lithuania to Poland will not be treated as an intra-EU acquisition of goods in Poland.

(vi) Services are to be performed on the goods in Poland for the benefit of a VAT taxpayer, provided that, following the performance of the services, the goods are transported back to the EU Member State from which they were originally transported.

Example: Goods are transported from Germany to Poland. The goods are repaired in Poland and then transported back to Germany. If the conditions specified above in (vi) are met, the movement of the goods from Germany to Poland will not be treated as an intra-EU acquisition of goods.

(vii) The goods are to be used temporarily in Poland for the provision of services by a VAT taxpayer with its seat or place of residence in the EU Member State in which the shipment or transportation originated.

(viii) The goods are to be used temporarily (up to 24 months) in Poland, provided the importation of the goods from a third country into Poland would be exempt from customs duties due to their being transported on a temporary basis.

(ix) The movement of gas or energy in the appropriate gas or energy systems.[215]

In the event the circumstances described above cease to exist, the transportation of the goods will be deemed to constitute an intra-EU acquisition.[216]

The place of supply of goods in the context of an intra-EU acquisition is generally the EU Member State in which the goods are located once the shipment or transportation is completed. There are, however, exceptions to this rule.

4. Intra-EU Supply of Goods

The intra-EU supply of goods is the transportation of goods, in the context of the performance of the activities specified in Article 7 of the VAT Act (i.e., the supply of goods), from Poland to another EU Member State. The intra-EU supply of goods is also the transportation of goods belonging to a business from Poland to another EU Member State, if the goods are to be used for activities performed by the relevant entity as a VAT taxpayer in another Member State. Such a transaction is referred to a "deemed intra-EU supply," because no transfer of the right to dispose of the goods takes place within its framework.

However, no "deemed intra-EU supply" takes place if:

(i) The goods are installed or assembled in an EU Member State other than Poland, whether or not an attempt is made to activate the goods;

(ii) The transportation of the goods is effected as a distance sale from Poland;

(iii) The goods are transported by a ship, an aircraft or a train in the process of transporting passengers within the European Union, and are designated to be supplied on board that vehicle;

(iv) The goods are to be exported;

(v) The goods are the object of a "regular" intra-EU supply effected by the taxpayer, if goods are moved into the territory of an EU Member State other than the territory of the Member State into which this intra-EU supply is effected;

(vi) Services are to be performed on the goods in an EU Member State other than Poland for the benefit of a VAT taxpayer, provided the goods will be transported back to Poland upon completion of the services;

(vii) The goods are to be temporarily used in the territory of an EU Member State other than Poland for the purpose of provision of services by the taxpayers having their seat of economic activity in Poland that moved the goods or on whose behalf the goods have been moved;

(viii) The goods are to be used temporarily, i.e., for no longer than 24 months, in an EU Member State, provided the equivalent importation of the goods from a third country would be exempt from customs duties due to their being transported on a temporary basis; and

(ix) The supply consists of the movement of gas or energy in the appropriate gas or energy system.

If the circumstances described above cease to exist, the transportation of the goods concerned will be deemed to be an intra-EU supply of goods.

As a rule, the intra-EU supply of goods is subject to tax at the rate of 0%. However, to qualify for the 0% rate, the following conditions must be fulfilled:

(i) The supply must have been performed for an entity holding the relevant valid identification number issued by the EU Member State with jurisdiction over this entity and containing a two-digit code used for VAT purposes;

[215] VAT Act, Art. 12, Sec. 1.
[216] VAT Act, Art. 12, Sec. 2.

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(ii) Before certain deadlines, the taxpayer making the intra-EU supply must have evidence in its documentation that the goods that are the object of the supply have actually been transported from Poland to a purchaser in another EU Member State; and

(iii) The taxpayer, while submitting a tax return in which he or she shows the supply of goods, is registered as an EU VAT payer.

5. Export and Import of Goods

The export of goods is defined in Polish VAT law as the transportation of goods, confirmed by the competent customs office and as defined under customs law, from Poland to outside the European Union, where the transportation is performed:

(i) By the supplier or on his behalf ("direct export"); or

(ii) By the acquiring entity, which has its seat outside Poland, or on its behalf ("indirect export").

The exportation of goods is subject to 0% VAT. For the exporter to be able to apply this rate, the VAT Act requires the exporter to have relevant documents confirming that the goods in question were removed from the EU customs area. The exportation of goods is deemed to occur only when the goods leave the EU.

The importation of goods is understood to be the bringing of goods into the EU area. In the case of the importation of goods, the VAT taxpayer is the individual or entity liable to pay customs duty. This is the case even when the imported goods are exempt from duty, when the duty is suspended or when a preferential duty rate is applied. Generally, the importation of goods is subject to tax either at the standard 23% rate or at one of the reduced rates.

Prior to July 1, 2021, parcels of low value, i.e., below 22 euros, were exempt from VAT. This was a frequently used exemption that often led to the understatement of the declared value of parcels. As a consequence of EU legislation, the low-value VAT exemption was repealed as of July 1, 2021.

D. Place of Supply

The place of supply rules determine where a transaction conducted by a taxpayer is subject to taxation. Thus, if the place of supply of goods or services is located in Poland, the transaction will be subject to tax in Poland. The VAT Act provides for a number of different rules concerning the place of supply of goods or services.

1. Place of Supply of Goods

The following basic rules determine the place of supply of goods:

(i) Where the goods are sent or transported in the context of the supply, the place where the goods are located (the territory in which the activity is taxable) at the moment of dispatch or transport is deemed to be the place of supply. In this case, it is not relevant who performs the transportation, i.e., whether it is the seller, the purchaser or, possibly, a third party.

(ii) Where the goods being sold are installed or assembled, the place of supply of the goods is the place in which the goods are installed or assembled. This rule applies irrespective of whether an attempt is made to start up the installed (assembled) goods, and also irrespective of whether the installation is performed by the supplier or an entity acting on its behalf.

Example: A Polish company has sold a production line to a business partner in the United States, and has also undertaken to install the relevant machinery at the U.S. company's premises. In such a case the place of supply is the place in which the machinery is installed, i.e., the United States.

Simple activities that allow an assembled or installed product to function in accordance with its intended use are not deemed to constitute assembly or installation for VAT purposes.

(iii) In the case of goods that are neither shipped nor transported, the place of supply is deemed to be the place in which they are located at the moment at which they are supplied.

Example: A Polish company has sold a warehouse located in Gdynia (Poland) to a company in Germany. In this case, the location of the real property is deemed to be the place of supply, and therefore the place in which tax is payable (Poland).

(iv) A special method of determining the place of supply applies also in the case of sales of goods on board a ship, an aircraft, or a train in the process of transporting passengers within the EU. In this case, the place of supply of the goods is the place in which the transportation of the passengers begins.

Special place of supply rules apply with respect to gas transmission services within a gas system or electrical power transmission within an electrical power system as well as to chain-supply of goods.

2. Place of Supply of Services

a. Introduction

The rules relating to the determination of the place of supply (i.e., the place in which the transaction is subject to VAT) differ with respect to transactions concluded between two VAT taxpayers and those concluded between VAT taxpayers and entities that are not VAT taxpayers.

Certain exceptions apply with respect to particular kinds of transactions. It should be noted that, for purposes of the provisions concerning the place of supply of services, VAT taxpayers are understood to be entities performing economic activities, irrespective of where they are established. Thus, entities established outside Poland or the European Union, such as U.S. corporations, are generally treated as VAT taxpayers for purposes of these provisions.

b. Transactions Between VAT Taxpayers

As regards transactions concluded between VAT taxpayers, the general principle is that the place of supply of services

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is the place in which the acquirer of the services, which is the VAT taxpayer, has its seat or place of residence.

Example: A Polish taxpayer supplies advisory services to a taxpayer having its seat in Germany. Such services will not be subject to VAT in Poland.

However, if the services are provided to a taxpayer's fixed establishment that is situated in a place other than its seat or place of residence, the place of supply of services is the place where the fixed establishment is situated.

Example: A Polish taxpayer supplies advisory services to a taxpayer that has its seat in Germany; however, the services are provided directly for the benefit of this taxpayer's branch located in Poland. Such services will be subject to VAT in Poland.

Furthermore, if the service acquirer has no seat, place of residence or fixed establishment, the place of supply is the place where the service acquirer normally operates or has a habitual residence.

c. Transactions Between VAT Taxpayers and Consumers

As regards transactions between VAT taxpayers and consumers ("B2C transactions"), the general principle indicates that the place of supply of services is the place where the service supplier has its seat or place of residence.

Example: A Polish taxpayer supplies advisory services to an entity that is not a VAT taxpayer, having its seat in the territory of Germany. Such services will be subject to VAT in Poland.

However, if the services are provided by a taxpayer's fixed establishment that is situated in a place other than the taxpayer's seat or place of residence, the place of supply of services is the place where the fixed establishment is situated. Furthermore, if the service supplier has no seat, place of residence or fixed establishment, the place of supply is the place where the taxpayer normally operates or has a habitual residence.

The supply of freight services for entities that are not taxpayers is deemed to take place where the transportation takes place. Moreover, in the case of the transportation of goods where the departure and arrival take place in two different EU Member States, the place of supply of the services is the place of departure of the goods.

With respect to the provision of the following services to an entity that is not a taxpayer and that has its seat, place of residence or place of habitual residence outside the European Union, the place of supply is the place where the entity has its seat, place of residence or habitual residence:

(i) The sale of rights or the granting of licenses and sublicenses; the transfer or assignment of copyrights, patents, rights to factory marks and trademarks; the granting of the use of a collective trademark or a collective guarantee trademark, or other neighboring right;

(ii) Advertising;

(iii) Consulting, engineering, legal or accounting services and similar services;

(iv) Services in the field of data processing, the provision of information and translation or interpreting;

(v) Banking, financial and insurance services, including reinsurance, except services provided by banks renting safe-boxes;

(vi) Supply of personnel (secondment);

(vii) Lease, tenancy and other services of a similar character the object of which is movable property, except for means of transport, which are also deemed to include trailers and semi-trailers and rail wagons;

(viii) Services of ensuring access to gas or electrical power systems or heating or cooling energy distribution networks;

(ix) Transmission of gas within a gas system, electrical power within an electrical power system and heating or cooling energy within heating or cooling energy distribution networks;

(x) Any services directly related to the services referred to above in (viii) and (ix); and

(xi) Services consisting of an obligation to refrain from the performance of the activities or from the use of a right referred to above in (i) – (x).

Furthermore, with respect to the provision of telecommunication, radio and television broadcasting and electronic services, the place of supply is the place where the consumer has its seat, place of residence or habitual residence, regardless of whether it is within or outside the European Union.

d. Exceptions to General Rules

A number of exceptions to the general rules apply regardless of whether the services concerned are provided to a VAT taxpayer or an entity that is not a VAT taxpayer, as follows:

(i) Services connected with immovable property, including services provided by property experts and intermediaries in immovable property trading, accommodation services in hotels and places with a similar function, such as holiday camps or places intended for use as camping sites, services consisting of the use of immovable property and services consisting of preparing and coordinating construction works, such as the services of architects and on-site supervision: the place of supply of services is the place where the immovable property is located;

(ii) Restaurant or catering services: the place of supply of services is the place where the services are actually provided (and if the restaurant and catering services are actually provided on board a ship, an aircraft or a train during the transport of passengers within the EU, the place of supply of services is the place of departure of the passengers);

(iii) Short-term lease of means of transportation services: the place of supply is the place in which the means of transportation are actually let for the disposal of the service acquirer. The term "short-term lease" means continuous possession of a means of transportation or use of it for

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a period not exceeding 30 days (90 days in the case of vessels); and

(iv) Lease of means of transportation to entities that are not VAT taxpayers (other than short-term leases, as defined under (iii), above): the place of supply is the place where the service recipient has its seat, permanent address or habitual place of residence.

