Investment in Poland

A rough guide to successful investing in Poland

June 2023

KPMG.PL

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Introduction

The recent geopolitical turmoil to the east has thrown the spotlight on Poland over the last year, as a centre for diplomacy in the region at the eastern edge of NATO. It has also emerged as a land of hope, welcoming a wave of millions of refugees from Ukraine.

A feature of Poland stretching back to 1989 is its strong and steady economic growth. Much of that growth has been fuelled by foreign investment, and foreign investors have profited immensely from their engagement of capital in Poland over the past three and a half decades.

Nothing succeeds like success. The success of one investment draws more investment. Meanwhile, the government continues to hone instruments that have helped attract investors to Poland. For example, new tax incentives for R&D, IP and robotics are aimed at raising the country's profile as a centre for innovation.

Poland is recognized for its highly skilled and well-educated workforce. It also offers the largest internal market of any EU member state in the CEE region. Geographically, it stretches from the southern mountains, through coal-producing regions and rich central farmlands, to several of the busiest ports on the Baltic Sea.

Despite the country's openness to foreign investment, investors need experienced and trusted professional advisors like KPMG to help them navigate their way through the complexities of the economic, legal, and tax system in Poland.

One thing we can do as professionals is to share our overall knowledge of Poland as a business destination and provide an overview of the country and what to expect when establishing and operating a business here. Hence this guide.

For investors looking to set up their own business in Poland, we examine the different available legal structures. For those interested in buying into an existing operation, we drill down into the M&A process. We also explore emerging trends such as ESG.

We hope you find this guide helpful as you consider investing in Poland and doing business here.

Stacy Ligas
Senior Partner,
CEO KPMG in Poland

Condition of Poland's economy

Macroeconomic indicators

Following Brexit, Poland has become the sixth-largest economy in the European Union. Since 2004, when the country joined the economic bloc, its GDP has grown by 4.1% per year on average — slightly higher growth was noted during this period only in two smaller member states (Ireland and Malta).

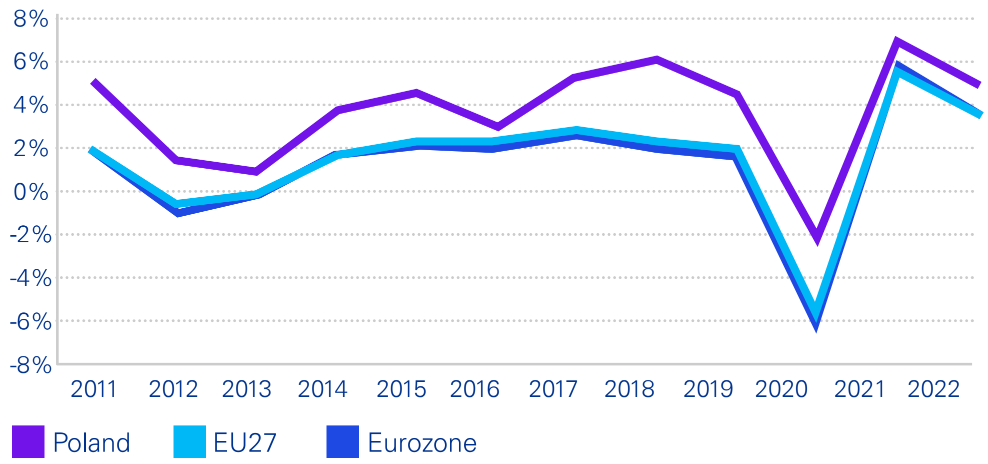
The Polish economy has grown not only quickly, but also steadily, as it was the only EU country not affected by recession during the previous global crisis. In 2009, at a time when the entire EU saw a decline of over 4%, Poland's gross domestic product rose by 2.8%. Poland, like other Central & Eastern European countries, embarked on a dynamic growth path in the 1990s. In 2020, as a result of the Covid-19 pandemic, Poland recorded its first annual GDP decline in the 21st century. With a 2% decline, it was the fifth-best result (on par with Denmark) in the whole EU. In the same year the eurozone and the overall EU economy shrank by 6.1% and 5.7% respectively.

In 2021 Poland presented a quicker than average recovery from the pandemic as well: 6.8% economic growth, compared to 5.4% in the entire EU. It was the highest growth rate in Poland since 2007. In 2020 and 2021 Polish government institutions announced fiscal policy measures to help companies survive and recover from the pandemic.

According to International Monetary Fund data, Poland introduced mechanisms worth in total about EUR 60 billion, or 11% of its GDP. This value consisted of subsidies and tax exemptions worth EUR 34 billion, aimed at maintaining employment. Companies were also offered liquidity loans and credit guarantees. Above the national measures, Poland can also benefit from the European Union's Recovery and Resilience Facility, a large part of which, EUR 24 billion in grants and EUR 11 billion in loans, was assigned to the country. Most of that money will support green and digital transition. However, release of the funds is still being negotiated.

In 2022 the Polish economy, despite troubled times, continued a strong growth path. The main contributors were fiscal policy, as well as a growing labour market, supported by an influx of workers from Ukraine. This short-term domestic demand could provide a boost to the economy.

Gross Domestic Product growth rate



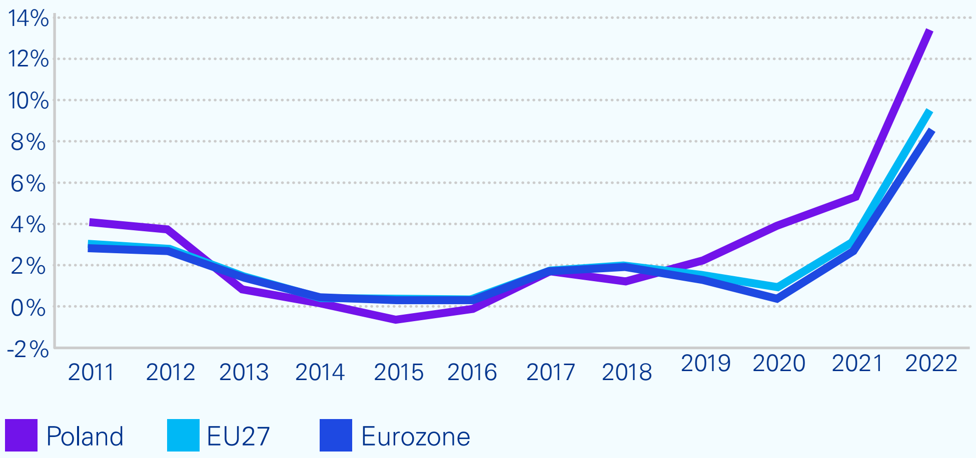
Source: KPMG in Poland based on Eurostat data.

Year 2022 showed a drop in the GDP growth rate (5.1%), in comparison with 3.5% in the entire EU. The European Commission prognosis for FY2022 for the EU and the eurozone was 3.3% and 3.2% respectively.

Real GDP growth is forecast to decelerate in 2023 due to higher energy prices as a result of the impact of the war in Ukraine. Weaker domestic demand caused by a lack of trading partners, inflation, and general post-pandemic economy recovery, are also expected to contribute. GDP growth is expected to recover in 2024.

The institution responsible for maintaining price stability in Poland is the National Bank of Poland. Between 2013 and 2018, inflation in Poland was lower than in the EU as a whole. The situation changed in 2019 mainly due to rising energy prices and increased expenditure stemming from rapidly rising income levels. In 2021, for the first time in nine years, the central bank's inflation target was exceeded.

Consumer goods and services prices growth rate*



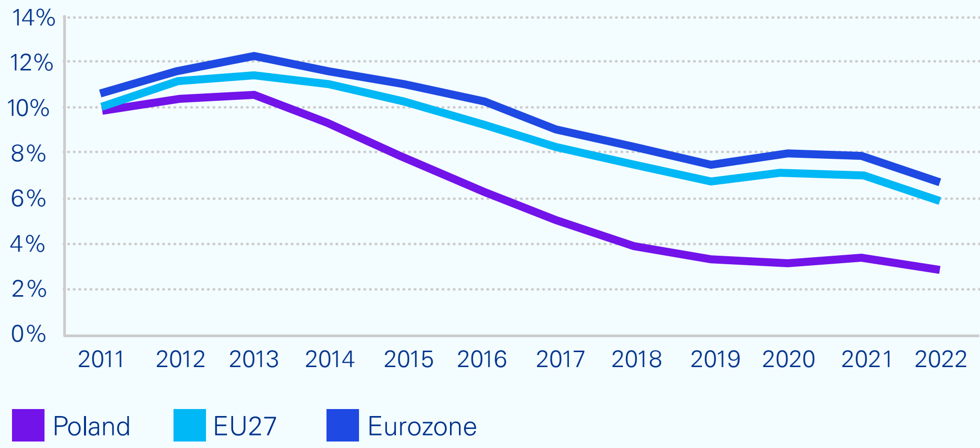
Source: KPMG in Poland based on Eurostat data.
*HICP harmonised data, with 2015 as the baseline year.

According to the Eurostat methodology, prices of consumer goods and services grew by 5.2%, which was caused mainly by rising energy and transport prices, as well as large demand maintained by low interest rates, raised only in the last quarter of the year. In 2022 a big inflation spike was noticed throughout Europe (in Poland 13.2%), and it continues to rise, with projections to remain at a similar level in 2023.

For years, economic growth in Poland was driven by domestic demand, primarily private consumption, which in turn resulted from low unemployment and rising wages. The Covid-19 pandemic created some uncertainty in the job market, and therefore various measures were implemented by the government to support workers (wage subsidies, financial support for businesses, public works programmes). Today Poland has one of the lowest unemployment rates in the EU. According to Eurostat data, in 2022 unemployment fell by 0.5% pp and reached 2.9% in comparison with 3.4% in 2021. It is much less than 6.8% in the Eurozone. Unemployment is more severe among young people and women and is predicted to grow.

The government is committed to raising the minimum wage twice a year if annual average inflation in the previous year exceeded 5%. From January 2023, the minimum wage rose to EUR 743 per month, nearly EUR 102 more than in 2021. In July 2023, another increase will take place, to about EUR 766. On top of that, the minimum hourly wage has been raised from EUR 4.17 to EUR 4.85, and another increase will take effect from July 2023, to EUR 5.00. This raise, as well as the reduction of personal income tax (from 17% to 12%), will allow the lowest-earning citizens to maintain their purchasing power and minister in increasing domestic demand.

