



Lex Mundi European Union: Accession States Tax Guide

POLAND

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A. General information

Most of the basic rules of the Polish tax system, especially in the area of income taxation, date back to the early 1990s when, in order to meet the requirements of free market economy, the new legislation on corporate and personal income taxes, as well as on VAT, has been introduced. Along with the new developments in other areas of law, internationalization of economy and new developments in the business practice, tax provisions have likewise been amended on numerous occasions, including the introduction of rules such as transfer pricing, thin capitalization and M&A taxation. Furthermore, legislators have repeatedly updated the list of exemptions, allowances and (non-)deductible costs.

The introduction, on 1 January 1998, of new general regulations on tax obligations and the tax procedure, including measures such as advance tax rulings, increased legal certainty and enhanced protection of taxpayers. Further changes have been brought about by the Polish accession to the EU on 1 May 2004, including new VAT and excise duty laws and significant amendments in income tax acts, designed to fully implement respective EC directives.

As far as public finance is concerned, most of the tax revenues are derived from indirect taxes, such as VAT and excise duty, which generate budgetary revenues a few times in excess of those from income taxes. It is also important to note that, due to the recent rapid economic growth (with the increase of the GDP around 5,8%), fiscal revenues considerably exceed the targets provided for in the budgetary estimates. It was also announced that public debt remains at the level of approx. 48% of the GDP and the budgetary deficit has been limited to 25,1% bln PLN. Economic growth has also been reflected in the international ratings, including an upgrade in the ratings of Moody's and of Fitch.



B. Corporate income taxation

1. Which are the taxable entities?

Corporate income tax is levied upon capital companies (limited liability companies and joint stock companies), including companies under organization, and all other corporate bodies (funds, foundations, cooperatives, certain entities from within the public sector etc.). Corporate income tax also applies to entities without proper legal personality, save for partnerships, which are transparent for income tax purposes.

Furthermore, Polish tax laws allow tax consolidation of capital companies, in which case a tax group, and not its particular members, will be deemed, for corporate income tax purposes, as a taxable entity.

2. How is the taxable income determined?

In principle, taxable income is calculated as a surplus of taxable revenues over tax-deductible costs, subject to a number of additional rules and exceptions.

However, in specific cases provided in the legislation, the tax is actually being levied upon revenue, i.e. without deduction of any costs or expenditures. That is especially the case for withholding taxes on interest and royalties distributed abroad, as well as the withholding tax on dividends, whether distributed abroad or to a domestic shareholder.

Expenditures will qualify as tax-deductible costs if they pass a double test provided for in the applicable tax laws. First, under the general clause, there must be a sufficient causal link between costs suffered and actual, or expected, revenues of an enterprise. Secondly, even if this criterion is met, specific costs will not be available for deduction if they are included in the exhaustive list of expenditures automatically disqualified from tax-deductible costs.

For instance, abandoned investments, although probably could be linked to potential revenues, are expressly excluded from deduction, according to the black list contained in the tax legislation. Also, reserves, even when made in accordance with accounting provisions, will not generally be tax-deductible, unless straightforward tax provisions provide otherwise. Expenses incurred of fixed assets, as well as certain intangibles, will not generally be directly deductible otherwise than through depreciation.

Notwithstanding, it is also vital to allocate expenditures, once qualified as tax-deductible, to a proper tax year. In that respect, it is principally required that costs must be deducted in a year in which the corresponding revenues have also been obtained.

3. What are the applicable tax rates?

The general corporate income tax rate used to be gradually lowered from one year to another during the preceding years, but since 1 January 2004 it has been fixed at 19%.

Notwithstanding, withholding tax on interest and royalties distributed abroad is charged at the rate of 20% rate (subject to provisions of double tax treaties, to be decreased - for EU companies qualifying for the Interest Royalties Directive - to 5%, from 1 July 2009, and down to 0% from 1 July 2013), whereas the 19% withholding tax is generally charged on dividends, whether distributed abroad (subject to provisions of double tax treaties and separate rules implementing the Parent Subsidiary Directive) or to a domestic shareholder.

A separate 20% withholding tax rate also applies, subject to tax treaties, to certain income of non-residents from the organization of entertainment, artistic and sports events in Poland, as well as from certain intangible services, including legal assistance, marketing, consulting, accounting, advertising, data processing, staff recruitment and alike.