E. Exemptions

1. Exemptions Based on Turnover

Taxpayers whose sales volume in the previous tax year did not exceed PLN 200,000 are exempt from VAT.[217] However, such taxpayers may waive the right to that exemption by notifying the head of the tax office accordingly. The exemption becomes ineffective when the taxpayer's turnover exceeds PLN 200,000 in the tax year concerned.

A taxpayer that has lost its right to exemption from VAT or has waived its right to exemption can be made exempt from VAT again after one year from the date of the waiver or loss. However, the taxpayer's sales volume must not exceed the amount of PLN 200,000 in the previous tax year. Taxpayers commencing their activity may elect for VAT exemption if their anticipated turnover for the year in which sales are first to be made does not exceed a proportion of the amount specified above corresponding to the period remaining in that year.

The exemption referred to above is not available to all taxpayers. Thus, for example, taxpayers providing services in the fields of law, consultancy services or jeweler's services are not entitled to the exemption.

With effect from January 1, 2025, EU entrepreneurs selling goods and services in Poland with low turnover volumes are able to benefit from the above VAT exemption under the SME (small and medium-sized enterprises) procedure, provided they do not exceed certain limits and comply with the requisite formalities.[218] Until the end of 2024, the exemption was available only to entrepreneurs based in Poland. Comparable new rules also apply to Polish companies operating in other EU Member States in which similar rules have been implemented.

The exemption applies to a taxpayer registered in another EU Member State where:

(i) The total annual value of goods and services supplied by it (excluding VAT) does not exceed 100,000 euros in either the previous or the current tax year. Exceeding this threshold results in the loss of the exemption across the entire European Union.

(ii) The value of its sales in Poland (excluding VAT) does not exceed 200,000 PLN in the same periods.

(iii) It does not engage in certain listed activities (for example, the sale of new means of transport or legal services).[219]

(iv) It declares in its Member State of residence that it intends to avail itself of the exemption in Poland.

2. Other Exemptions

Other VAT exemptions are provided for in Article 43 of the VAT Act and the Minister of Finance Ordinance of December 20, 2013, including, for example, exemptions for:

(i) The supply of goods used exclusively for the purposes of tax-exempt activity, if in respect of acquisition, import or manufacture of these goods, the person effecting their supply did not enjoy the right to reduce the amount of output tax by the input tax amount;

(ii) The supply of gold to the National Bank of Poland;

(iii) The supply of some residential structures, except for buildings or parts of buildings that are to be occupied for the first time as a result of taxable activities (for example, leases and sales); however, taxpayers may elect to have such supplies be subject to VAT;

(iv) The provision of services by dental technicians and the supply of dentures by dental surgeons and dental technicians;

(v) Financial services;

(vi) Health care and social services;

(vii) Certain educational services (for example, private tutoring);

(viii) Common postal services provided by an operator obliged to render such services and the supply of goods closely related to these services;

(ix) Services rendered by public radio and television; and

(x) Accommodation services in boarding schools and student halls of residence.

F. Filing Procedures and Reporting Procedures

Taxpayers pay VAT on a monthly basis, by the 25th of the month following the month in which the respective tax liability arose. By this deadline, taxpayers are required to submit a new special unified audit file (JPK_VAT), covering the return and records, and pay any VAT due. This means that taxpayers now send one file, complying simultaneously with two obligations, instead of submitting a separate return and a separate unified audit file as was the case prior to October 1, 2020.

Small taxpayers may opt to settle VAT on a quarterly basis. Taxpayers commencing business activity may opt for quarterly tax returns after 12 monthly settlement periods. Currently, VAT small taxpayer status is granted to entities whose previous year's turnover (including tax) did not exceed 2 million euros. Importantly, the Unified Audit File must be submitted on a monthly basis, regardless of the taxpayer's settlement period.

Small taxpayers, as defined, may also choose a cash-basis tax settlement method. Under this method, VAT liability arises on the day on which the payment was made, in whole or in part. However, if the transaction is concluded with a customer who is not a VAT payer, the VAT liability arises on the day on which the payment is made in whole or in part, but not later than 180 days from the day on which the goods that are the subject of the taxable transaction are released or the relevant services provided.

[217] VAT Act, Art. 113.
[218] VAT Act, Art. 113a.
[219] VAT Act, Art. 113 Sec. 13.

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To be able to use this procedure, a taxpayer must notify the head of the tax office prior to the end of the month preceding the period in which the cash-basis tax settlement procedure will be used. Small taxpayers using the cash-basis tax settlement method submit their tax returns quarterly. Small taxpayers may relinquish the cash-basis tax settlement method after having settled their tax obligations using this method for at least 12 months and after notifying the head of the tax office in writing prior to the end of the quarter in which the method is last applied.

Most taxpayers generally pay VAT on imports to the Customs Office and declare the tax in the customs return. However, if certain additional conditions are fulfilled, a simplified customs procedure may be available, under which VAT on imports is declared on the VAT return and paid to the relevant tax office (this is referred to as "postponed accounting").

G. VAT Deductions

In general, a taxpayer that acquires goods or services for the purposes of taxable activities is entitled to deduct input VAT incurred with respect to their acquisition.

Example: A taxpayer purchases:

Material: PLN 100,000 + PLN 23,000 VAT

Additional items: PLN 10,000 + PLN 2,300 VAT

Having purchased these items, the taxpayer produces and sells jeans worth PLN 200,000 + PLN 46,000 VAT.

The total amount of tax due in relation to the sale of the jeans is PLN 46,000.

The total amount of tax incurred in relation to the purchase of materials to produce the jeans was 25,300. The taxpayer is entitled to deduct that amount from the tax due. Therefore, the amount of VAT that must be paid to the authorities is:

PLN 46,000 − PLN 25,300 = PLN 20,700

As a rule, the amount of tax incurred is the amount of tax stated on the invoice documenting the acquisition of the goods and services obtained by the taxpayer.

In the case of the importation of goods, the tax incurred is the amount stated on the relevant customs documents.

In the case of the importation of services, the intra-EU acquisition of goods and the acquisition of goods supplied in Poland by a foreign taxpayer if the purchaser is liable to settle the tax, the amount of input VAT is the amount of tax due on these activities (or on the importation of the goods if VAT is settled using the postponed accounting procedure — see above). In the case of an advance payment, the amount of tax incurred is the amount stated on the invoice confirming the advance payment.

Options for deducting tax incurred are sometimes restricted. The right to deduct tax incurred when purchasing a car is generally limited to 50% of the amount stated on the invoice. Certain circumstances, however, qualify for full deduction of input VAT. Also, the input tax on engine fuel, diesel oil and gas used to power vehicles is subject to the above limitation.

Generally, the VAT Act also denies the right to deduct tax in the case of:

(i) Taxpayers not registered as VAT taxpayers;

(ii) Most accommodation and catering services; and

(iii) Goods and services the purchase of which is documented in invoices obtained before the day on which the right to exemption based on turnover is lost.

No input VAT can be deducted if the invoice documents a transaction that is not subject to VAT or that is VAT exempt (even if the amount mentioned on the invoice has been fully paid to the supplier).

Note: Some of the above exclusions from the right to deduct input VAT raise doubts as to whether they are in compliance with the EC VAT Directive.

H. VAT Refunds

The availability of tax refunds is a basic principle of the Polish VAT system. In this respect, where input VAT exceeds output VAT for a given period, taxpayers have two options, either:

(i) To reduce the output VAT for subsequent periods; or

(ii) To obtain a tax refund.

As a taxpayer's fundamental right, a VAT refund cannot be limited in amount.

I. Time Limits for VAT Refunds

The excess of input tax over output tax of a taxpayer should generally be refunded to the taxpayer's bank account within 60 days following the filing of the VAT return by the taxpayer.

At the request of the taxpayer and subject to certain conditions, the tax office will refund the excess of input tax over output tax to the taxpayer within 25 days following the filing of the VAT return.

However, if additional examination of the grounds for claiming a refund is required, the head of the tax office may extend the 60-day (or 25-day) deadline until the necessary explanatory proceedings are completed and, in addition, may require a cash guarantee.

For a taxpayer that does not perform any taxable activities, VAT is refunded within 180 days following the filing of the VAT return.

As of 2022, two additional VAT refund deadlines of 40 days and 15 days were introduced.

The 40-day refund deadline is intended as an incentive for taxpayers to issue electronic invoices via the national e-invoice system, which was created by the Ministry of Finance.[220] This benefit is only for taxpayers that issue invoices solely in this manner, although there are other conditions to be fulfilled before they can take advantage of the incentive.

The 15-day tax refund deadline is intended for taxpayers who sell to private persons and record their sales in cash registers.[221] To benefit from such a short deadline for tax refunds, there are a number of conditions, including a sufficiently high share of non-cash payments in sales. Thus, this option is designed as an additional tool to combat the shadow economy.

[220] VAT Act, Art. 87, Para. 5b.
[221] VAT Act, Art. 87, Para. 6d.

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Note: Tax offices often exercise their right to extend the deadline for granting a VAT refund. As a result, refunds may take several months after a taxpayer has filed a VAT return showing the excess VAT to be refunded.[222]

J. Refund of Polish VAT to Foreign Entities

EU entities (on the basis of the Polish provisions implementing Council Directive 2008/9/EC of February 12, 2008, laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (*Dyrektywa Rady 2008/9/WE z dnia 12 lutego 2008 r. określająca szczegółowe zasady zwrotu podatku od wartości dodanej, przewidzianego w dyrektywie 2006/112/WE, podatnikom niemającym siedziby w państwie członkowskim zwrotu, lecz majacym siedzibę w innym państwie członkowskim*) and non-EU entities (on the basis of Polish provisions implementing the Thirteenth EC Directive, subject to the rule of reciprocity) that do not perform VAT taxable activities in Poland are allowed to apply for a refund of Polish VAT paid on the purchase of all types of goods and services from Polish entities.

Other requirements that a foreign entity must comply with to apply for a VAT refund are as follows:

(i) The foreign entity must be registered as a VAT taxpayer in its country of residence; and

(ii) The foreign entity must not perform activities that are subject to VAT in Poland (subject to some exceptions).

A foreign entity is allowed to request a refund of VAT paid on the purchase of goods or services for a period not less than three months and not longer than one calendar year. The amount of the requested refund may not be less than the equivalent of:

(i) PLN 400 if the application relates to a period shorter than one calendar year but not less than three months; or

(ii) PLN 50 if the application relates to a whole tax year or a period shorter than the last three months of that year.

The VAT refund procedure for an entity that has its seat or place of residence in another EU Member State differs from that for an entity that has its seat or place of residence outside the European Union. In the first case, the VAT refund is made at the taxpayer's request submitted by means of an electronic communication through the EU Member State in which the taxpayer has its seat or place of residence. The request must be submitted not later than September 30 of the year following the year that the request for refund concerns. In the latter case, the VAT refund is made at the taxpayer's written request submitted directly to the Second Tax Office Warsaw-Middletown, not later than September 30 of the year following the year that the request for refund concerns.

In both cases, the refund is made within four months from the date of application. This term may be extended if the tax authorities request additional documentation or information.