Unemployment rate



Source: KPMG in Poland based on Eurostat data.

The industrial sector, with wholesale, retail, trade, transport and HoReCa sectors, accounts for the largest share of Polish gross added value (value of goods and services produced, less materials and other directly related costs).

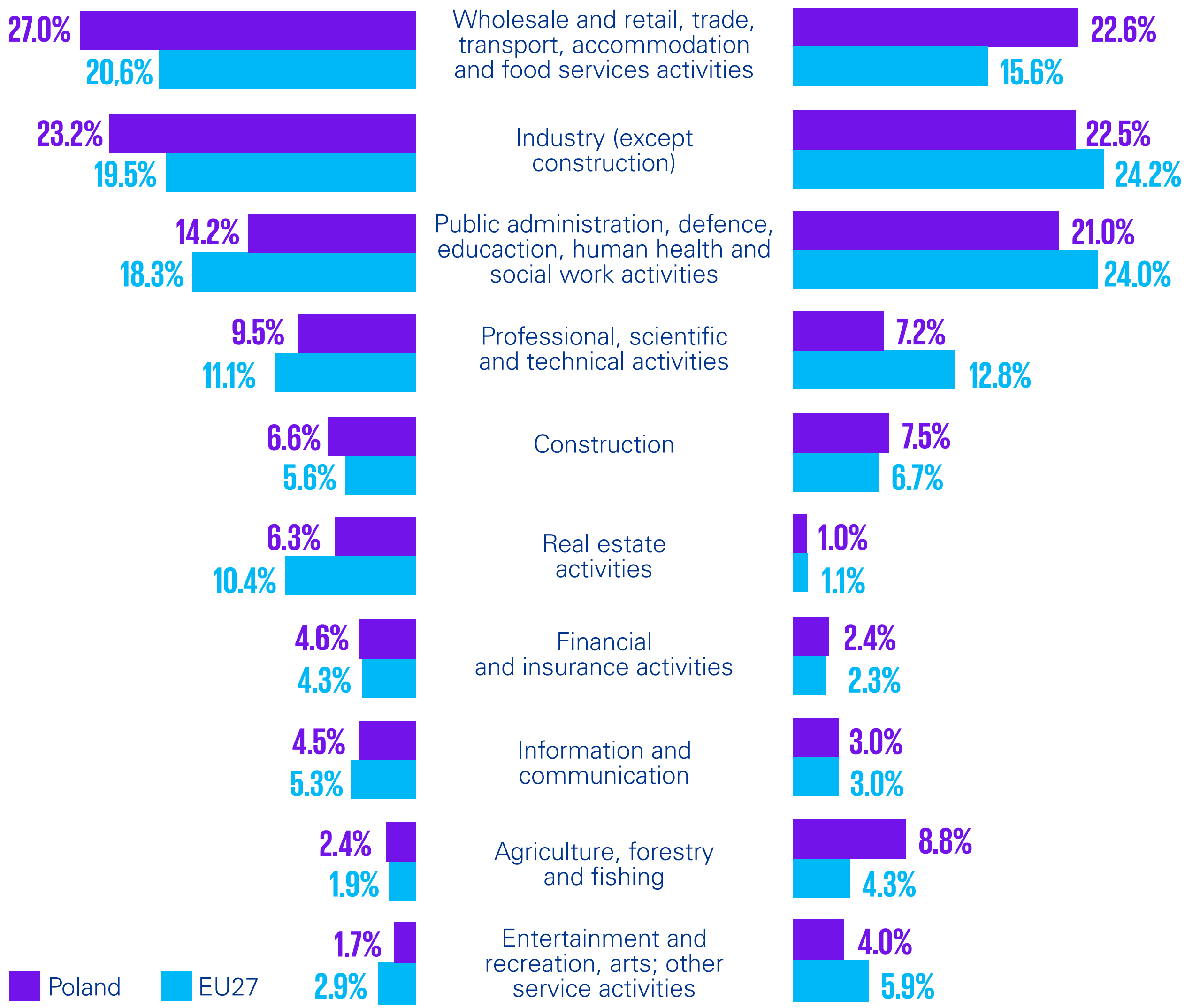
In 2022, they reached 27.0% and 23.2% respectively.

The same two sectors are also the country's largest source of labour, totalling nearly 45% of the working population. The third-largest sector in terms of both gross added value and employment is the public sector. However, comparing Poland to the EU, it is noticeable that public administration, defence, education, healthcare and social work activities play a slightly smaller role overall.

The scientific sector has also developed with slightly fewer workers (7.2% in Poland and 12.8% in the EU). However, almost twice as many people in Poland as in the EU find employment in agriculture, forestry and fishing (8.8% vs. 4.3%).

Share of sectors in generating gross added value in 2022

Share of sectors in employment in 2022



Source: KPMG in Poland based on Eurostat data.

In 2022, Poland exported goods worth EUR 343.8 billion. The value of imported goods was EUR 363.7 billion, giving a negative balance of EUR 19.9 billion. Compared to the previous year, the value of exported goods increased by 19.3% and imported goods by 25.6%.

Most of the trade is carried out between Poland and other EU countries — 75.6% of exports and 51.3% of imports in value terms. Poland exported EUR 95.6 billion worth of goods to Germany, which accounted for 27.8% of total revenues. Goods worth EUR 73.4 billion were imported from Germany, which accounted for 20.2% of the total import market share. The positive balance of trade with Germany amounted to EUR 22.2 billion. Poland's next-largest partners in terms of exports in 2022 were Czechia and France, with a 6.6% and 5.7% share in Poland's export value respectively.
The countries outside the European Union receiving the largest share of Polish exports were the United Kingdom, the United States and Ukraine (together responsible for a 10.7% share).

The goods that accounted for the largest share of both exports and imports were machinery, equipment, and means of transport. In 2022 Poland exported goods in this group worth EUR 123.0 billion, accounting for 35.8% of goods sold abroad. Imported products in this group were worth EUR 111.9 bilion (30.8% of total import value). Industrial goods classified mostly by commodity were the next largest group of goods that Poland sells to and buys from other countries.

International trade in goods

95.6
27.8%
Germany

22.7
6.6%
Czechia

19.7
5.7%
France

16.8
4.9%
United Kingdom

15.8
4.6%
Italy

TOTAL EXPORTS
EUR 343.8 billion

Goods exports from Poland in 2022 (EUR billion, % share)

Goods imports into Poland in 2022 (EUR billion, % share)

TOTAL IMPORTS
EUR 363.7 billion

73.4
20.2%
Germany

53.6
14.7%
China

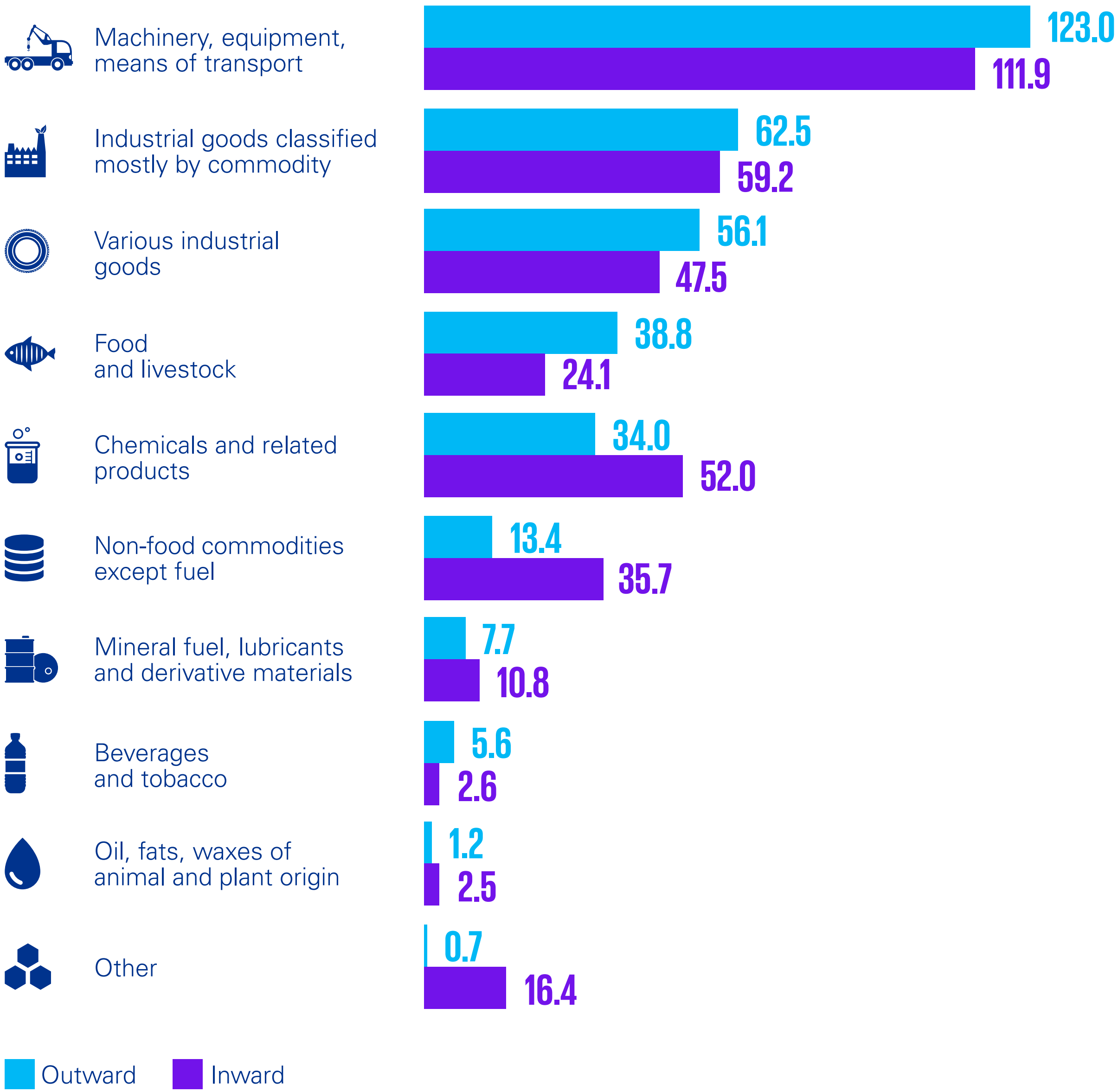
16.8
4.6%
Italy

15.6
4.3%
USA

13.9
3.8%
Netherlands

Source: KPMG in Poland based on Eurostat data.