Moreover, 10% withholding tax is collected at source on income earned within the Polish territory by foreign airlines, as well as on income earned by foreign shipping companies for carriage of passengers and goods taken aboard in Polish ports.

4. Are capital gains taxed separately?

In general, Polish laws do not provide for a separate regime of taxation for all capital gains. However, certain gains, which attract also special tax rules, are indeed recognized as a different category. That includes, inter alia, income from redemption of shares, from the sale of shares in a company to that company, effected in order to allow redemption of those shares by the company, the value of liquidation proceeds, income used for the increase of the share capital or additional payments received by shareholders in case of a merger. The tax is levied on those profits at the rate of 19%.

5. May losses be carried back or forward and to what extent?

No carry-back is allowed. Losses may only be carried forward, for five tax years, but the deduction made in a given year may not exceed 50% of the tax loss available from a preceding year. Furthermore, in case of a merger, acquiring companies may not carry forward any losses previously incurred by the acquired companies.

Special rules apply in a tax group, which may immediately consolidate profits and losses at the group level but is not able to utilize losses suffered by the participating companies prior to the establishment of the group. Similarly, after the group is dissolved, none of the former members may claim deduction for losses suffered by the group during its lifetime.

6. Are there any withholding taxes and at which rates?

As mentioned, withholding tax on interest and royalties distributed abroad is charged at the rate of 20%. Following the Directive 2004/76, Poland applies a transitional period as regards the implementation of the Interest Royalties Directive whereby, for cases falling within the scope of the Directive, interest and royalties are currently subject 10% withholding tax. Starting from 1 July 2009, the 5% withholding tax will be collected and, eventually, the exemption will apply from 1 July 2013.

Also, 19% withholding tax is charged on dividends, whether distributed abroad or to a domestic shareholder. However, Poland has also implemented the Parent Subsidiary Directive and thus

dividends, as well as other profits from participation in capital companies (such as liquidation or redemption proceeds) distributed by Polish companies to qualified shareholders from within the EU, EEA or from Switzerland will be exempted from any withholding tax whatsoever.

Notwithstanding, especially in situations outside the scope of EU directives, the actual rate of the withholding tax applicable remains subject to provisions of double tax treaties, which may provide for a reduced rate or for an exemption. Those treaty benefits are available if the Polish company distributing dividends, interest or royalties to a foreign beneficiary has obtained from the beneficiary a tax certificate confirming that the beneficiary is indeed considered as resident, for tax purposes, in the treaty jurisdiction.

It must also be mentioned, although this may appear to have less practical importance, that a separate 20% withholding tax rate also applies, subject to tax treaties, to certain income of non-residents from the organization of entertainment, artistic and sports events in Poland, as well as from certain intangible services, including legal assistance, marketing, consulting, accounting, advertising, data processing, staff recruitment and alike. Non-residents will be shielded from the withholding tax if they are able to provide the entity paying the fees with their certificate of tax residence.

Moreover, 10% withholding tax is collected at source on income earned within the Polish territory by foreign airlines, as well as on income earned by foreign shipping companies for carriage of passengers and goods taken aboard in Polish ports.

7. Are there any preferential group taxation rules in force?

As mentioned, Polish corporate tax laws do provide for a group taxation scheme, although – due to restrictive conditions and legal framework – it has been used extremely rarely.

A tax group may be established by a group of capital companies (limited liability companies and joint stock companies) resident in Poland with the average share capital of at least PLN 1.000.000. It is also required that one of the companies, appointed as the leader of the group, should hold at least 95% of the shares in other participants.

The tax group comes into being after the participants enter a respective agreement, made in the form of a notarial deed, and notify tax authorities of the creation of the group. The duration of the scheme may not be less than 3 tax years.

Further conditions apply after the group has been created. Specifically, members of the group may not benefit from exemptions in corporate income tax and may not be related, within the meaning of separate provisions, to entities remaining outside the group. Moreover, the group as such must maintain the profits to revenues ratio of at least 3%.

All the members of the group are jointly and severally liable for tax arrears of the group as a whole, arising during the lifetime of the group.

If the group no longer meets the criteria for preferential group taxation and is dissolved by sole operation of law, none of the members may adhere to another tax group unless after a year from the end of the year in which the previous group had been dissolved.

8. Which are the anti-avoidance rules currently in force?

Polish tax laws used to incorporate an extensive general anti-abuse clause, but this has been partly quashed by the Constitutional Tribunal and partly removed by legislators.