K. VAT Split Payment System

A VAT split payment system was introduced into the VAT Act on July 1, 2018. Except in certain cases when it is mandatory, the application of split payments is optional. The split payment mechanism is mandatory for invoices over PLN 15,000 gross that relate to sensitive goods and services (for example, fuel, steel, coal, smartphones and tablets, and construction services).

The buyer transfers only the net amount of the payment to the seller's bank account, while the amount of VAT is transferred to the seller's VAT account (i.e., a special account intended for tax settlement purposes). The money in the VAT account belongs to the seller but access to it is limited.

The seller may use the amount accumulated in the VAT account to pay its VAT tax liability. If the tax liability is lower than the amount accumulated in the VAT account, the seller may apply for a refund of the whole or a part of this amount, which is then transferred to a regular bank account within 60 days from the date of the refund application.

The VAT split payment applies only to transactions between VAT taxpayers and only to transfers in PLN.

As the application of the VAT split payment system is not obligatory (with the above-mentioned exceptions), the seller may stipulate on the basis of the general freedom of contracts that he or she does not accept VAT split payment and that the total amount (including VAT) should be paid to his or her regular bank account.

L. VAT Register

The Head of the National Tax Administration maintains an electronic database of:

(i) Entities that were not registered for VAT by the head of the tax office or that were deleted from the register of VAT taxpayers; and

(ii) Entities registered as VAT taxpayers.

The database covers a wide range of information, including bank account numbers indicated by taxpayers on registration applications submitted to the tax office.

The most important restriction introduced by these provisions is the requirement to make payments to contractors exceeding PLN 15,000 only through the bank accounts indicated in the database. Tax deductible expenses will be disallowed to the extent they were made without the intermediation of a bank account or to an account other than that indicated in the database maintained by the Head of the National Tax Administration on the day of the transfer.

However, the payment in the split payment system allows the expense to be included in tax deductible expenses. In addition, the buyer is jointly and severally liable for the supplier's tax arrears to the extent of the VAT proportionally attributable to the supply of goods or services for which payment was made to a bank account not listed in the database on the date of payment. To avoid sanctions, the buyer may submit a notification to the head of the tax office up to seven days of the transfer. The buyer will also not be liable if the payment has been made using the split payment method. The above regulations mean that significant attention must be paid to the bank accounts to

[222] VAT Act, Art. 87, Para. 2.

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which payments are made. Only by making payments to accounts indicated in the database it is possible to avoid negative consequences.

M. VAT e-Commerce

As of 1 July 1, 2021, the VAT exemption on the importation of goods placed in consignments sent from outside the European Union directly to a recipient residing in Poland (provided the total value of the goods in the consignment does not exceed an amount expressed in PLN equivalent to 22 euros) has been removed. A similar exemption has been removed across the European Union.

In place of the previous VAT exemption, a special import scheme was introduced. Businesses operating electronic interfaces (such as online marketplaces or platforms) will, in certain situations, be deemed for VAT purposes to be the supplier of goods sold to customers in the European Union by companies using the interface. Consequently, these businesses will have to collect and pay the VAT on these sales.

Under this scheme, the online platform is required to account for VAT if the following conditions are fulfilled:

(i) The vendor is established outside the European Union;

(ii) The vendor does not have a fixed establishment for VAT purposes in the European Union; and

(iii) The vendor sends the goods to the consumer from within the European Union.

N. VAT Groups

From January 1, 2023, VAT taxpayers may create a VAT group in Poland. This change allows for the joint settlement of VAT for all member entities of a group. Hence, the main benefit of establishing a VAT group is that all transactions between the group members are attributed to a single VAT registration.

To form a VAT group, group members must sign an agreement in this respect. The group must register as a separate VAT taxpayer. Furthermore, the member entities must be financially, economically and organizationally linked during the entire period the VAT group is in existence. For this purpose, the financial link requires a direct holding by one of the group entities of more than 50% of the shares of the other entities.

For a valid economic link, the principal activity of the members of the VAT group must be of the same nature, or the activities ought to be complementary and interdependent, or a member of the group must carry on activities that benefit wholly or largely the other group members. The organizational element means that the members must be under common management or organize their activities wholly or partly in coordination.

The biggest advantage of a VAT group, under which related taxpayers will be able to jointly account for VAT, is the reduction of accounting obligations for activities between entities forming the group. These activities do not need to be documented with invoices or shown in the VAT records. However, members of a VAT group are obliged to keep, in an electronic form, records of activities involving the supply of goods and the provision of services performed for other members of the group.

A VAT group may be created by taxpayers who are established in Poland and by foreign entities holding a Polish branch. Each VAT group may remain in existence for a period of at least three years.

With effect from July 1, 2023, entities that are members of VAT groups are obliged to maintain electronic records of the supply of goods and the provision of services to other members of the same VAT group. The records need to be in the form of a standardized file (JPK_GV format), which must be sent to the tax office on a monthly basis.[223]

O. Mandatory E-invoicing

The National e-Invoicing System (*Krajowy System e-Faktur*, KSeF), which imposes mandatory e-invoicing of all commercial transactions, was scheduled to enter into force on July 1, 2024. However, various implementation issues led the Polish Sejm to adopt the Act of May 9, 2024, which postpones the deadline for the KSeF roll-out to 2026.

Under the new Act, e-invoicing will become mandatory for enterprises with annual revenues exceeding PLN 200 million (approximately 46 million euros) from February 1, 2026. B2B e-invoicing will become mandatory for all enterprises from April 1, 2026. The use of the KSeF for B2C invoices remains voluntary.

KSeF is intended to provide the tax administration with more structure, transparency and "real-time" control over the e-invoicing processes of each mandated taxpayer.

Switching to mandatory e-invoicing would likely impose a significant burden on small and mid-sized enterprises (for example, because of a lack of the resources and/or technological capabilities required to comply with the new e-invoicing requirements). Forward planning is therefore highly recommended.

P. VAT Trends

While various changes were made to the VAT legislation in 2023 and 2024, none of these changes are revolutionary. Instead, the changes are focused primarily on improving the functioning of the existing regulations (for example, increasing the turnover threshold below which an entity has small taxpayer status from 1.2 million euros to 2 million euros).[224]

The changes introduced included simplifications to the invoicing of sales recorded using cash registers and the maintaining of sales records using cash registers (including making it possible for taxpayers to avoid the obligation to print certain tax documents). There were also certain minor changes to the applicable VAT rates system, for example, the reduction of the VAT rate for certain services in the beauty sector.

The CJEU's decision in case C-935/19 is also reflected in the revised VAT provisions under which, for purposes of the VAT penalties, taxpayers making errors in VAT settlements are not to be treated in the same way as persons committing actual fraud. In compliance with this decision, the revised rules enable the tax authorities to determine VAT penalties on a case-

[223] VAT Act, Art. 109.11g–11h.

[224] VAT Act, Art. 2.25. amended on July 1, 2023.

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by-case basis, taking into account the circumstances of each individual taxpayer.[225]

Q. Excise Tax

1. Taxable Activities

The following are the main types of transactions subject to excise tax in Poland:

(i) The manufacture of excise goods;

(ii) The entering of excise goods into a tax warehouse;

(iii) The importation of excise goods;

(iv) The intra-EU acquisition of excise goods; and

(v) The dispatching of excise goods that are not the property of the entity operating a tax warehouse from the tax warehouse, outside the scope of the Excise Tax Suspension Procedure.

Some other activities, in particular those provided for under Articles 8 (Paragraph 2–6), 9 and 100 of the Excise Tax Act, may be treated as taxable activities for purposes of the Excise Tax Act. On the other hand, multiple activities are exempt from the tax, mainly as a result of EC Directives.

2. Taxpayers

Individuals, legal persons and organizations not having the status of legal persons performing taxable activities are taxpayers for excise tax purposes. The following are also taxpayers for excise tax purposes:

(i) Entities that acquire or hold excise goods, not subject to the Excise Tax Suspension Procedure, on which the appropriate excise tax has not been paid and, following tax audit, the fact that excise tax has been paid was not established;

(ii) Entities that are final consumers of electricity on which the appropriate excise tax has not been paid, when it is not possible to determine who the supplier was;

(iii) Entities that hold excise goods, where a shortage of excise goods has occurred, even if they are not the owners of such goods;

(iv) Entities that qualify as tax representatives; and

(v) Entities qualifying as registered traders, as defined, with respect to the intra-EU acquisition of excise goods for third parties.

Aside from the above, Article 13 (Paragraph 1–6a) provides for other specific situations causing individuals, legal persons or organizations not having the status of legal persons to be taxpayers for excise tax purposes.

In addition, the Minister of Finance may grant tax exemptions for specific goods.

3. Excise Tax Suspension Procedure

Harmonized excise goods are subject to a specific suspension procedure required by EC Directives. The procedure for the suspension of excise duties enables the payment of excise tax to be deferred until given transactions relating to specified excise goods are performed. Above all, the procedure is intended as a tool for implementation of the final consumption rule. This means, among other things, that a mere transfer of excise goods between tax warehouses does not trigger excise tax liability, and excise goods should be subject to excise tax at the place of final consumption.

The procedure is generally connected with the use of tax warehouses, where excise goods can be produced, processed and stored. Thus, the collection of excise tax may be suspended if the goods are, for example:

(i) Stored in a tax warehouse;

(ii) Moved between tax warehouses within Poland; or

(iii) Moved for purposes of export between a tax warehouse in Poland and the Customs Office within Poland that supervises the actual movement of excise goods outside the European Union.

A taxpayer planning to operate a tax warehouse must obtain a special permit from the competent Customs Office. To obtain such a permit, the taxpayer must fulfill certain conditions, including the following:

(i) Conduct at least one type of activity consisting of the manufacture, processing and storage of harmonized excise goods;

(ii) Be a VAT taxpayer;

(iii) Not be in arrears with respect to customs duties, taxes constituting state budget revenue, or social and health insurance premiums;

(iv) Deposit cash collateral to secure potential tax liabilities; and

(v) Be an entity whose operations are managed by persons who have not been convicted of any offence with respect to the credibility of documents, property, pecuniary or securities transactions, or financial trading, or of a fiscal offense.[226]

The excise suspension procedure is used both in the case of given transactions on the site of the tax warehouse or the movement of goods to a tax warehouse, and in some situations with respect to goods of which the recipient is not a tax warehouse. Thus, if the recipient is not a tax warehouse, excise tax may be suspended, for example, when the recipient of excise goods delivered from other EU Member State is a "registered consignee," i.e., an entity that has been granted by the customs authorities a permit for the intra-EU acquisition (or for a single intra-EU acquisition) of excise goods dispatched under an excise suspension procedure.

Registered consignees may make use of the excise tax suspension procedure. Such registered consignees are natural persons, legal persons or organizations that do not have legal personality that have been authorized by the competent authorities of an EU Member State to acquire excise goods from another Member State, using the excise tax suspension procedure.[227]

[225] VAT Act, Art. 112b.2b. in force from June 6, 2023.

[226] Excise Tax Act, Art. 48.

[227] Excise Tax Act, Art. 2, Point 13.

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In the case of a registered consignee (with a general permit for intra-EU acquisitions of excise goods), this authorization allows such acquisitions in the regular course of the consignee's business (for example, a wholesaler of alcohol X in Poland who regularly brings in alcohol produced abroad from tax warehouse Y in France). By contrast, registered consignees with a permit for a single intra-EU acquisition are authorized to carry out a single acquisition of excise goods (for example, the owner of a pub that typically serves Polish beer but sometimes acquires beer from Ireland, could apply for a permit for a single acquisition when acquiring beer from Ireland). Taxpayers apply for the status of a "registered consignee for a single intra-Community acquisition permit" if they do not acquire harmonized excise goods on a regular basis.