Poland's foreign trade in 2022 broken down by groups of goods (EUR billion)



Source: KPMG in Poland based on Eurostat data.

The situation in the trade in services shows a somewhat different picture. The value of exports of services in 2021 was EUR 68.7 billion, 17% higher than in 2020. In contrast, the value of service imports was EUR 41.9 billion, up 18% y/y. A positive balance of EUR 26.8 billion was recorded.

Nearly two-thirds (64%) of all services were exported to EU countries. Poland's largest export partner was once again Germany. Polish companies received EUR 15.6 billion from Germany for services sold (23% of total exports), and paid EUR 8.2 billion for services bought from entities in Germany (20% of total imports). Other key partners in services trade are countries from outside the EU: the United Kingdom, the United States and Switzerland.

Transport is the key category of services provided by companies based in Poland. The value of Polish companies' receivables remained almost unchanged in the first year of the pandemic, and sharply increased in 2021 to EUR 20.2 billion. Poland is the EU leader, with a 33% market share among member states in terms of international transport performed, measured in tonne-kilometres (according to 2021 data). In terms of exports, the category of other business services, provided largely from shared services centres (SSC/BPO), plays an equally important role. In 2022, Poland had about 1,700 such centres, more than any other CEE country.

International trade in services

TOTAL EXPORTS

EUR 68.7 billion

Germany	Switzerland	USA	United Kingdom	Netherlands
15.6	5.6	5.7	5.4	5
22.7%	8.1%	8.2%	7.8%	7.2%

Exports of services from Poland in 2021*
(EUR billion, % share)

Imports of services to Poland in 2021*
(EUR billion, % share)

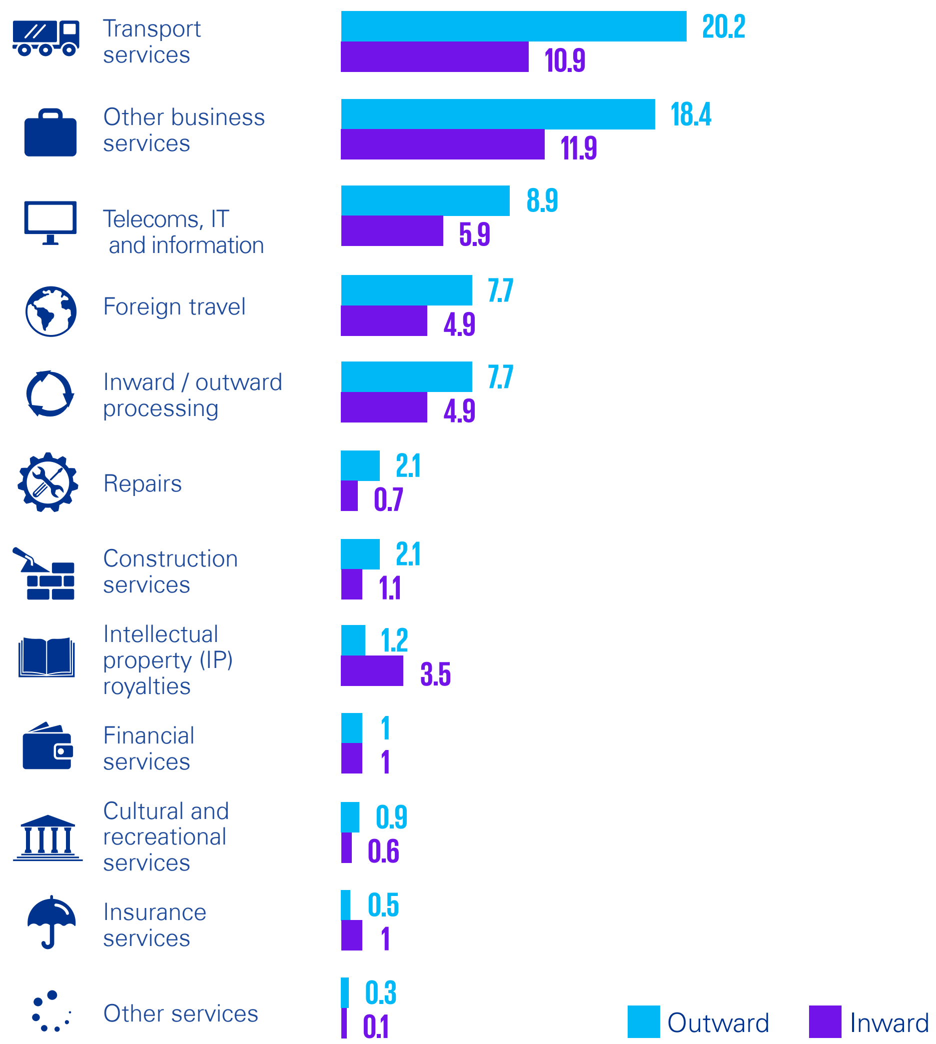
TOTAL IMPORTS

EUR 42.0 billion

Germany	United Kingdom	Ireland	Netherlands	France
8.2	3.4	2.8	2.5	2.2
19.5%	8.1%	6.6%	6%	5.2%

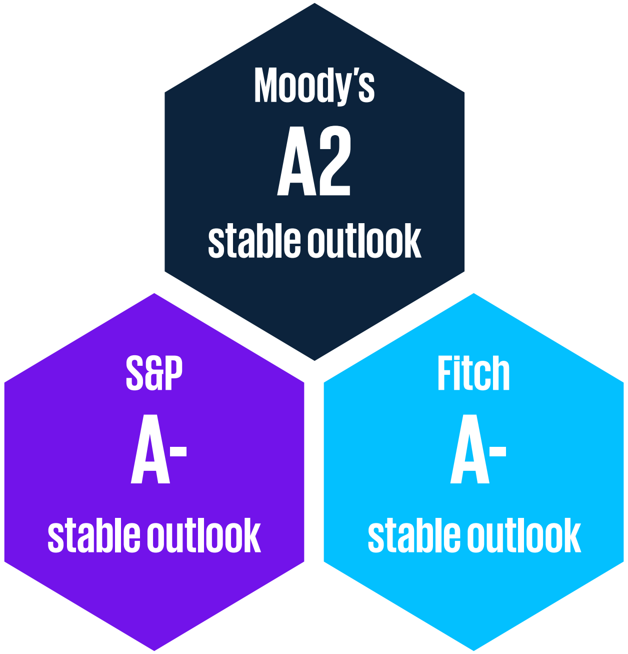
Source: KPMG in Poland, based on National Bank of Poland data, converted at the average annual exchange rate for 2021.
*Latest available data on date of publication

Poland's foreign trade in 2021* by type of services (EUR billion)



Source: KPMG in Poland, based on National Bank of Poland data, converted at the average annual exchange rate for 2021.
*Latest available data on date of publication

Foreign currency long-term sovereign debt ratings of Poland*



Source: KPMG in Poland, based on Polish Ministry of Finance news portal.
*Ratings current for April 2023

Credit ratings

Recent months have been very challenging for European countries, including Poland. Recovery from the pandemic has barely begun, and already another crisis has come - the war in Ukraine. Despite these challenges, all three major rating agencies predict that the Polish economy will remain resilient to shocks. They highlight the good performance of the country's economy and the stability associated with European Union membership. The current outlook for the credit ratings from Moody's, S&P and Fitch has been described as "stable" for Poland.

How can we help you?

The multidisciplinary KPMG Financial Services team provides support to increase the value of financial institutions and strengthen their competitive position on the market.

- Credit risk: statistical model design and validation, scenario analysis, sensitivity and stress testing
- Market risk: financial instruments valuation, interest rate risk management
- Capital adequacy: CRR 3 / Basel IV gap analysis, impact assessment, implementation
- Data Science, Machine Learning and Artificial Intelligence
- M&A services: due diligence, VDR assistance, negotiations, post-M&A integration
- Accounting Advisory Services: IFRS implementation, PPA, finance function transformation
- Transactions structuring: synthetic securitizations, credit derivatives, financial guarantees and other forms of synthetic carve-out of specific portfolios
- AssetsBased Consulting: IFRS 9 tool, RWA tool, NDoD tool, Leasy tool
- Transformation and integration of the finance function
- Optimisation, acceleration and automation of financial processes (e.g. Fast Close)
- ESG Risk Management and implementation of ESG Regulations (EU Taxonomy, SFDR, TCFD)
- Sustainable Finance: Practical solutions for selection of green assets, design of green bonds frameworks, support in creation of "green" funds in accordance with SFDR
- Customer & Sales management services: innovation & product management, CX management
- Operational excellence: Target Operating Model, process design and re-engineering
- Business Strategy and Transformation
- Financial statement audit
- Other assurance services