Currently, according to the laws applicable, tax authorities are principally allowed to adopt the “substance over form” approach to transactions entered into by taxpayers, thus seeking for the actual intention of the parties and setting aside the literal wording of an agreement. However, if tax authorities choose to claim that a transaction was non-existent at all, or that it should be re-qualified as another type of a contract, they must, in order to do so, enforce formal litigation before a court of law.

Furthermore, separate tax laws include specific anti-avoidance provisions. That includes rules on transfer pricing, thin capitalization and an anti-abuse clause applicable to mergers and other restructuring operations. Moreover, specific tax provisions enable tax authorities to examine and re-assess the value of transactions when it has bearing on the taxable base. No CFC rules have been introduced so far.

As far as transfer pricing is concerned, if a Polish corporation pays prices or remuneration for services or intangibles to a related entity in excess of EUR 30.000, per tax year, it will be required to produce and maintain special transfer pricing documentation, so as to demonstrate and substantiate that the fees or remuneration, and other conditions of a transaction, have been established on an arm’s length basis.

Notwithstanding, if a Polish corporation pays prices for goods to a related entity in excess of 20% of the Polish company’s share capital and the aggregate amount of those prices remain above EUR 100.000, per tax year, the Polish company will also be required to produce and maintain transfer pricing documentation, as specified above.

Moreover, whenever a Polish corporation pays prices, fees or remuneration to a tax haven in excess of EUR 20.000, per tax year, the transfer pricing documentation will also be obligatory.

In all the cases referred to above, transfer pricing documentation must be provided to tax authorities, if and when they request so. A failure to present the documentation within 7 days from request may trigger considerable tax exposure if it is found that income has been underestimated as an effect of transactional values being below proper market value.

9. Which are the main administrative requirements to comply with the local tax authorities?

Corporate taxpayers commencing activities must register themselves with tax authorities, as well as notify them of any changes in the circumstances covered by the registration form. Accordingly, when a company is wound up or otherwise removed from the register of companies, de-registration from tax registers may be necessary.

Corporate taxpayers must also calculate and pay monthly tax advances, by the 20th of the following month, due on the profits acquired during the tax year. Accordingly, they are required to file monthly tax returns. Certain taxpayers may elect to pay quarterly tax advances and, correspondingly, file quarterly tax returns.

After a tax year, corporate taxpayers are required, within 3 months, to submit to tax authorities the annual tax return and pay the resulting tax, in case of a surplus of tax due for that year over the tax advances paid throughout the year. Moreover, taxpayers required to produce annual statements must file them with tax authorities, within 10 days from the approval by the general shareholders' meeting, together with an opinion and a report from a chartered accountant (unless separate laws do not require such examination), and with the resolution approving the annual statement attached thereto.

10. With which countries have double taxation conventions already been concluded?

Poland have concluded double taxation conventions with Albania, Algeria, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, South Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Moldova, Mongolia, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Philippines, Portugal, Romania, Russian Federation, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Vietnam, Yugoslavia, Zambia and Zimbabwe.

11. Are there any special laws providing tax incentives to certain taxable entities?

According to the applicable EC laws, selective tax incentives may qualify as state aid and thus would only be legitimate if compatible with the rules of the common market. For those reasons, most of the schemes offering fiscal incentives to be applied must be structured so as not to constitute aid or be approved by the Commission.

In that respect, subject to the amendments which were necessary to bring the scheme in line with the Community state aid laws, Poland has maintained, as regional aid, special economic zones which enable investors to obtain tax exemption up to certain proportion of the investment made. The intensity of aid so available amount to, during the period 2007 -2013, 50%, 40% or 30% of the qualified expenses, depending on the region of the country involved.

C. Individuals

1. Which are the taxable persons?

Personal income tax is levied upon individuals. Therefore, it is also imposed upon individual partners in a partnership, including a civil partnership, a registered partnership, professional partnership and a limited joint-stock partnership.

Individuals resident in Poland tax purposes (i.e. having usual place of abode in Poland, or residing in Poland for more than 183 days during a year) are subject in Poland to unlimited tax liability, which implies that they are taxed in Poland on their world-wide income, i.e. regardless of whether it was earned in Poland or abroad. Non-resident individuals are subject to limited tax liability and thus may only be taxed in Poland on the income earned within the territory of Poland.