4. Payment Rules and Periods

Payers of excise tax declare and pay the amount of tax due on a monthly excise tax return by the 25th day of the month following the month in which the tax liability arose.

A special mechanism exists for the settlement of excise tax in the case of the importation of excise goods. With respect to these transactions, taxpayers are not required to submit monthly tax returns. Thus, taxpayers are required to calculate and state the excise amount due in a customs declaration and pay the due amount of excise tax according to the principles and within the periods specified in customs law regulations. It should be emphasized that the requirement to pay excise tax in connection with the importation of excise goods also arises when the taxpayer imports duty-free goods, goods covered by the customs duty suspension procedure or goods subject to a 0% customs duty rate.[228]

[228] Excise Tax Act, Art. 28, Para. 2.

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XIII. Transfer Tax

A. Scope of Taxation

Transfer tax is levied on the conclusion of a number of civil law agreements and related court decisions, as follows:

(i) Civil law agreements:

- Contracts for the sale or exchange of movable property and property rights;
- Loan contracts — subject to some exceptions;
- A company's articles of association;
- Gift contracts to the extent the beneficiary takes over debts and obligations;
- Life tenancy agreements;
- Agreements on the division of an inheritance or liquidation of co-ownership to the extent of any repayment of a portion of the inheritance or additional payments;
- Irregular deposit agreements (i.e., special storage agreements that entitle the person storing the goods or money of the third party to use them and to return the same quantity of goods of the same quality or the same amount of money subsequently); and
- The establishment of a mortgage or right of use for consideration.

(ii) Amendments to the agreements listed above under (i), if they result in an increase in the taxable base for transfer tax purposes.

(iii) Court decisions, including arbitration, as well as settlements concluded before the courts, provided such settlements have the same consequences as the civil law agreements referred to above under (i) and (ii).[229]

The civil law agreements listed above under (i) are subject to transfer tax if they pertain to property located in Poland or property rights being executed in Poland. Accordingly, the sale of shares in a Polish company is subject to Polish transfer tax, regardless of where the sale takes place or who the purchaser is. Contracts for the sale or exchange of property located abroad or covering property rights subject to execution abroad are subject to transfer tax in Poland if the purchaser has a seat or place of residence in Poland and the purchase or exchange takes place in Poland.

B. Civil Law Acts Not Subject to Transfer Tax

Some of the civil law agreements listed under (i) in A., above are not subject to transfer tax if one of the parties to the agreement is obliged to pay value added tax (VAT) or is exempt from VAT in connection with the transaction, except with regard to the sale by a VAT payer of real property exempt from VAT or of shares in a company.

Example: A U.S. company sells a copyright to a Polish VAT payer. The transaction will be subject to VAT in Poland at the standard 23% VAT rate. Because the Polish taxpayer is obliged to pay VAT on the sale price, the sale agreement will not be subject to transfer tax in Poland. If, however, the VAT payer sells real property that is exempt from VAT, the sale will be subject to transfer tax. Thus, generally, a sale by a Polish company of a residential building that had previously been leased to different lessees will be subject to transfer tax at a rate of 2% but exempt from VAT.

Certain other acts are not subject to transfer tax, including:

(i) Legal acts relating to:

- Support, alimony, guardianship, curatorship and adoption;
- The election of the President, members of Parliament and local governmental bodies;
- Social insurance, health insurance and social welfare;
- Employment, social benefits and remuneration for work; and
- Education and health;

(ii) The sale or exchange of goods that are:

- Introduced into a duty-free zone or a duty-free warehouse; or
- Placed under a customs warehousing procedure.

As of January 1, 2016, the sale of property in execution or bankruptcy proceedings is no longer exempt from taxation.

Furthermore, no transfer tax applies in the case of the following transactions even though they require the amendment of a company's articles of association:

(i) Merger;

(ii) The conversion of the company into another company;

(iii) Contributions to the company, in exchange for its shares, of:

- An enterprise of the company or an organized part thereof; or
- Shares of another company, resulting in the holding of a majority of votes in that company, or subsequent shares if the company to which the shares are contributed already holds the majority of votes in that company.

C. Exemptions

The Transfer Tax Act provides for a number of exemptions from transfer tax. These exemptions are either subjective or objective in nature. Subjective exemptions are enjoyed by public benefit organizations that conduct activities connected with nonprofit activities in the public interest, the State Treasury and local self-government units.

The objective exemptions include exemptions for:[230]

(i) Loans — up to a maximum of PLN 1,000;

[229] Transfer Tax Act of September 9, 2000 (consolidated text), Journal of Laws 2016 Item 223, Art. 1.

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(ii) Loans granted to a limited liability company or joint-stock company by its shareholder;

(iii) The sale of treasury bills and bonds;

(iv) The sale of foreign currency;

(v) The sale of movable property if the price does not exceed PLN 1,000;

(vi) The sale of financial instruments:

- To domestic or foreign investment firms;
- Effected through domestic or foreign investment firms;
- Effected as part of organized trading;
- Effected outside of organized trading by domestic or foreign investment firms, if such rights were acquired by such firms as a part of organized trading; and

(vii) Articles of association and amendments to articles of association, including the following:

- The conversion of a company or a merger to the extent of the contributions made to the company or its share capital that were subject to transfer tax or to the tax on capital contributions, if the contributions were made to a company located in another European Union (EU) Member State, or on which the tax was not levied according to the provisions of the law of the EU Member State. (This exemption applies with respect to contributions made prior to January 1, 2001, pursuant to amendments to the Transfer Tax Act of October 30, 2008);
- Increases in share capital resulting from additional payments not returned to shareholders or from non-repayable loans granted to a company by its shareholders that were previously subject to transfer tax or to the tax on capital contributions made to companies located in other EU Member States. (Pursuant to amendments to the Transfer Tax Act of October 30, 2008, this exemption applies to share capital increases resulting from loans granted to a company by its shareholders as of January 1, 2007, and from additional payments made to a company by its shareholders as of May 1, 2004); and
- Increases in share capital occurring within four years from a share capital decrease resulting from losses incurred by a company, to the extent of the amount of the decrease.

D. Tax Liability

Generally, tax liability arises on the conclusion of an agreement subject to taxation (for example, the sale of property, the granting of a loan or the making of irregular deposits), except in the case of certain transactions. Thus, tax liability connected with an amendment to the articles of association to implement a decision to increase the capital of a company arises on the adoption of the resolution on such increase. Tax liability on the establishment of a mortgage arises on the filing of the declaration establishing the mortgage.

E. Taxable Base

The Transfer Tax Act contains detailed provisions relating to the calculation of the taxable base and applicable rates. The taxable base depends on the agreement that is subject to taxation. For example, the taxable base in the case of the sale of real property or movables, or a contract for the sale of property rights is the sale price. The sale price should be equal to the market value of the subject of the civil law agreement.[231]

Prices that deviate from market value can be challenged by the tax authorities, which can request that the parties to the transaction increase or decrease the sale price. If the parties disagree with the position of the tax authorities, the final price may be established with the assistance of experts.

Example: A Polish company sells a machine. The sale price negotiated by the parties is PLN 250,000. The market value of the machine is PLN 300,000. Therefore, the taxable base for transfer tax purposes will be PLN 300,000, resulting in a transfer tax liability of PLN 6,000 (PLN 300,000 × 2% = PLN 6,000). If the parties pay the transfer tax based on the negotiated price (i.e., transfer tax of PLN 5,000), the tax authorities may require that the parties pay the additional PLN 1,000 in tax, together with penalty interest, assessed based on market value.

In the case of a loan agreement subject to transfer tax, the taxable base is the actual amount of the loan.

The taxable base with respect to the articles of association of a company or a commercial partnership is determined, as follows:

(i) On the drafting of the articles of association, the value of contributions made to the partnership or the value of the share capital.

(ii) On the making of contributions to the partnership, or on an increase in the contributions or an increase in the share capital, the value of the contributions increasing the value of the partnership's assets or the value by which the company's share capital was increased.

(iii) On additional payments made by the shareholders, the amount of the additional payments.

(iv) On the granting of a loan by a shareholder/partner, the amount of the loan. As of January 1, 2009, loans granted to a limited liability company or a joint stock company by its shareholders are exempt from transfer tax.

(v) On the conversion a company or the merger of companies, the value of the assets contributed to the partnership established as a result of the conversion or the value of the share capital of the company established as a result of the conversion or merger.

The taxpayer may deduct the following costs from the taxable base described above:

(i) The amount of remuneration for notarial services, including VAT, connected with the preparation of articles of

[230] Transfer Tax Act of September 9, 2000, Art. 9.

[231] Transfer Tax Act of September 9, 2000, Art. 6.

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association or relevant amendments thereto, if they result in an increase in the share capital of the company;

(ii) The court fee connected with registration of the company in the register of business entities or amendment thereof concerning contributions to the company or the share capital; and

(iii) The fee for the publication of an official announcement concerning registration in the register of business entities or amendment of any such entry.

F. Rates of Transfer Tax

Generally, transfer tax is determined as a percentage of the taxable base. The transfer tax rate on a loan contract is 0.5% of the loan amount. The rate of 2% applies to sales of real property or movables, while the sale of property rights is subject to tax at the rate of 1% of the sale price. The transfer tax rate on articles of association is 0.5%.

The penalty is 20% if, during the course of an audit, tax proceeding, tax inspection or inspection proceeding conducted by the tax authorities:

(i) The taxpayer cites the conclusion of a loan agreement, improperly made deposit or establishment of an improper usufruct, or modifications thereof, and the corresponding tax has not been paid; or

(ii) The taxpayer cites the conclusion of a loan agreement with a close relative and, in his capacity as a borrower, has failed to provide documentation to prove receipt of the money in a bank account or in an account maintained on his behalf by a cooperative savings-credit fund or postal order.

G. Payment of Transfer Tax

Generally, the parties concluding an agreement that is subject to transfer tax are obliged to prepare and submit the appropriate tax return to the competent tax office and pay the tax due within 14 days from the time when the tax liability connected with the transaction arose. However, if the agreement is concluded before a public notary in the form of a notarial deed, the obligation to pay the transfer tax due rests with the notary. The notary is obliged to calculate and collect the transfer tax due from the parties and to transfer this amount to the account of the competent tax authorities. The notary is also required to keep a record covering all transactions that result in a liability to collect transfer tax.

The person with whom the tax liability rests depends on the type of contract, as follows:[232]

(i) Sale contract: with the buyer;

(ii) Exchange contract: with both parties to the contract;

(iii) Donation: with the donee;

(iv) Annuity contract (i.e., a contract pursuant to which a party, in exchange for the transfer of real property, assumes the obligation to provide the transferor of such property with means of sustenance for life): with the buyer of the real property concerned;

(v) Distribution of property or abrogation of ownership contract: with the person acquiring rights or property rights over a share of an inheritance or co-ownership;

(vi) Usufruct contract: with the usufructuary;

(vii) Loan or irregular deposit:[233] with the borrower or depository;

(viii) Mortgage: with the mortgagee;

(ix) Civil partnership contract: with the partners; and

(x) Drafting or amendment of the articles of association of a company/commercial partnership: with the company/commercial partnership.

If several parties are liable for payment of the transfer tax, the liability is joint and several.