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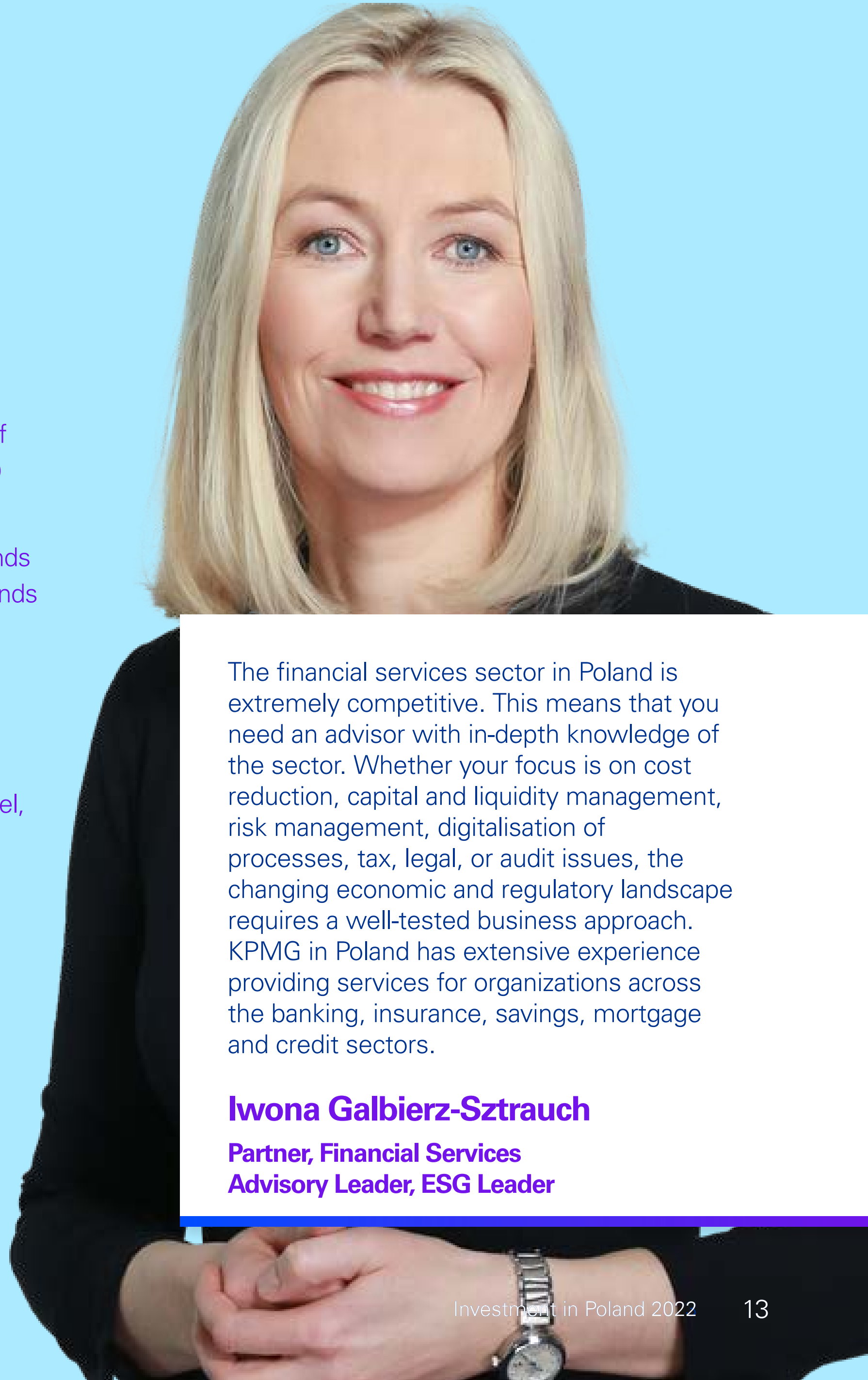


The financial services sector in Poland is extremely competitive. This means that you need an advisor with in-depth knowledge of the sector. Whether your focus is on cost reduction, capital and liquidity management, risk management, digitalisation of processes, tax, legal, or audit issues, the changing economic and regulatory landscape requires a well-tested business approach. KPMG in Poland has extensive experience providing services for organizations across the banking, insurance, savings, mortgage and credit sectors.

Iwona Galbierz-Sztrauch

Partner, Financial Services Advisory Leader, ESG Leader

Doing business in Poland

The institutional environment

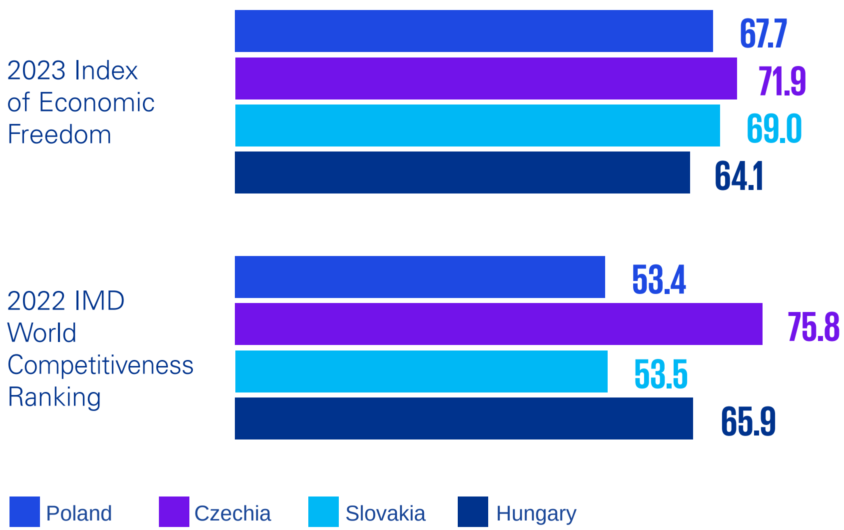
The ease of doing business is also dependent on good regulations as well as certainty of business transactions. Those are hard to measure, but international institutions try to take as many indicators as possible to do it. The Heritage Foundation placed Poland 47th in its 2023 Index of Economic Freedom, giving the country 67.7 out of a maximum 100 points. The ranking covers 184 economies.

The 2022 IMD World Competitiveness Ranking by the International Institute for Management Development considered 63 chosen countries. In this report, Poland ranked 50th, scoring 53.37 points.

Poland is appreciated for its international trade freedom. In the IMD report, Poland ranked 18th in the International Trade category. The Heritage Foundation gave the country even more points for its investment and financial freedom. No duties are levied in trade between EU member states, and non-tariff barriers are also prohibited. In relations with third countries, trade policy is regulated by the European Commission.

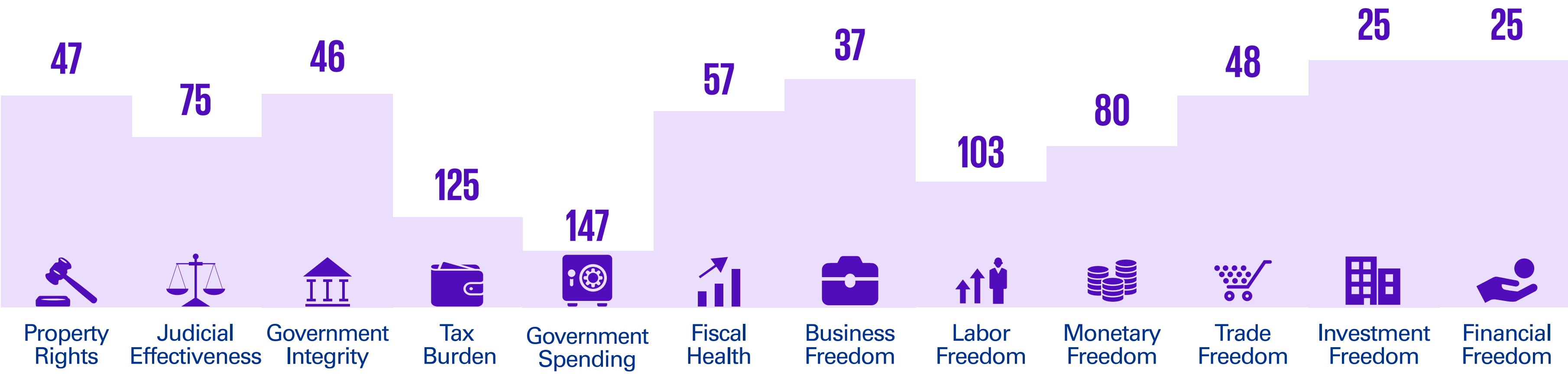
This way, the European Union ensures uniform and consistent rules for trade in goods, foreign direct investments and intellectual property rights. Moreover, flows of services, capital and people are facilitated within the single market, allowing companies registered in one country to operate throughout the EU almost as freely as in a single country.

Countries' performance in global economic ratings



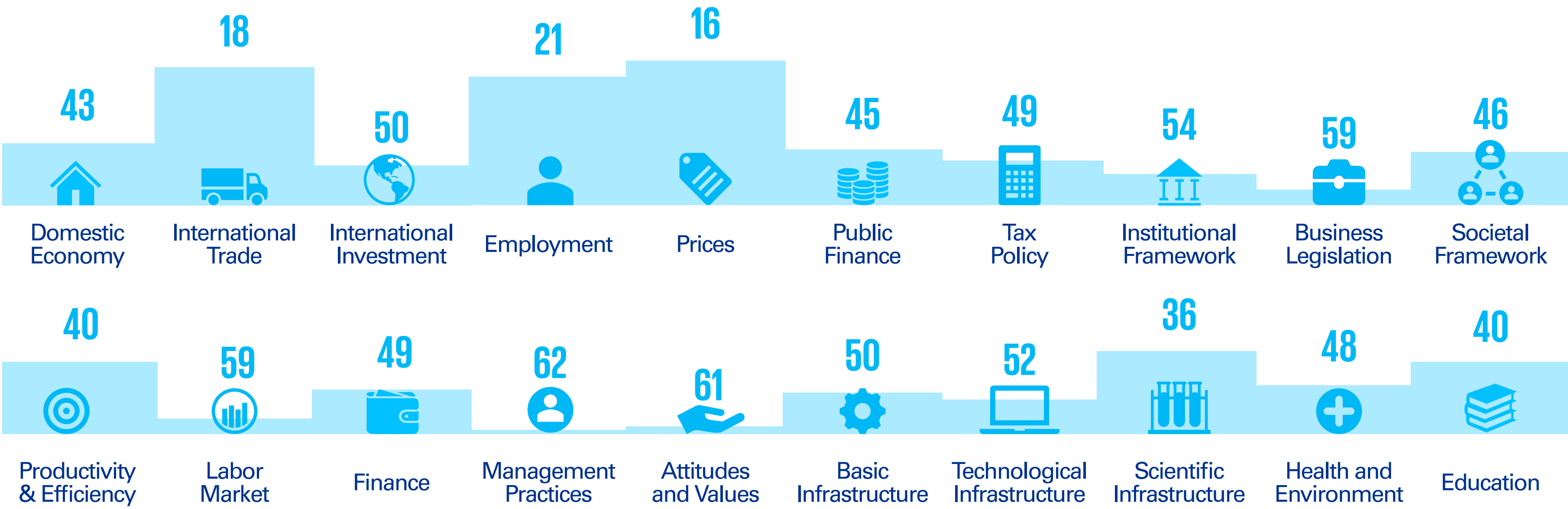
Source: KPMG in Poland based on The Heritage Foundation, International Institute for Management Development.