2. How is the taxable income specified?

As a matter of principle, any income of an individual is subject to personal income tax. However, tax legislation recognizes, as separate categories, major sources of income, including employment, business activities (as a sole trader, or as a partner in a partnership) directors' fees, real estate, capital income, savings, dividends, royalties, personal services, social benefits etc. It may be important to properly qualify income of an individual into one of the categories above since they may attract different tax treatment, including rules on tax-deductible costs, applicable tax rate or settlement procedures.

Furthermore, costs and losses may only be deducted from revenues, or profits, within the same income category. Also, whereas most of the categories of taxable income are eventually aggregated, for the purpose of the annual tax return, and taxable at progressive rates of 19%, 30% and 40%, some of the categories are subject to single flat tax and are not aggregated with other income.

3. What are the applicable tax rates?

In 2007, profits of up to 43.405 are taxed at 19%, minus the basic allowance of PLN 572,54. Profits between PLN 43.405 and PLN 85.528 would be subject to personal income tax of PLN 7.674,41 plus 30% of the surplus over PLN 43.405. Finally, taxpayers with annual income over PLN 85.528 would be required to pay PLN 20.311,31 plus 40% of the excess over PLN 85.528.

4. Are capital gains taxed separately?

Polish regulations on personal income tax do not recognize capital gains as a separate category. Instead, they recognize the notion of capital income, which include interest and discount on securities, as well as dividends and other income from participation in legal entities. Such capital income is subject to flat income tax at 19%.

5. May losses be carried forward or back?

Individuals with business activities are covered by loss deduction rules similar to those applicable to corporations. Therefore, no carry-back is allowed and losses may only be carried forward, for five subsequent tax years. In any event, deduction made in a given year may not exceed 50% of the tax loss available from a preceding year.

D. Capital

In outline, which are the main taxes on capital, if any?

Capital gains are generally subject to income tax, both for corporations and individuals. In addition, taxes on capital include tax on inheritance and gifts and, to some extent, tax on civil law transactions. Real property is also subject to separate real estate tax, but that is usually charged with respect to the surface of the property, and not its actual value.

E. Indirect taxes

In outline, which are the main indirect taxes, if any?

Main indirect taxes include Value Added Tax (VAT), excise duty and tax on civil law transactions.

VAT is imposed on the sale of goods and provisions of services, generally at the rate of 22%, save when reduced rates (7%, 3%, 0%) or exemptions apply. Although Polish VAT laws are generally based on the EC Directives, Poland applies some specific national rules, such as those concerning taxation of cars, penalties for improper calculation of VAT, limitations imposed upon deductibility of input VAT, real estate transactions, recovery of input VAT or chargeability of VAT.

In accordance with the general notion of value added tax, businesses are allowed to deduct from their output VAT the amounts of input VAT incurred in the prices of goods and services purchased. If a surplus of input VAT occurs, it may either be carried forward for deduction later on, or, subject to conditions, reimbursed in cash directly to a taxpayer's account. Therefore, VAT is designed to be neutral for business operators and is deemed to be incurred primarily by end consumers.

Poland continues to benefit from some transitional measures in the area of VAT. For instance, supply of new residential buildings is still subject, until 31 December 2007, to the VAT rate of 7%.

Excise duty is imposed on harmonized goods, such as fuels, alcohol and tobacco, as well as electric energy, cosmetics, cars, weapons or gambling equipment.

Tax on civil law transactions, commonly abbreviated as "PCC", is imposed upon a number of transactions, which are exhaustively enlisted in the relevant legislation, both when made between businesses and between private entities and individuals.

Most of all, PCC is charged on the sale of goods and rights, as long as at least one of the parties is not subject to VAT or is not exempted from that tax. As a consequence, the sale of shares in a company, which is principally outside VAT, is subject to PCC (at the rate of 1%).

By way of exception, real estate transactions, even when not VAT-taxable, trigger PCC (at 2%).

Furthermore, PCC is charged on loans, save for loans expressly exempted and for the bank loans which, as financial services, are generally exempted from VAT and thus also outside the scope of PCC.

F. Other duties

In outline, are there any other taxes, if any?

Polish tax laws provide for a number of local taxes which generally constitute the income of, and are administered by, local municipalities acting in their capacity of tax authorities. These include real estate tax (in most cases charged on the surface, and not on the value of real property), transport tax (levied on lorries), forest tax (imposed on those lands which qualify as woods) and rural tax (charged on real estate in agricultural areas). A new tonnage tax has also been introduced only recently in the shipping industry.