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[232] Transfer Tax Act of September 9, 2000, Art. 4.

[233] Irregular deposits are defined as follows: "Where it follows from separate provisions of law or from the contract or the circumstances that the keeper may dispose of the money or other items designated only as to their kind and given to him for safe-keeping, the provisions on the loan shall apply respectively (irregular deposit). The time and the place of the return of the item shall be regulated by the provisions on safe-keeping". Civil Code, Art. 845.

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XIV. Stamp Duty

A. Scope of Taxation

In general, the individual matters pertaining to state administration listed below are subject to stamp duty:

(i) Requests for specified official actions, based on the applicant's request;

(ii) The issuance of certificates;

(iii) The issuance of permits and licenses; and

(iv) The submission of a power of attorney, a proxy or its transcript, or a copy in the case of state administration or court litigation.[234]

B. Exemptions

The Stamp Duty Act contains an extensive list of documents (acts of administrative bodies) that are not subject to stamp duty, including those relating to specified official actions such as the issuance of certificates, permits and licenses; the issuance of powers of attorney and proxies; and transcripts and copies of such documents, in cases pertaining to alimony, guardianship, wardship, social security, elections, employment, education, housing, the changing of a person's name and, in certain cases, protection of the natural environment.

Public benefit organizations, state budget units, local government units, etc. are exempt from stamp duty.

C. Tax Rates

The Stamp Duty Act contains detailed attachments relating to stamp duty rates (for example, the stamp duty on a power of attorney is PLN 17 (if a power of attorney covers more than one person in the same document, the amount of the stamp duty due must be multiplied by the number of persons covered — for example, in the case of the submission to the tax office of a power of attorney granted for two persons, the stamp duty due would be 2 × PLN 17 = PLN 34); on the confirmation of a building project, PLN 47; and on a license promise, PLN 98).

D. Liability for Payment

Stamp duty must be paid by the natural person, the legal person or the organizational unit with no legal personality whose application or motion initiated the official action to be performed, or the certificate or permit to be issued. The liability for stamp duty rests jointly and severally with such persons and units if they jointly file applications or if official actions are performed, or certificates or permits are issued, at the joint request of such persons.

Stamp duty must be paid when the liability to pay arises. The liability to pay arises upon the submission of an application or motion, or the submission of a power of attorney, a proxy or a transcript or copy of such document. Payment is made either in cash or in the form of a transfer to the account of the relevant authority (for example, the tax office, municipal council or court).

[234] Stamp Duty Act of November 16, 2006 (*Ustawa z dnia 16 listopada 2006 r. o opłacie skarbowej* (Dz.U.2020.1546)).

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XV. Real Property Tax

A. Scope of Taxation

The tax on real property is a local tax. Revenue from real property tax goes to the budget of the locality in which the real property is located.

The following items are subject to taxation:[235]

(i) Buildings and parts of buildings;

(ii) Structures and parts of structures connected with the carrying on of commercial activity other than forestry or agriculture;

(iii) Land;

(iv) Land classified in the land and buildings register as farmland and forest that is occupied for purposes of conducting business activity; and

(v) Land on which there is a lake, a water reservoir or a water-powered electrical generator.[236]

Significant amendments to the real property tax were introduced with effect from January 1, 2025. Among the most important changes are new definitions of buildings and structures, including an annex to the Real Estate Act listing objects that are considered to be structures. Although the Ministry of Finance maintains that they intended to reflect the existing regulations and case law and that there are no revolutionary changes, some of the new definitions are not precise and may lead to controversy.

Taxpayers should review the classification of buildings and structures in light of the new definitions to ensure that the new rules do not require a change in their current approach. Some of the changes in the rules also derive from existing case law and it is important to analyze the approach currently applied if the case law and its impact on taxation have not been closely monitored.

B. Exempt Property

The Law on Local Taxes and Fees recognizes some types of immovable property that are not subject to real property tax, including:

(i) On the condition of reciprocity, real property owned by foreign countries or international organizations designated for the seat of diplomatic representatives, consular offices and other units enjoying diplomatic immunity;

(ii) Land under sailing and navigable waterways;

(iii) Real property occupied by local governmental units; and

(iv) Lanes, including roads and buildings, connected with the protection of road users.

C. Taxpayers

Real property tax is payable by individuals, legal persons and organizational units, including companies without legal personality, that are:[237]

(i) Owners of real property or structures;

(ii) Sole and independent possessors of real property or buildings/structures;[238]

(iii) Perpetual usufructuaries of land; and

(iv) Possessors of the whole or part of real property or the whole or part of buildings/structures owned by the State Treasury or local authorities if:

- Possession was established under an agreement concluded with the owner, the State Treasury Agricultural Property Agency or under any other legal title (the only exception being apartments owned by individuals that are not legally recognized as separate real property); or
- There is no legal title with respect to such possession.

If real property or a building/structure is co-owned or possessed by two or more persons, the tax on such property is due separately from each of the co-owners, who are jointly and severally responsible for payment of the tax.

If an apartment is legally recognized as a separate piece of property, the owner of the apartment is responsible for the payment of the portion of the real property tax payable on the land on which the building housing the apartment is located and a portion of the real property tax payable on that building, that portion — until December 31, 2016 — being a percentage equal to the proportion of the area of the apartment to the usable area of the building as a whole. As of January 1, 2016, the portion of tax due on the land and building is calculated based on the owner's share in the building.

D. Taxable Base

The taxable base is determined as:[239]

(i) In the case of buildings or parts thereof: the floor area;

(ii) In the case of structures: the value of the structure as of January 1 of the tax year concerned; this is the same as the basis for calculating depreciation allowances for that year, and, in the case of structures that have been entirely depreciated, their value as of January 1 of the year in which the last depreciation deduction was taken; and

(iii) In the case of land: the surface area of the land.

E. Tax Rates

Real property tax rates are set annually by local councils but may not exceed the maximum rates provided for in the Law on Local Taxes and Fees. The maximum rates are generally determined annually by the Minister of Finance as a fixed amount per square meter of area subject to taxation. However, the tax on structures is calculated as a percentage of their value. The

[235] Law on Local Taxes and Fees of Jan. 12, 1991 (consolidated text), Journal of Laws 2019 Item 1170, Art. 2, Sec. 1.

[236] Categories (iv) and (v) exist as special categories of land because they are subject to different tax rates.

[237] Law on Local Taxes and Fees of January 12, 1991, Art. 3, Secs. 1, 4, 5.

[238] Law on Local Taxes and Fees of January 12, 1991, Art. 3, Secs. 1, 4, 5.

[239] Law on Local Taxes and Fees, Art. 4, Sec. 1.

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real property tax rates are updated annually. The current rates are as follows:[240]

(i) PLN 1.19 per square meter of the floor area of residential buildings or parts of such buildings;

(ii) PLN 34 per square meter of the floor area of buildings or parts of buildings connected with commercial activity and of those parts of residential buildings occupied for purposes of carrying on commercial activity;

(iii) PLN 15.92 per square meter of floor area of buildings or parts of buildings connected with commercial activity in the field of the sale of certified seed material;

(iv) PLN 6.95 per square meter of the floor area of buildings or parts of buildings connected with commercial activity in the field of medical care;

(v) PLN 11.48 per square meter of the floor area of other buildings or parts of other buildings, including buildings used by public benefit organizations for purposes of conducting activities for the public benefit;

(vi) 2% of the value of structures;

(vii) PLN 1.38 per square meter of the area of land connected with commercial activity, irrespective of how the land concerned is classified in the Land and Buildings Register;

(viii) PLN 6.84 per hectare of land on which there is a lake and land on which there is a water reservoir or a water-powered electrical generator;

(ix) PLN 0.73 per square meter of land in other cases, including land used by public benefit organizations for purposes of conducting activities for the public benefit; and

(x) PLN 4.51 per square meter of land covered by the revitalization law and designed for residential or service areas in the local area development plan, if the plan is in force for at least four years and construction on the land has not been completed.

F. Exemptions

The Law on Local Taxes and Fees provides for a number of exemptions from real property tax. These exemptions are both subjective and objective in nature. Subjective exemptions are enjoyed by primary and secondary schools and institutions of higher learning, Polish Academy of Science units, and the Polish Allotment Holders Union subject to certain conditions specified in the Law on Local Taxes and Fees. Subjective exemption is also enjoyed by entrepreneurs that obtained research and development (R&D) center status based on the Act on the Forms of Support of Innovative Activities of July 29, 2005.

Additionally, local councils have the right to determine additional objective exemptions applicable within the territory of a particular commune. Local councils cannot refrain from collecting real property tax (i.e., cannot make all entities exempt from the obligation to pay the real property tax) and cannot establish an exemption applicable only to a single person.

G. Procedures

The provisions governing the taxation of real property impose reporting requirements. Thus, taxpayers must report ownership or possession of real property to the local authorities and any changes that may lead to an increase or reduction in the tax.

Corporate entities have the duty to:[241]

(i) File, by January 31 of each year, a real property tax return for the tax year concerned with the appropriate local authority for the location of the real property and, if the tax liability arises after January 31, file a real property tax return within 14 days from the date on which the tax liability arose;

(ii) File corrections to the return within 14 days of any changes that would lead to an increase or reduction of the tax; and

(iii) Pay the real property tax as calculated in the tax return — without an official request — to the appropriate local government body, by the 15th day of each month and, in the case of January, by January 31.

Individuals have the duty to:[242]

(i) File, within 14 days from the date on which the tax liability arose, information on real property that is in their possession; on the basis of information received from an individual, the tax authorities will determine the amount of real property tax that should be paid by that individual; and

(ii) Pay the real property tax as calculated by the tax authorities in the decision issued and delivered to the taxpayer. The tax is paid in installments, which must be paid no later than March 15, May 15, September 15, and November 15.

H. Real Property Tax Register

The Polish Government established the Real Property Tax Register with a view to creating a system that would enable the tax authorities to calculate and collect real property tax without incurring the additional costs involved in properly identifying taxpayers liable for payment of the tax. The Register contains information about taxpayers for real property tax purposes and real property in their possession, whether as owners or not. The appropriate entries in the Real Property Tax Register are made based on the following documents and registers:

(i) Notarial deeds;

(ii) Decisions issued by the administrative authorities relating to land development;

(iii) Town and country development plans;

(iv) Records kept by the tax authorities; and

(v) The National Register of Taxpayers.

[240] Law on Local Taxes and Fees, Art. 5.

[241] Law on Local Taxes and Fees, Art. 6, Sec. 9.

[242] Law on Local Taxes and Fees, Art. 6, Sec. 9.

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XVI. Inheritance and Gift Tax

A. General

Acquisitions by way of inheritance or a gift of tangible property located in Poland and property rights executable in Poland are subject to inheritance and gift tax.[243] Acquisitions of tangible property and other property rights by way of *usu capio* are also subject to this tax. Generally, inheritance and gift tax is paid by individuals. However, where a company makes a donation to an individual, liability for inheritance and gift tax rests with both the donor and the donee.

Acquisitions under a *legitime* (i.e., the compulsory part of an inheritance that is not received by the beneficiary in the form of a gift from the testator, in the form of a bequest or as a beneficiary named in the will) is subject to inheritance and gift tax. The gratuitous dissolution of joint property is also subject to inheritance and gift tax.