Poland's position in 2023 *Index of Economic Freedom* in various areas of business (place in the ranking)



Source: KPMG in Poland based on the 2023 Index of Economic Freedom, The Heritage Foundation.

Poland's position in 2022 *IMD World Competitiveness Ranking* in various areas of business (place in the ranking)



Source: KPMG in Poland based on the 2022 IMD Competitiveness Ranking, International Institute for Management Development.

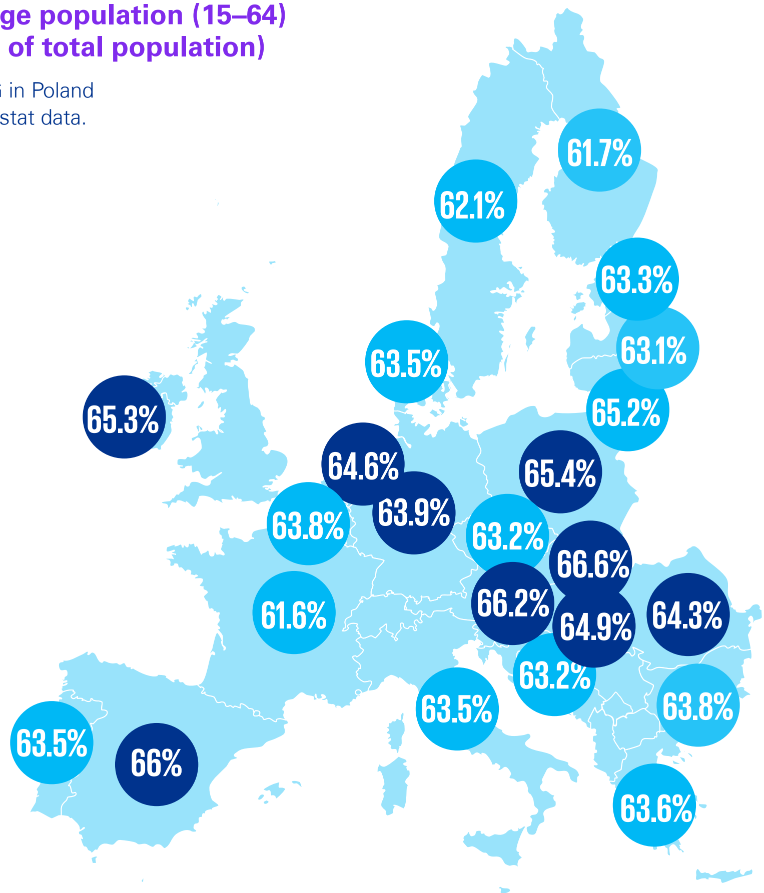
Human capital

Poland has a population of nearly 38 million (the mass migration from Ukraine in 2022 is yet to be counted). This ranks fifth in the number of residents in the European Union, between Spain and Romania. The population is relatively young, and 65.4% of Poles are of working age. In the EU, only six other countries had a higher percentage of people in the 15–64 age group in 2022.

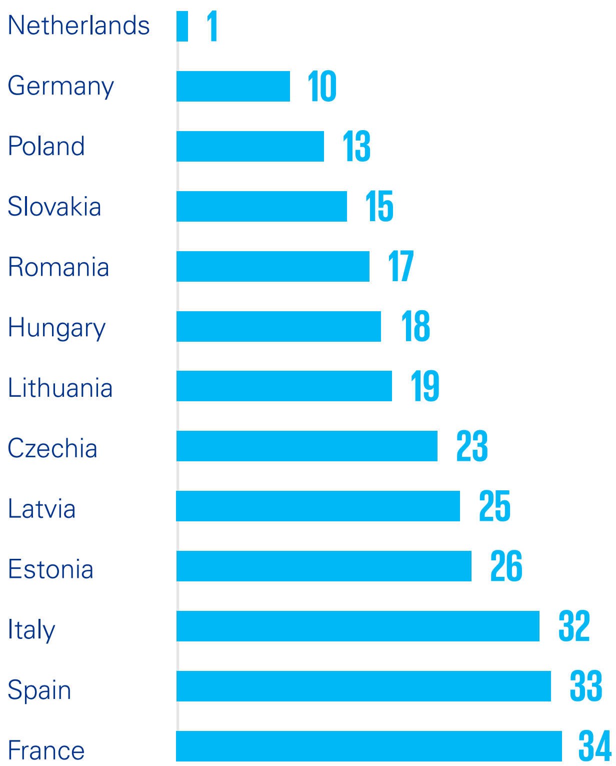
More than 29% of Poles who fall into the working-age category have a college degree. According to Statistics Poland, the most popular subgroups of majors in the 2021/2022 school year were business and administration (18.2%), medical studies (12.1%) and social studies (10.8%). Students in Poland take broad advantage of mobility between European universities under the Erasmus+ programme. In 2021 alone, nearly 50,000 students and staff members participated in studying abroad, including about 15,000 Poles leaving for vocational education and training — more than in any other EU country. A great emphasis is placed in Poland on learning English. It is a compulsory subject throughout education. According to the EF English Proficiency Index 2022, Poland ranks 13th in the world in English fluency, describing the level as "very high proficiency." According to recent data from Eurostat, 79% of secondary school students study two or more foreign languages (compared to 49% in the entire EU). Other popular languages in Poland are German, Russian and Spanish. Statistics show that 67% of Poles know at least one foreign language, and 22% say they can communicate in two or more languages.

Working-age population (15–64) in 2022 (% of total population)

Source: KPMG in Poland based on Eurostat data.



Position of selected European countries in the EF Index Proficiency Index 2022



Source: KPMG in Poland, based on EF English Proficiency Index 2022.

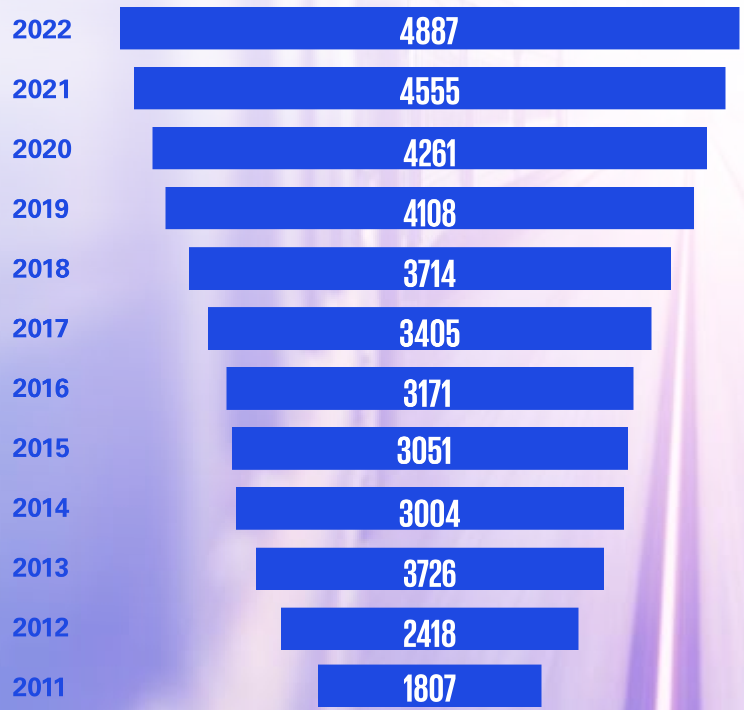
Infrastructure

Poland's location at the heart of the continent and, at the same time, at the EU's border, means that major trade routes between Europe and Asia intersect within its territory. Two out of nine corridors of the Trans-European Transport Network (TEN-T) of international importance run across Poland: the North Sea – Baltic Sea corridor and the Baltic Sea – Adriatic Sea corridor. Since joining the EU, Poland has rapidly expanded its network of road, sea, air and rail connections with support from EU funds. In the current 2021 – 2027 perspective, Poland will receive EUR 76 billion from EU funds, thus remaining the largest beneficiary of the EU Cohesion Policy. From those funds, the largest part (32%) will be allocated to infrastructure projects, roads, rail, public transport, and environmental protection. Additionally, Poland is planning to allocate nearly EUR 7 billion of grants from the new EU Recovery and Resilience Facility for sustainable transport modes and related infrastructure.

After years of a construction boom, the motorway network in Poland expanded from 405 km to 1,800 km, with 3,087 km of express roads by the end of 2022. According to the Government Road Construction Programme, 6,000 km of motorways and express roads will be operational by 2023, and 7,500 by 2030.

According to Eurostat data, Poland has the third-longest rail network in the EU, ranking just behind Germany and France. High-speed rail was launched in 2014 and is still being developed. 2021 brought a post-pandemic recovery in both passenger and freight traffic. 2022, despite the lack of complete data, will certainly prove to be even better; through the first three quarters, the number of rail passengers (249 million) exceeded that of the entire 2021.

Length of express roads and motorways network

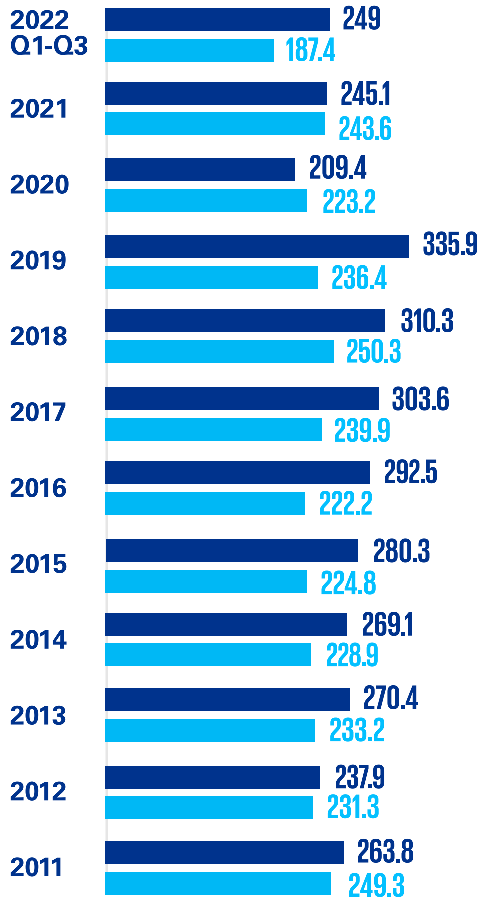


Source: KPMG in Poland based on Statistics Poland (GUS) data.