G. Enforcement- Litigation procedure

1. In outline, which are the existing measures in order to ensure compliance with the tax legislation?

Save for routine checks and filing requirements, compliance is being ensured through tax and fiscal inspections. Findings of those inspections may be used in formal tax proceedings where tax authorities assess tax arrears, if any, and issue a declaratory decision obliging the taxpayer to cover outstanding liabilities. Substantive tax laws do provide for certain sanctions for breach of tax provisions, but in case of a major breach penal fiscal liability (usually fines) may be imposed upon individuals held responsible for the breach (directors, CFOs, chief accountants, financial directors or alike).

2. What is on average the duration of the litigation procedure for the final resolution of tax disputes?

A decision made by a local tax office (*urząd skarbowy*), if challenged by a taxpayer, will normally be reviewed by the appellate body, which the tax chamber (*izba skarbowa*), within a few months. The decision of the tax chamber may be appealed through a complaint to the Regional Administrative Court (*Naczelny Sąd Administracyjny*) where litigation may take up to two years, depending on case. In order to set aside a judgment of the Regional Administrative Court, taxpayers may, subject to some conditions, bring a case, solely on a point of law, before the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) in Warsaw, which should be able to rule on the case within a year.

APPENDIX**INCOME TAX RATES**

Corporations	Partnerships	Individuals	Other entities
19%	19% ⁽¹⁾	19%, 30% and 40%	19%
20% - royalties and interest			
19% - dividends		19% - dividends, capital income	

1. (profits are taxable at the hands of partners. Partners which are capital companies are taxed at 19%. Individual partners may, which is practically a rule, qualify for the flat 19% rate applicable to business profits of individuals, subject to certain conditions. Otherwise, individual partners will be taxed at the progressive rates of 19%, 30% and 40%).

LIST of DTC AGREEMENTS

Country	Interest withholding tax rate	Royalties withholding tax rate	Dividends withholding tax rate
Germany protocol	0/5	5	5/15
Greece	10	10	19
Hungary protocol	0/10	10	10
Iceland	0/10	10	5/15
India	0/15	20	15
Indonesia	0/10	15	10/15
Iran protocol	0/10	10	7
Ireland	0/10	0/10 (t)	0/15
Israel	5	5/10 ()	5/10
Italy	0/10	10	10
Japan	0/10	0/10 (i)	10
Jordan	0/10	10	10

Country	Interest withholding tax rate	Royalties withholding tax rate	Dividends withholding tax rate
Kazakhstan	0/10	10	10/15
Kuwait	0/5	15	0/5
Kyrgyzstan	0/10	10 (u)	10
Latvia	0/10	10	5/15
Lebanon	5	5	5
Lithuania	0/10	10	5/15
Luxembourg	0/10	10	5/15
Macedonia	0/10	10	5/15
Malaysia	15	15	0
Malta	0/10	10	5/15
Mexico	0/5/15	10	5/15
Moldova	0/10	10	5/15
Mongolia	0/10	5	10
Morocco	10	10	7/15
Nigeria	0/10	10	10
Norway	0	0/10	5/15
Pakistan	0/20	15/20	15
Philippines	0/10	15	10/15
Portugal	0/10	10	10/15
Romania	0/10	10	5/15
Russian Federation	0/10	10	10
Singapore	0/10	10	0/10
Slovak Republic	0/10	5	5/10
Slovenia	0/10	10	5/15
South Africa	0/10	10	5/15
Spain	0	0/10	5/15
Sri Lanka	0/10	0/10	15
Sweden	0	5	5/15

Country	Interest withholding tax rate	Royalties withholding tax rate	Dividends withholding tax rate
Switzerland	10	0	5/15
Syria	0/10	18	10
Tajikistan	10	10	5/15
Thailand	0/10/20	5/15	19
Tunisia	12	12	5/10
Turkey	0/10	10	10/15
Ukraine	0/10	10	5/15
United Arab Emirates	0/5	5	0/5
United Kingdom	5	5	0/10
United States	0	10	5/15
Uruguay	0/15	15	15
Uzbekistan	0/10	10	5/15
Vietnam	10	10/15	10/15
Yugoslavia	10	10	5/15
Zambia	10		
Zimbabwe	10	10	10/15