If the object of acquisition by way of inheritance or gift is material property located abroad or property rights executable abroad, the acquisition is subject to inheritance and gift tax if, at the moment the succession is initiated or the gift agreement is entered into, the recipient was a Polish citizen or had a place of permanent residence in Poland.[244]

The following are not subject to inheritance and gift tax:[245]

(i) The acquisition of movable tangible property located in Poland or property rights executable in Poland if, on the day of acquisition, neither the recipient nor the decedent or donor were Polish citizens or had a place of permanent residence or head office in Poland;

(ii) The acquisition by way of inheritance or gift of copyrights, rights to inventions, designs, trademarks, decorative designs or claims deriving from the acquisition of such rights;

(iii) The acquisition by way of inheritance of financial resources from special pension funds of the deceased;

(iv) The acquisition by way of inheritance of financial resources from an employee's retirement plan; and

(v) The acquisition by way of inheritance of financial resources from an individual retirement account.

A number of specific exemptions also apply. For example, the acquisition of money or other items, in the form of a gift, by a person included in Tax Group I (see (i) below) in an amount not exceeding PLN 11,095 per donor or not exceeding a total of PLN 22,189 in the case of multiple donors, is exempt from inheritance and gift tax for a period of five years from the date of the first donation, if the money or items donated are used to pay for:

(i) A contribution to a housing co-operative;

(ii) The construction of a small detached house;

(iii) The purchase of residential premises constituting separate property under the law; or

(iv) The repayment of a mortgage loan together with interest.[246]

Note: If the amounts of money or the value of other items received by a person as gifts will exceed PLN 11,095 per donor (or a total of PLN 22,189 in the case of multiple donors) over a period of five years from the date of the first donation, the difference between the amount received and the exemption amounts is subject to inheritance and gift tax.

The provisions classify recipients of property or rights by way of inheritance or gift into three tax groups. The amount of tax liability depends on the tax group in which the recipient falls. A recipient is placed in a tax group in accordance with the personal relationship of the recipient to the individual from whom the property or property rights were received or inherited. The three tax groups are:[247]

(i) Group I: spouses, descendants or ancestors, stepchildren, sons- or daughters-in-law, siblings, stepfathers, stepmothers and parents-in-law;

(ii) Group II: descendants of siblings, siblings of parents, descendants and spouses of step-children, spouses of siblings and siblings of spouses, spouses of spouse's siblings, spouses of other descendants; and

(iii) Group III: other recipients.

However, the acquisition of money or other items in the form of a gift or inheritance by a spouse, descendant, ancestor, stepchild, sibling or step-parent is exempt from tax without any value limitation if:

(i) The head of the tax office is notified of the acquisition within six months of its occurrence; and

(ii) The acquisition is documented (if the acquisition is a gift of money) by evidence of bank transfer or postal order.

B. Tax Liability

The point at which inheritance and gift tax liability arises depends on the nature of the transaction subject to taxation. If a taxpayer acquires goods by way of inheritance, tax liability arises upon acceptance of the inheritance. In the case of a donation, tax liability arises upon a statement being made confirming the fact that the donation will be made in the form of a notarial deed or upon actual execution of the donation.

C. Taxable Base

The taxable base is the value of the property or property rights received, after the deduction of debts and encumbrances ("pure value,") established according to the status of the property or property rights on the date of their acquisition.[248] The value of the property or property rights acquired is taken to be the value determined by the recipient, if this corresponds to the market value of the property or rights. If the value does not cor-

[243] Law on Inheritance and Gift Tax of July 28, 1983 (consolidated text), Journal of Laws 2021 Item 1043, Art. 1.
[244] Law on Inheritance and Gift Tax, Art. 2.
[245] Law on Inheritance and Gift Tax, Art. 3.
[246] Law on Inheritance and Gift Tax, Art. 4, Sec. 5.5.
[247] Law on Inheritance and Gift Tax, Art. 14.
[248] Law on Inheritance and Gift Tax, Art. 7, Sec. 1.

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respond to market value, the value may (after the taxpayer is asked by the tax office to provide a higher value) be established by the head of the tax office. The tax base of property inherited on the gratuitous dissolution of joint property is equal to the amount by which the value of the property or property rights at the time of dissolution exceeds the value of the joint property to which the party acquiring the inheritance was entitled prior to the dissolution.

To be subject to inheritance and gift tax, the acquisition by a recipient of tangible property or property rights from one person, must exceed:[249]

(i) PLN 36,120 if the recipient is an individual included in tax group I;

(ii) PLN 27,090 if the recipient is an individual included in tax group II; or

(iii) PLN 5,733 if the recipient is an individual included in tax group III.

Gifts over a five-year period are aggregated to calculate the exempt amount.

Acquisitions by way of *usu capio* are always subject to inheritance and gift tax and do not benefit from the tax exemptions mentioned above.

D. Tax Rates

The tax is calculated on the excess of the tax base over the tax-free amount indicated in B., above, according to the following scales:[250]

(i) Recipients included in tax group I:

Amount of Excess in PLN		Amount of Tax
Over	Up to	
—	11,833	3%
11,833	23,665	PLN 355 + 5% of excess over PLN 11,833
23,665	—	PLN 946.60 + 7% of excess over PLN 23,665

(ii) Recipients included in tax group II:

Amount of Excess in PLN		Amount of Tax
Over	Up to	
—	11,833	7%
11,833	23,665	PLN 828.40 + 9% of excess over PLN 11,833
23,665	—	PLN 1,893.30 + 12% of excess over PLN 23,665

(iii) Recipients included in tax group III:

Amount of Excess in PLN		Amount of Tax
Over	Up to	
—	11,833	12%
11,833	23,665	PLN 1,420 + 16% of excess over PLN 11,833
23,665	—	PLN 3,313.2 + 20% of excess over PLN 23,665

Acquisition by way of *usu capio* is subject to a flat 7% tax rate.

The acquisition of property by way of donation or warrant from the donor is subject to a flat 20% rate if the gift tax due was not paid and the taxpayer admits to the existence of the donation in the course of a tax audit or tax litigation.[251]

E. Tax Relief for Residential Purposes

The Law on Inheritance and Gift Tax provides for special tax relief in connection with the acquisition of residential real estate. Specifically, the value of residential real estate not exceeding the value of 110 m^2 of floor area will not be included in the taxable base (i.e., will not be subject to inheritance and gift tax) in the case of acquisition by way of:

(i) Inheritance, legacy, further legacy, testamentary instruction, gift or donor's instruction, where the recipient is included in tax group I;

(ii) Inheritance, legacy, further legacy or testamentary instruction, where the recipient is included in tax group II; or

(iii) Inheritance, legacy, further legacy or testamentary instruction, where the recipient is included in tax group III, provided the recipient has been caring for the testator for a period of at least two years on the basis of a formal notarized agreement.

To obtain tax relief, a recipient:

(i) Must not be in possession of any residential real estate other than the property acquired by way of inheritance or gift (a taxpayer who possesses other residential real property must sell it within six months to benefit from the tax relief described above);

(ii) Must not have a lease on other residential property (a taxpayers with such a lease must terminate it within six months to benefit from the tax relief described above); and

(iii) Must reside on the real property covered by the tax relief for a period of at least five years from the date of submission of the inheritance and gift tax return connected with acquisition of that property or from the day on which the recipient started to occupy it.

F. Tax Treaties

Poland has concluded inheritance tax treaties with Austria and Hungary.

[249] Law on Inheritance and Gift Tax, Art. 9, Sec. 1.
[250] Law on Inheritance and Gift Tax, Art. 15, Sec. 1.
[251] Law on Inheritance and Gift Tax, Art. 15, Sec. 4.

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XVII. Tax on Means of Transportation

A. Taxable Types of Transport

Tax on means of transportation applies, among other things, to:

(i) Trucks or truck tractors with a permitted weight of between 3.5 tons and 12 tons;

(ii) Trucks or truck tractors with a permitted weight of 12 tons or more;

(iii) Trailers and semi-trailers, the permitted weight of which, together with a motor vehicle, is between 7 tons and 12 tons, except for those that are used only for farming purposes by a payer of agricultural tax;

(iv) Trailers and semi-trailers, the permitted weight of which, together with a motor vehicle, is 12 tons or more, except for those that are used only for farming purposes by a payer of agricultural tax; and

(v) Buses.

B. Tax Liability

Liability for the tax on means of transportation arises in the following circumstances:

(i) Natural and legal persons that own any means of transportation are liable to pay the tax. Organizational units having no legal personality, in whose name a means of transportation is registered, as well as holders of means of transportation registered in Poland, as entrusted by foreign natural or legal persons to Polish entities, are also treated as owners;

(ii) If a means of transportation is co-owned by two or more natural or legal persons, all the co-owners are jointly and severally liable to pay the tax;

(iii) The tax liability arises on the first day of the month following the month in which the means of transportation was registered in Poland, and in the event that the means of transportation acquired has already been registered, on the first day of the month following the month in which the means of transportation was acquired; and

(iv) The tax liability referred to above in (i) and (ii) expires at the end of the month in which the means of transportation was deleted from the register; in which the decision on the temporary withdrawal from circulation of a means of transportation was issued; or at the end of the month during which the period that the means of transportation was entrusted by a foreign natural or legal person to a Polish entity, lapsed.

C. Tax Rates

Currently, the annual rate of tax on one means of transportation may not exceed:

(i) In the case of trucks referred to in (i) in XVII.A., above, depending on the permitted maximum weight of the vehicle:

- From 3.5 tons to 5.5 tons — PLN 1,204.87;
- From 5.5 tons to 9 tons — PLN 2,009.97; and
- Over 9 tons — PLN 2,411.94.

(ii) In the case of trucks referred to in (ii) in XVII.A., above — PLN 4,602.58, subject to certain exceptions.

(iii) In the case of trailers and semi-trailers referred to in (iii) in XVII.A., above — PLN 2,813.88.

(iv) In the case of trailers and semi-trailers referred to in (iv) in XVII.A., above, depending on the permitted maximum weight of the vehicle:

- Less than 36 tons — PLN 2,813.88; and
- More than 36 tons — PLN 3,557.48.

(v) In the case of buses, depending on the number of seats:

- Fewer than 22 seats — PLN 2,848.04; and
- 22 seats or more — PLN 3,600.69.

(vi) In the case of truck tractors referred to in (i) in XVII.A., above — PLN 2,411.94.

(vii) In the case of truck tractors referred to in (ii) in XVII.A., above, depending on the permitted maximum weight of the vehicle:

- Less than 36 tons — PLN 3,557.48; and
- More than 36 tons — PLN 4,602.58.

A detailed description of the minimum tax rates applicable to means of transportation is given in Appendices 1–3 to the Law on Local Taxes and Fees. These tax rates are calculated as follows: The euro exchange rate as quoted on the first day of October of the current year is divided by the euro exchange rate in the tax year preceding the current tax year. The result of this calculation is expressed as a percentage. If that percentage is lower than 5%, the tax rate will not change in the following tax year. If it is higher, the tax rate will be increased by 5.1% or more, accordingly.

D. Deadlines for Tax Payments

The tax on the means of transportation is payable in two equal installments by February 15 and September 15 each year, subject to the exceptions described below. If the tax obligation arises:

(i) After February 1, but before September 1 of the tax year, tax for that year is payable in two equal installments as follows: the first installment within 14 days from the day on which the tax obligation arises, and the second installment by September 15 of the tax year;

(ii) After September 1, tax is payable in full, as a one-off payment, within 14 days of the day on which the tax obligation arises.