Passenger and freight transport by rail

Passenger (in million people)

Freight (in million tonnes)



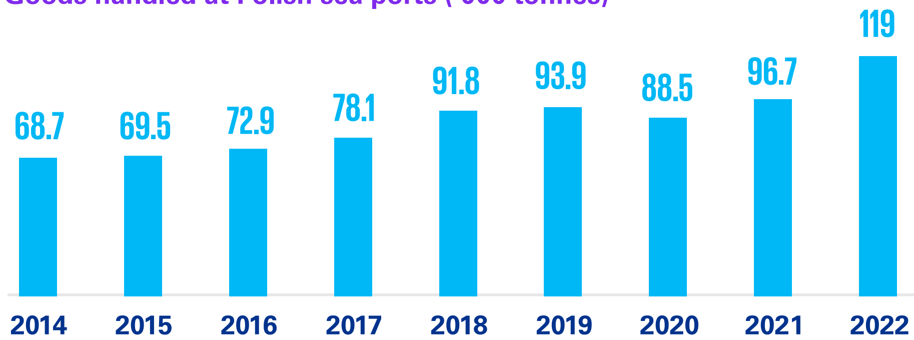
Source: KPMG in Poland based on UTK data (Office of Rail Transport).

Air transportation in Poland continues to grow. There are currently 14 airports operating in the country. The largest, Warsaw Chopin Airport, is located on the outskirts of the capital and is well connected to the centre of Warsaw, and from there transportation to other Polish cities is equally easy. After a pandemic year, the travel sector began a slow recovery in 2021, and nearly 7.5 million passengers used Chopin Airport (+2 million y/y), 2022 year was even better, with 14.4 million passengers. Chopin Airport is also Poland's largest airport in terms of cargo transport (nearly 102 million tonnes in 2022). Other major airports are located in Kraków, Katowice and Gdańsk. One of the largest ongoing projects in Poland is construction of the Solidarity Transport Hub in the centre of the country. Construction is to commence in mid-2023, and the airport is scheduled to open for passengers in 2028. In the first phase of operation, the airport will handle 40 million passengers a year. A road and rail network will also be built to connect the airport to the country's largest cities.

Through the Baltic Sea, Poland has access to markets all over the world, enabling it to directly receive and dispatch bulk goods and containers. The largest Polish port, which is also the third-largest port on the Baltic, is in Gdańsk. Considering container transport only, the Gdańsk trans-shipment terminal is the largest on the Baltic. In 2022, the volume of goods handled at Polish ports was the highest ever, reaching nearly 119 million tonnes. This was largely due to the war in Ukraine and the Russian blockade of that country's Black Sea ports. Polish sea terminals have become a window to the world for Ukrainian exports and imports.

Passengers and cargo handled at Polish airports in 2022

Goods handled at Polish sea ports (`000 tonnes)

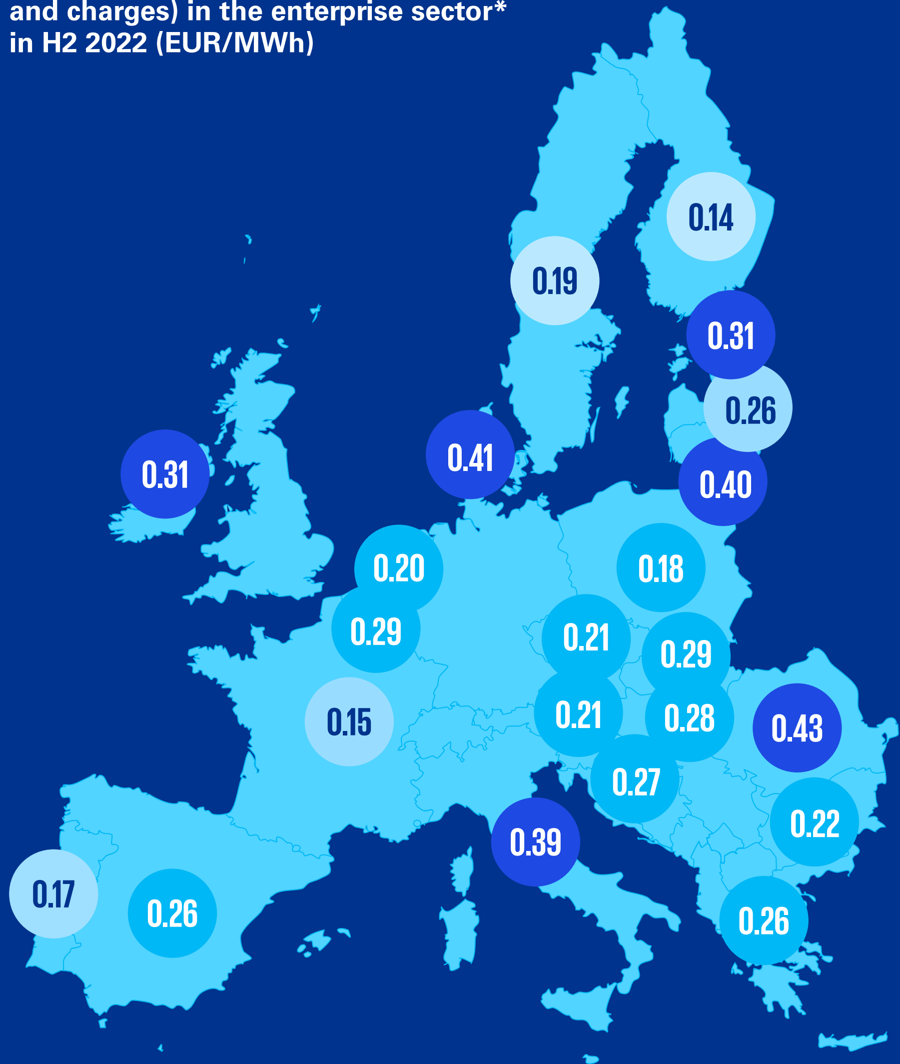


Source: KPMG in Poland based on ULC (Civil Aviation Authority) and Statistics Poland (GUS) data.

Energy prices

Poland has fully adopted the provisions of the EU energy packages liberalising the energy market. As a result, Poland has a fully competitive electricity market, where both individual and institutional customers have the right to choose their energy supplier freely, regardless of the power grid operator or energy producer. Freedom of choice helps companies select the best price. According to data from the Council of European Energy Regulators, which collected information from 24 European countries, in Poland the highest percentage of non-household customers (more than 50%) changed their electricity supplier in 2020. The situation looked similar during the preceding few years, as a result of the large number of suppliers operating throughout the country and the hassle-free switching process. Moreover, energy - intensive enterprises may decide to reduce energy prices by purchasing it from the Polish Power Exchange or signing a contract directly with a power generating company. Nominal electricity prices for corporate users remain competitive compared to most of Poland's EU neighbours. Nevertheless, the cost of electricity in Poland is a heavy burden when purchasing power parity is taken into account.

Average electricity cost (including taxes and charges) in the enterprise sector* in H2 2022 (EUR/MWh)



* Entities consuming 500 - 2 000 MWh per annum
Source: KPMG in Poland based on Eurostat data.

Impact of inflation and geopolitical tensions on the economy

In 2022 inflation accelerated throughout the world. Central & Eastern Europe, including Poland, was highly affected by price increases due to the level of dependency on Russian natural resources and vulnerability to fossil fuel prices.

The Russian invasion of Ukraine brought new challenges to European countries recovering from the pandemic.

The impact of war in Ukraine

Russia's full-scale invasion of Ukraine in February 2022 raised concerns about physical security. But despite tension in the region, Poland has maintained stability on its borders. The Polish armed forces are not the sole guarantor of the country's security, as Poland is a member of NATO and the EU. Art. 5 of the North Atlantic Treaty promises a collective defence between all 30 allies, including the US as the largest military power, with its large military presence in Poland as a deterrent for potential aggressors. In turn, the EU's Common Security and Defence Policy is an approach towards crisis management, drawing on civilian and military assets.

As Ukraine's largest western neighbour, Poland became a natural direction for most refugees. Through the end of 2022, the Polish border was crossed 8.6 million times by people from the war-torn Ukraine. New regulations were passed to support Ukrainians coming to Poland, including work permits for all the newcomers after 24 February 2022. About 1.5 million Ukrainians applied for a Polish ID number, 90% of them women and children. At the same time, many Ukrainian men living and working in Poland returned to defend their country after 24 February 2022. The structure of employment in Poland changed significantly.

Polish government institutions have offered help relocating employees and businesses from geopolitically unstable countries to Poland. The Polish Investment and Trade Agency's "Poland-Business Harbour" programme was launched after large-scale Belarusian protests in 2020, and later extended to include companies in strategic industries from around the world. The programme is designed to make it easier for IT professionals, startups and companies to relocate seamlessly to Poland. Over the first two years, more than 140 companies benefited from the programme, and nearly 50,000 workers were reported for relocation, most of them after Russia's 2022 invasion of Ukraine.