If a tax obligation arises or expires in the course of the tax year, the tax rates specified in a municipal council resolution will be lowered in proportion to the number of months for which the tax obligation did not exist. Natural persons or legal persons being owners of means of transportation and organizational units not having legal personality, to whom a means of transportation is registered, pay tax on means of transportation,

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without being called upon to do so, to the municipal budget account.

E. Exemptions

The following are exempt from tax on means of transportation:

(i) Provided a reciprocal arrangement is in place, means of transportation held by diplomatic missions, consular offices and other foreign missions enjoying privileges and immunity on the basis of acts of law, treaties or internationally accepted norms, and their personnel and persons of equal status who are not Polish citizens and do not have a permanent place of residence in Poland;

(ii) Means of transportation held for mobilization purposes (for example, trucks), special vehicles and vehicles used for special purposes within the meaning of the traffic regulations; and

(iii) Vintage vehicles within the meaning of the traffic regulations.

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XVIII. Substance Over Form and the Tax Law Circumvention Clause

A general anti-abuse rule may be used by the tax authorities to reassess certain transactions that occur or have effect beginning from July 15, 2016. The clause is aimed at artificial transactions that are performed solely or mainly for the purpose of tax avoidance and obtaining tax benefits. Such benefits may consist of reducing, postponing or avoiding the tax liability, creating a surplus tax payment, or the entitlement to a tax refund.

The applicability of the clause has been limited to transactions resulting in a tax benefit in excess of PLN 100,000 in a given settlement period. The transactions may be considered artificial if they have no economic purpose and justification. Such transactions must not result in tax benefits and will be regarded as if the alternative "appropriate" legal transaction had been performed.

The general anti-abuse rule does not apply to tax issues that are covered by separate, specific anti-abuse regulations (VAT and exemption from withholding tax on dividends).

In addition, the tax authorities may use certain other measures to prevent tax avoidance or tax fraud. Primarily, the tax authorities are authorized to seek the true meaning of a transaction, rather than simply basing their judgment on the wording of the agreement concerned.

Moreover, if the parties to an agreement conceal an underlying agreement, the tax authorities will determine the tax consequences for the parties based on that hidden agreement. On the other hand, whenever the evidence gathered by the tax authorities raises doubts as to the existence of one or more relationships between parties or of a right, the tax authorities are required to stay the proceedings and must file a suit in the common court (i.e., the civil court) for a judgment on these facts.

Under regulations in effect from 2019, it is explicitly forbidden to apply for tax rulings regarding any provisions related to tax avoidance matters (i.e. both general anti-avoidance regulations) as well as other specific anti-abuse clauses (for example, on the taxation of mergers or dividends). Any tax rulings on these areas previously obtained by taxpayers expired as of January 1, 2019.

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XIX. Mandatory Disclosure Rules

The MDR provisions were introduced in the Law — Tax Ordinance and entered into force on January 1, 2019. However, the reporting obligation also covers schemes for which the first implementation activity was carried out before January 1, 2019, but after June 25, 2018 ("cross-border: schemes) or after November 1, 2018. ("domestic" schemes). Additional reporting obligations for cross-border schemes were introduced by an amendment to the MDR regulations, which came into effect on July 1, 2020.

The Polish MDR regulations, although an implementation of the EU DAC 6, are broader in scope than the EU regulations, covering the reporting of domestic schemes, indirect taxes (for example, VAT) and additional identifying features.

Regulations implemented in 2019 require the notification of the details of any tax scheme to the Head of the National Tax Administration. This duty applies, in general, to tax advisors, legal advisors, advocates and other experts (promoters), and, in certain situations, taxpayers themselves. The information provided must outline the details of the tax arrangement and tax scheme and the anticipated tax benefits.

Domestic (Polish) tax schemes are not covered if the taxpayer's revenues/costs or total assets do not exceed 10 million euros or if the market value of assets or rights covered by the tax scheme is below 2.5 million euros.

The deadlines for notification are as follows:

(i) Cross-border tax schemes implemented between June 25, 2018 and January 1, 2019 must be reported by the promoters by June 30, 2019; if the promoters do not report by this date, then the taxpayers must submit the notification by September 30, 2019;

(ii) Domestic tax schemes implemented between November 1, 2018 and January 1, 2019, must be reported by the promoters by June 30, 2019; if the promoters do not report by this date, then the taxpayers must submit the notification by September 30, 2019.

From January 1, 2019, tax schemes must be reported within 30 days after the earlier of the day when the scheme is:

(i) Available to the client;

(ii) Ready for implementation; or

(iii) Started.

Note: For reportable tax schemes concerning solely domestic transactions, the reporting deadline was suspended as of March 31, 2020, and expired on the 30th day after the date the emergency status of the COVID-19 epidemic is revoked. The emergency status of the COVID-19 epidemic was revoked as from July 1, 2023.

In certain cases, the above notification is also required from other persons (for example, banks, financial advisors, etc.) that are assisting with the implementation or execution of the tax scheme.

In Q1 2025, the Ministry of Finance in Poland announced a comprehensive reform of the MDR rules aimed at significantly simplifying reporting obligations. A key aspect of the reform is the discontinuation of the reporting of domestic schemes, which could reduce the number of filings by up to 70%. Important changes include the exemption for professional advisors from MDR reporting and the authorization of the Minister of Finance to issue regulations exempting specific transactions from MDR reporting obligations.

The discussion on the amendment of the rules and the proposed changes are a consequence of a Constitutional Tribunal ruling[252] that found certain provisions obliging tax advisors to report tax schemes to be unconstitutional.

[252] Constitutional Tribunal ruling of July 23, 2024, case no. K 13/20.

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XX. Tax Strategy Reporting

The following are required to publish information on tax strategies adopted for a given financial year:

(i) Taxpayers with revenues in excess of 50 million euros;

(ii) Tax groups (PGK).

The regulations require that the above taxpayers prepare information on the implementation of the tax strategy, to include, among other items:

(i) A description of the approach to tax processes and procedures;

(ii) A description of the forms of cooperation with the tax authorities;

(iii) Information on the number of MDR (DAC6) reports filed;

(iv) Information on transactions with related entities;

(v) Information on requests for interpretations (general, individual, WIS and WIA); and

(vi) Information on settlements in tax havens.

The relevant information must be prepared and published on the taxpayer's website within 12 months from the end of a given financial year.

The first year for which information on the implementation of a tax strategy had to be prepared was 2020. This means that, for taxpayers with a calendar year tax year, the information was required to be prepared and published for the first time by the end of 2021.

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XXI. Controlled Foreign Corporations

Polish tax resident direct or indirect shareholders of a nonresident entity that meets the definition of a controlled foreign company (CFC) may be subject to CIT in Poland. The definition of a CFC covers the following companies (and other entities including foundations, trusts, and other fiduciary entities):

(i) A company situated in (or having a place of management in) a country with a harmful tax regime (as identified in a Resolution of the Minister of Finance);

(ii) A company situated in (or having a place of management in) a country with no agreement for the exchange of tax information with Poland or the European Union;

(iii) A company situated in (or having a place of management in) another country if it meets the following tests:

- A control test;
- A low-tax test; and
- One of the following tests:
  - — A passive revenues test;
  - — A passive assets test; or
  - — An operational test.

The control test is met where a Polish taxpayer holds, directly or indirectly with other Polish resident entities, for at least 30 consecutive days, at least 50% of: (i) the nonresident company's capital; (ii) the voting rights in the controlling, constituting or managing bodies of the nonresident company; (iii) shares carrying a right to participate in the nonresident company's profits. The test is also considered to be met were a Polish taxpayer exercises factual control over the non-resident company's votes.

The low-tax test is met where the income tax actually paid by the nonresident entity is at least 25% less than the hypothetical CIT that would be payable in Poland applying the standard CIT rate of 19% (i.e., is subject to a tax rate lower than 14.25%).

The passive revenues test is met where at least 33% of the nonresident company's revenue is derived from passive sources, including the following:

(i) Dividends, interest and royalties;

(ii) Income from sales of shares in companies;

(iii) Receivables;

(iv) Income from the provision of consulting, accounting, market research, legal, advertising, management and control, data processing, employee recruitment and acquisition services and similar services;

(v) Income from lease and sublease arrangements;

(vi) Income from copyrights or industrial property rights; and

(vii) Income from transactions with related parties when the company does not generate economic added value or the value is insignificant in relation to those transactions.

The passive assets test is met where:

(i) Passive revenues (see above) are lower than 30% of the sum of the value of certain passive assets held by the nonresident company, including shares, real estate, movable property and intangible assets; and

(ii) Such passive assets constitute at least 50% of the value of the nonresident entity's total assets.

The operational test is met where:

(i) The nonresident entity's income exceeds the income calculated according to the formula: (a + b) x 20%, where:

- a is the balance sheet value of assets increased by accumulated depreciation write-offs; and
- b is the annual employment costs of the entity;

(ii) Less than 75% of the revenue of the nonresident entity is derived from transactions with unrelated entities having their place of residence, seat, place of management, registration or location in the same country as the nonresident entity.

If the CFC meets the control, low-tax and passive assets tests but does not meet the passive revenues and operational tests, the CFC income is deemed to be 8% of the value of certain passive assets.

Comment: Due to the complexity and extensiveness of the CFC regulations, particular attention should be paid to this issue and a close analysis would be advisable.

The amount of profits attributable to shares in the CFC held by a subsidiary of the taxpayer may be deducted from the corresponding share of profits of the CFC, provided the subsidiary is also subject to a CFC regime (in Poland or another country) and provided, among other requirements, the subsidiary holds, directly or indirectly, at least 50% of the rights to participate in the profits of the CFC.

The taxable base is the overall income[253] of the CFC (proportional to the taxpayer's share of the CFC's profit) less dividends received by the taxpayer and income from the sale of shares in the CFC. The amount of deductions may be carried forward and deducted in the following consecutive five tax years. The amount of income is ascertained in accordance with the provisions of the Polish tax law and the taxpayer may be obliged to maintain certain records with respect to the CFC's activities. Losses cannot be carried forward. Tax payable in Poland may be reduced by the amount of any tax paid by the CFC abroad (proportionally to the shares held in the CFC by the taxpayer).

The CFC regime does not apply if the CFC conducts significant, real economic activity in an EU/EEA country where it is subject to taxation on all revenue.[254]

[253] For purposes of determining income, allowances and exemptions generally do not apply, under the amendment introduced as of January 1, 2023 in Corporate Income Tax Act, Art. 24a, Para 6c.

[254] Corporate Income Tax Act, Art. 24a, Para. 16.

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XXII. Avoidance of Double Taxation

A. *Tax Credit and Exemption Methods*

Natural persons residing in Poland and legal entities with their registered seat in Poland are subject to taxation on their worldwide income. In cases where part of the income is received and taxable abroad, double taxation is avoided in accordance with the methods set forth in Poland's tax treaties and Polish domestic tax rules. These rules provide for double taxation to be avoided by means of tax credits or exemptions, depending on the type of income concerned.

A natural person deriving income abroad and exempted from taxation in Poland based on one of Poland's tax treaties must use the exemption with progression method to calculate his or her tax liability in Poland. Under this method, foreign-source income is added to Polish-source income and the tax is calculated on the total amount using the applicable rates. The percentage rate calculated on total income is then applied to the Polish-source income.[255]

If the applicable tax treaty provides for the use of the tax credit method, Polish income is added to foreign income and tax is computed on the aggregate amount according to the tax rates applicable in Poland. The tax paid abroad is then credited against the tax so calculated. However, the credit may not exceed the portion of the Polish tax (before application of the credit) that is attributable to the income derived from the foreign country.[256] This limitation is applied on a per country basis.