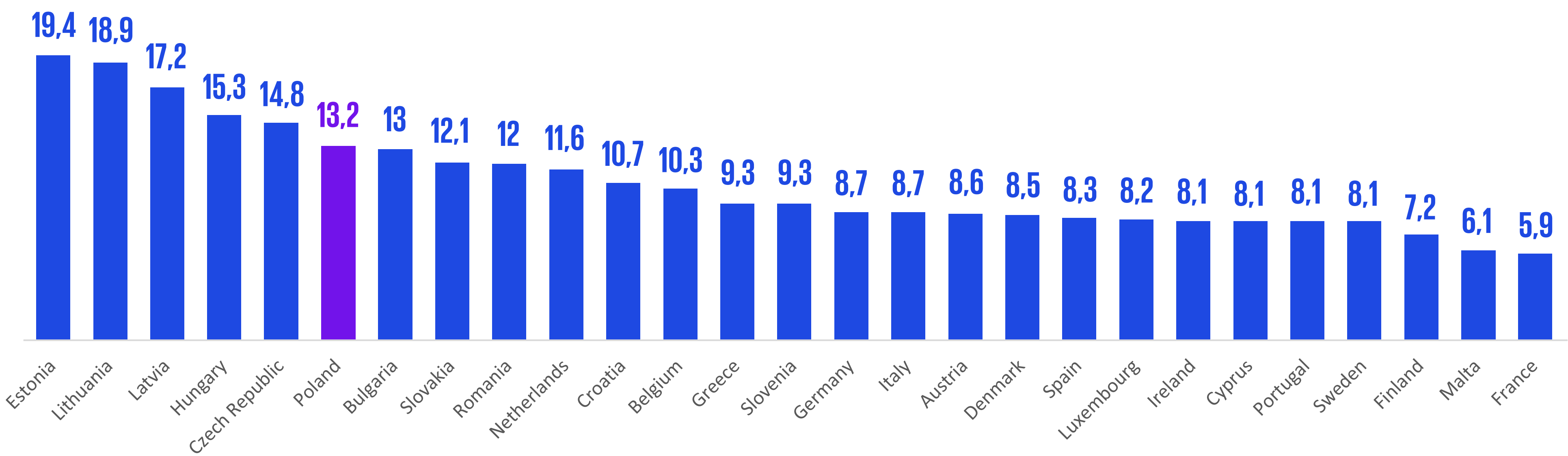
Inflationary pressure

The most noticeable effect of the war on ordinary citizens is inflation. Price increases began to accelerate in late 2021 as the pent-up demand was quickly recovering from the pandemic and problems with energy resources supplies emerged in the entire region. Russia used its position of European

Union's main coal, gas and oil supplier to manipulate in the energy prices on the market by reducing deliveries for a few months before invasion on Ukraine. Poland and the EU put sanctions on part or all the Russian supplies of particular resources, looking for other directions of deliveries. The energy crisis accelerated during the war, yet the energy deliveries were maintained, but costs increased. High energy prices translate into increased manufacturing and transportation costs.
And this is already directly affecting more expensive food and necessities.

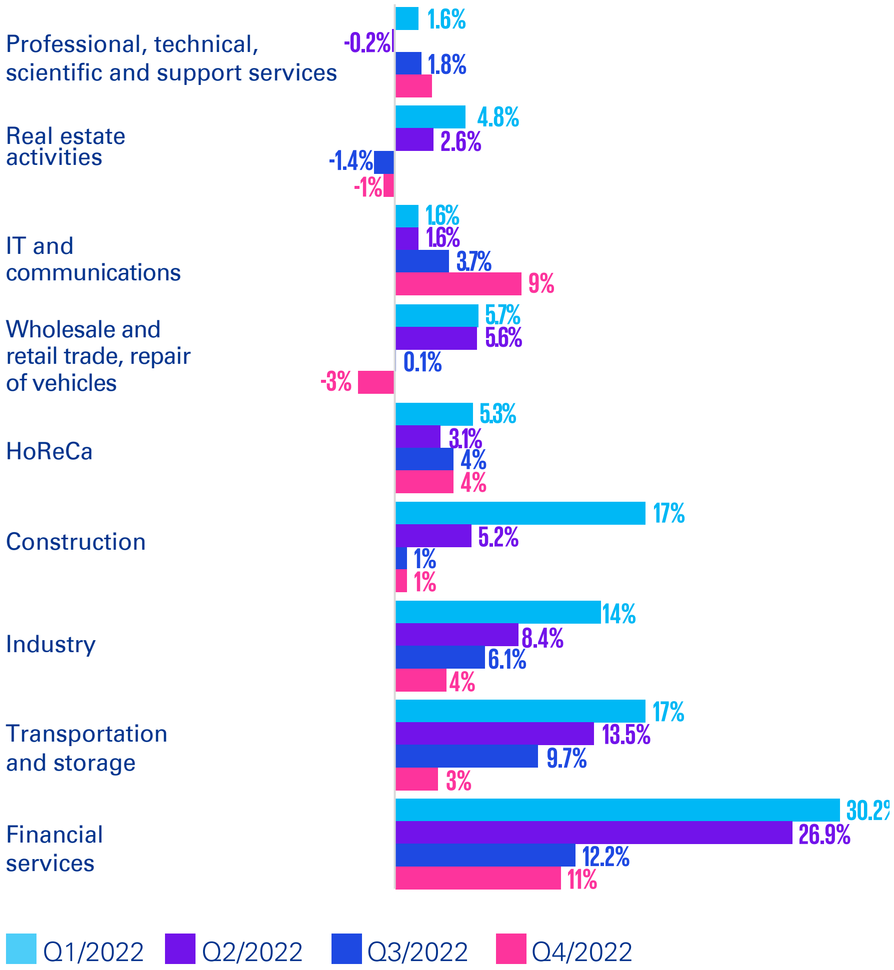
Inflation is now present in all European countries. The level of inflation in Poland, compared to neighboring Baltic states and some V4 partners, remains lower. HICP consumer prices rate showed a 16.1% increase over year in November 2021 in Poland, higher than the EU average of 11.1%. Throughout 2022, the government maintained the Anti-Inflation Shield, which reduced the VAT rate on natural gas, electricity or heat, and provided 0% rate on food.

Annual inflation rate in 2022 in EU countries



Source: KPMG in Poland based on Eurostat data.

Annual change in the quarterly gross value added in sectors of the Polish economy (in real terms)

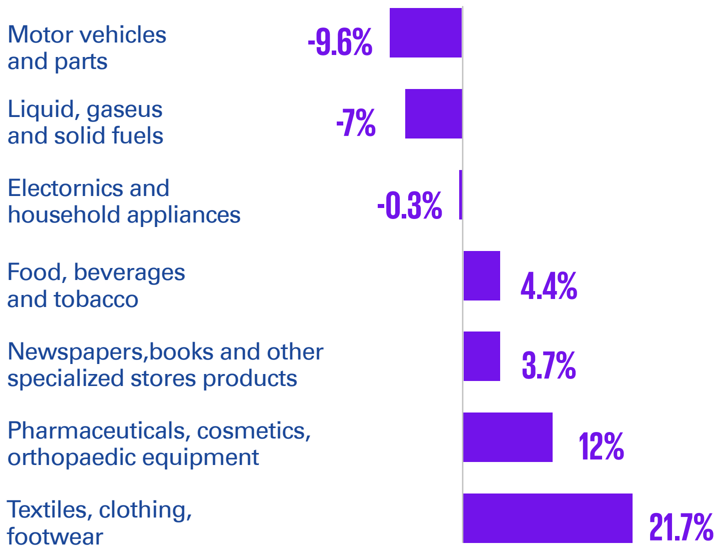


Source: KPMG in Poland based on Statistics Poland (GUS) data.

Situation in the sectors

The influx of Ukrainian refugees and accelerated inflation had a different impact on particular branches of the economy. Analysis of the changes in gross value added of companies from specific sectors allows to show the best and worst

Annual change in the value of retail sales by category in Poland in Jan.- Dec. 2022 (in real terms)



Source: KPMG in Poland based on Statistics Poland (GUS) data.

performing ones. In real terms, i.e. including the inflation, financial services rose input into GDP rose on a double digit level throught all 2022. Similar situation was noted in transportation and logistics, as well as the industry in H1 2022. Construction, which gross value added increased by 17% in the first three months of the year, slowed down sharply in the next nine months. In trade, input increase in Q3 2022 amounted to only 0.1%, and Q4 2022 to minus 3%, showing an impact of accelerated inflation on consumer spending in the second half of the year. Somewhat different picture can be seen in the case of IT and Telecoms and professional services, which dynamic of GVA growth only increased in H2 2022.

The internal market results in Poland show that in 2022, sales increased the most in the textiles segment (21.7% y/y), as well as pharmaceuticals and cosmetics (12.0%). This was mainly due to huge demand for consumer goods from Ukrainians coming to Poland. Fuel consumption declined, which can be explained by energy savings by consumers in a time of increased prices. Sales of vehicles declined as well, as the global supply of new cars was still insufficient due to semiconductor shortages. Demand for electronics in Poland, which had accelerated in the first two years of the pandemic, stood at nearly the same level as the same period of the previous year.

How can we help you?

KPMG in Poland offers consulting services aimed at improving companys' efficiency and technology application.

CFO advisory:

- Accounting advisory
- Governance and risk compliance
- Controlling and performance

Cybersecurity:

- Red Teaming
- Application Security
- Cybersecurity consulting and implementation
- Incident response

Data and analytics:

- Business intelligence
- Data Quality
- Data Governance
- Atificial Intelligence
- Cloud computing

Technology:

- IT consulting
- SAP
- Microsoft
- ServiceNow
- Low Code & RPA
- System & Vendor Selection

Business Consulting:

- Customer (CRM, CX, Sales & Service)
- Operational excellence
- Digital Transformation