The tax credit method also applies to natural persons deriving income from a country with which Poland has not signed a tax treaty and that does not apply the "rule of reciprocity".[257] The regulations provide for the use of the exemption with progression method to avoid double taxation when a natural person derives income from a country with which Poland has no tax treaty, where the country does grant reciprocal treatment with respect to income from Poland, and the income is subject in that country to a tax of the same type as that imposed in Poland. It is worth noting that, in practice, reciprocity is assumed.

Identical methods, i.e., tax credit and exemption, are provided for in the Corporate Income Tax Act. Where there is an applicable tax treaty, the method actually applied depends on the provisions of the treaty.

As a rule, Poland's tax treaties avoid double taxation of dividends, royalties and interest by means of the credit method. The exemption method usually applies to other types of income (for natural persons, the exemption with progression method applies). However, particular tax treaties contain a series of exceptions to these rules.

B. *Tax Treaties*

1. *General*

For a list of Poland's income tax treaties and other tax-related agreements, see International Tax Treaties.[258]

[255] Personal Income Tax Act, Art. 27.8.

[256] Personal Income Tax Act, Art. 27.9.

[257] Personal Income Tax Act, Art. 27.9 and 9a.

a. *Creation of Income Tax Treaty Relationship*

Poland's tax treaties follow the OECD Model Convention. The treaties are negotiated by the Ministry of Finance and are ratified with prior consent expressed in the Act. Article 89(1) of the Constitution of the Republic of Poland of April 2, 1997 lists situations in which it is necessary to ratify an international agreement with prior consent expressed in the Act. One of the conditions required for such a procedure, as set out in Article 89 section 1 item 5 of the Constitution, is that an international agreement concerns matters regulated by statute or with respect to which the Constitution requires statutory regulation.

Additionally, under Article 217 of the Constitution, "the imposition of taxes, other public levies, determination of entities, objects of taxation and tax rates, as well as the rules for granting reliefs and redemptions and categories of entities exempt from taxes, shall be effected by statute".

When interpreting agreements, the OECD Commentary is used as a guide but does not constitute a source of law in Poland.

b. *Administrative Measures Dealing with Tax Treaty Provisions*

Regarding the administrative measures relating to tax treaty provisions, the Mutual Agreement Procedure (MAP) may be conducted by the Ministry of Finance. The purpose of the MAP is to avoid double taxation arising as a result of an upward adjustment made by one of the Contracting Sates to a tax treaty with respect to transactions between related parties.

An application to initiate a MAP must be submitted within three years (or within the time limit resulting from a specific tax treaty) from the date of the first notification to the domestic related entity or its related entity of the activities of the tax authorities that may lead to double taxation.

The MAP procedure may be initiated based on the provisions of a specific tax treaty or based on the provisions of the Arbitration Convention.[259] The treaties concluded by Poland, as well as the Arbitration Convention, require the submission of a MAP application to the Competent Authority. In Poland, the role of Competent Authority is performed by the Minister of Finance.

c. *Treaty Interpretation*

While the Polish courts refer to the OECD commentary, the OECD commentary does not constitute a source of law in Poland.

The legal nature of the OECD Model Convention has been expressed by, among others, the Supreme Administrative Court.[260] The Court has indicated that, although the OECD Model and the OECD Commentary are not sources of law, the OECD Member States are obliged to use the OECD Model as a basis for concluding agreements, unless one Contracting State

[258] See also see the website of the Polish Ministry of Finance: https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/wykaz-umow-o-unikaniu-podwojnego-opodatkowania/.

[259] Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/463/EEC).

[260] Judgment of the Supreme Administrative Court from June 19, 2009, no. II FSK 276/08.

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has expressed specific reservations or has specific reasons not to apply the OECD Model.

Regarding the languages of the tax treaties that Poland has concluded, these are usually Polish and English, as well as the language of the country with which the treaty concerned is concluded.

2. Taxation of Business Income

a. Permanent Establishment

All of Poland's tax treaties contain a definition of activities that may constitute a permanent establishment (PE). These definitions generally conform with that in the Organisation for Economic Cooperation and Development (OECD) Model Convention.

b. Business Profits

Under the terms of Poland's tax treaties, income of a foreign person or entity that has a PE in Poland may be taxed in Poland, but only to the extent that the income can be attributed to the PE. Such foreign persons or entities are taxed in Poland according to the general principles set out in the Polish Income Tax Acts.

3. Taxation of Investment Income

a. Dividends

Dividends paid by a Polish company to a foreign shareholder are subject to a 19% tax, unless the shareholder is resident or has its seat in a country with which Poland has concluded a tax treaty. In such cases, the rate is usually reduced to 5% or 15%, but in some instances the rate is reduced to 0%.

To obtain the reduced rate benefit available under Poland's double taxation agreements, the recipient of the payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of its place of residence abroad (certificate of residence).

b. Interest

Interest paid by a Polish person to a foreign entity is taxed at the rate of 20%, collected at source, unless an applicable tax treaty provides otherwise. Most of Poland's tax treaties significantly reduce this rate, sometimes even to 0%.

To obtain the reduced rate benefit available under Poland's double taxation agreements, the recipient of the payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of its place of residence abroad (certificate of residence).

c. Royalties

Royalties paid by a Polish person to a foreign person are subject to a 20% tax. This tax is usually reduced under the provisions of Poland's tax treaties to 10%.

To obtain the reduced rate benefit available under Poland's double taxation agreements, the recipient of the payment must provide the Polish company making the payment with confirmation (issued by a relevant tax authority) of its place of residence abroad (certificate of residence).

Note: Some tax treaties provide that the reduced rates do not apply to income resulting from transactions entered into solely or primarily for purposes of benefiting from the treaty ("treaty-shopping").

4. Poland-United States Tax Treaty

The Poland-U.S. tax treaty was ratified in June 1976 and applies to income received in calendar and tax years beginning on or after January 1, 1974.

The treaty provides that dividends are subject to a 5% withholding tax if the recipient of the dividends is a company that directly holds at least 10% of the shares carrying voting rights in the entity paying the dividends. In other cases, the maximum withholding tax on dividends is 15% (the Polish withholding tax rate on dividends in the absence of a treaty is 19%).

Interest paid by a Polish individual or entity to an individual or entity resident in or with its registered seat in the United States is exempt from taxation in Poland (the Polish withholding tax rate on interest, in the absence of a treaty is 20%).

Royalties paid by a Polish individual or entity to an individual or entity resident in or with its registered seat in the United States are subject to a 10% withholding tax in Poland (in the absence of a tax treaty, the Polish withholding tax rate on royalties is 20%).

The Poland-U.S. tax treaty provides for an exemption for capital gains arising from the sale, exchange or other disposal of capital assets by an individual or entity resident in or with its registered seat in the United States, unless:

(i) The gains were realized on the sale or other disposal of real property located in Poland;

(ii) The gain were realized on the sale of property connected with a PE in Poland (and is deemed to be income of that PE subject to taxation in Poland); or

(iii) The gains are realized by a natural person from the sale of property in Poland who has remained in Poland for more than 183 days during the tax year.

The Poland-U.S. tax treaty provides that compensation derived by a U.S. resident employed by a U.S. company and seconded to work in Poland is taxable only in the United States, if the employee does not remain in Poland for more than 183 days in the relevant tax year and if the compensation is not borne by a PE of the U.S. employer in Poland.

Article 20 of the Poland-U.S. tax treaty provides that the ordinary tax credit is the method to be used to avoid double taxation.

Note: On February 12, 2013, a new tax treaty was signed between Poland and the United States. When ratified by both countries, it will supersede the tax treaty discussed above. The new tax treaty is still undergoing the ratification process and thus has not yet come into force.

5. OECD Multilateral Instrument

Poland has taken a fairly broad approach in terms of applying the Multilateral Convention (MLI). It submitted 78 double taxation treaties for inclusion in the MLI Convention. The final number of Polish tax treaties to which the MLI applies will depend on the number of MLI signatories.

Poland's approach with respect to the scope of the adopted MLI provisions is also quite broad. In addition to the regu-

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lations that constitute the minimum standards, Poland has expressed its willingness to adopt MLI regulations with respect to the following matters:[261]

(i) Principles of taxation of tax transparent entities, directed at limiting the use of hybrid mismatches (Article 3);

(ii) Determining the tax residence of dual resident entities (Article 4);

(iii) Methods of avoiding double taxation, changing the exemption with progression method into the credit method — option C (Article 5(6));

(iv) Withholding tax on dividend payments (Article 8);

(v) The immovable property clause (Article 9);

(vi) Reservation of right to tax residents (savings clause) (Art. 11); and

(viii) Cooperation of states in the field of related party profit adjustments (Article 17).

Poland signed the MLI on June 7, 2017 and deposited its ratification instrument January 23, 2018. The MLI entered into force in Poland on July 1, 2018.

[261] The complete list of Poland's reservations and notifications is available in English on the OECD website at: https://www.oecd.org/tax/treaties/beps-mli-position-poland-instrument-deposit.pdf.

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XXIII. DAC 7 Directive

The principal aim of Directive 2021/514 of March 22, 2021, known as the DAC 7, is to expand EU tax transparency rules. It is the sixth amendment to the EU's "Administrative Cooperation Directive" in the area of taxation.

In general, because of the formalized legislative process, the legislation has not kept up with the rapid pace of development of the markets, including the e-commerce market. One solution is to impose obligations on market participants aimed at stopping the gray economy. In this case, an obligation has been imposed on software operators (digital platforms, sites or applications) to report tax settlement information. The directive entered into force from January 1, 2023.

The directive is a legislative act setting a goal that all EU Member States must achieve. However, the way in which the goal is to be achieved determined by individual countries through their own legal acts.

The regulations implementing the objectives of DAC 7 into the Polish legal order were introduced on July 1, 2024. Although there has been a delay in the implementation of the regulation, shopping platforms covered by the new requirements will have to verify their reporting obligations and report data for the period beginning January 1, 2023.

The main obligation applying to operators of shopping platforms is that they must report to the tax office sellers who have reached the numeric threshold (30 transactions per calendar year) or the value of sales transactions threshold (2,000 euros per calendar year).

The reporting required should provide the Head of the National Tax Administration with aggregate information about sellers subject to reporting (i.e., sellers with at least 30 transactions or sales exceeding 2,000 euros in a calendar year). The reporting requires the provision of information containing, among other items, the names and surnames, addresses, Tax Identification Numbers and total amount of revenue of reportable sellers.

Reporting for a given calendar year is due by the end of the month following the end of the reporting period in which the platform operator identified a seller as a reportable seller, i.e., by January 31 of the following year.

As Poland failed to implement the provisions of the DAC 7 Directive by the required deadline of December 31, 2022, it is challenging for online platform operators to collect information for 2023 retroactively. The Polish Act implementing the DAC 7 rules contains a transitional provision[262] that requires a separate notification to be filed for 2023 by entities that met the definition of a reporting platform operator at any time after January 1, 2023. This notification should have been filed with the Polish tax authorities by December 31, 2024.

However, there is a debate about the constitutionality of introducing reporting/notification obligations for retroactive periods (2023) as a result of the delay in implementing the DAC 7 law in Poland. The Act was enacted only in mid-2024, which raises questions about the fairness of imposing penalties for not filing notifications for 2023.

[262] Art. 9 of the Act of May 23, 2024, amending the Act on the Exchange of Tax Information with Other Countries and Certain Other Acts.

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