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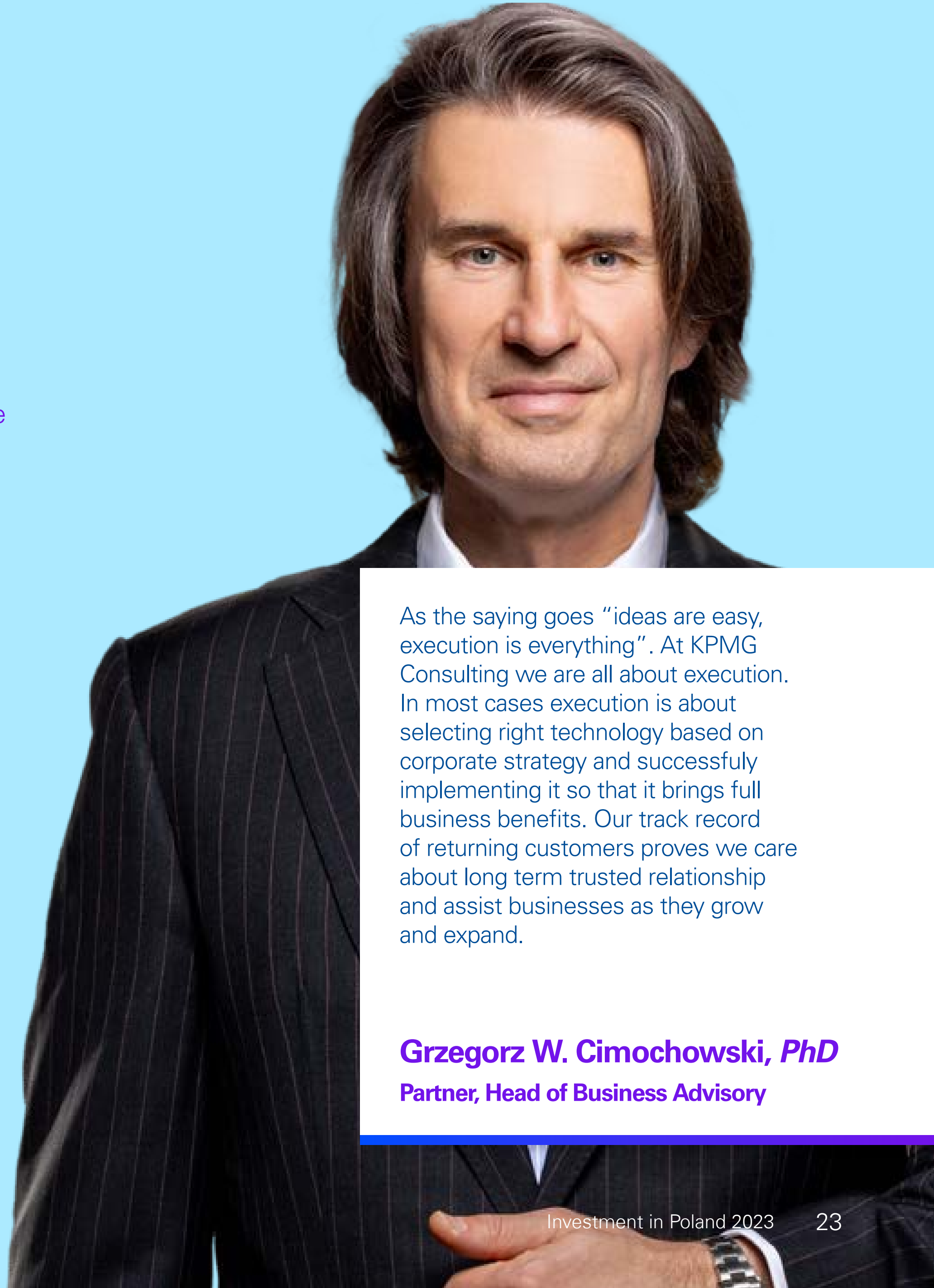


As the saying goes "ideas are easy, execution is everything". At KPMG Consulting we are all about execution. In most cases execution is about selecting right technology based on corporate strategy and successfully implementing it so that it brings full business benefits. Our track record of returning customers proves we care about long term trusted relationship and assist businesses as they grow and expand.

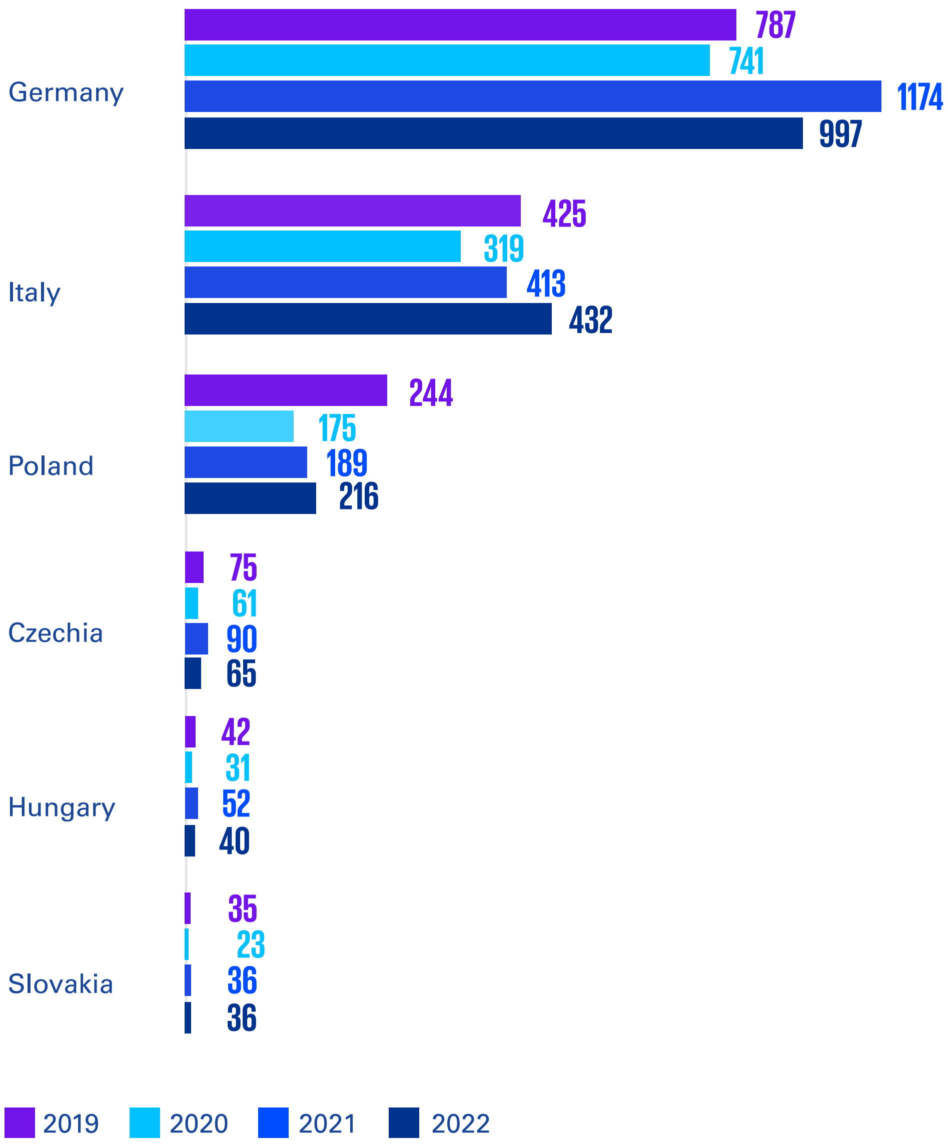
Grzegorz W. Cimochowski, *PhD*
Partner, Head of Business Advisory

Foreign investment in Poland

The M&A market in Poland

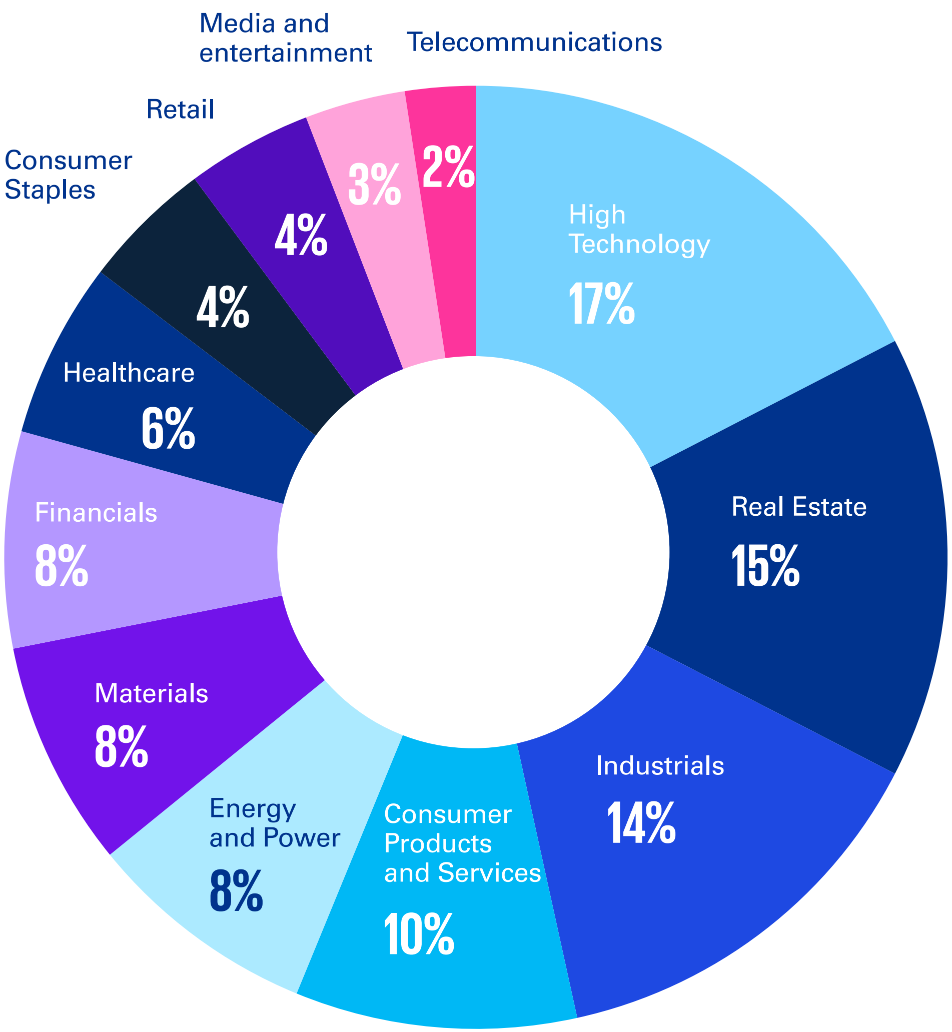
Poland's high appeal as an investment destination is also reflected in its well-developed mergers and acquisitions market. The number and value of M&A transactions in Poland was rising for years, until it fell during the coronavirus pandemic and accompanying economic uncertainty. But in 2021 and 2022 the number of cross-border transactions in Poland announced by foreign investors increased to 189 and 216 respectively. While this is still smaller than in the largest Western European markets, this is a significantly higher figure compared with the total transactions announced at that time in other CEE countries.

Number of cross-border M&A transactions announced in selected EU countries, by target country



Source: KPMG in Poland based on Thomson ONE data.

Number of cross-border M&A transactions in Poland in the period 2020-2022, by economic sector



Source: KPMG in Poland based on Refinitiv data.

Before the pandemic, the largest number of cross-border M&A transactions in Poland were observed in the real estate sector. But cumulative data from 2020–2022 show that 101 of 580 mergers and acquisitions were announced in high technology. Those companies are usually software developers, and since 2020, the greatest interest in such Polish companies is observed from UK and US investors.

Record investment in Poland

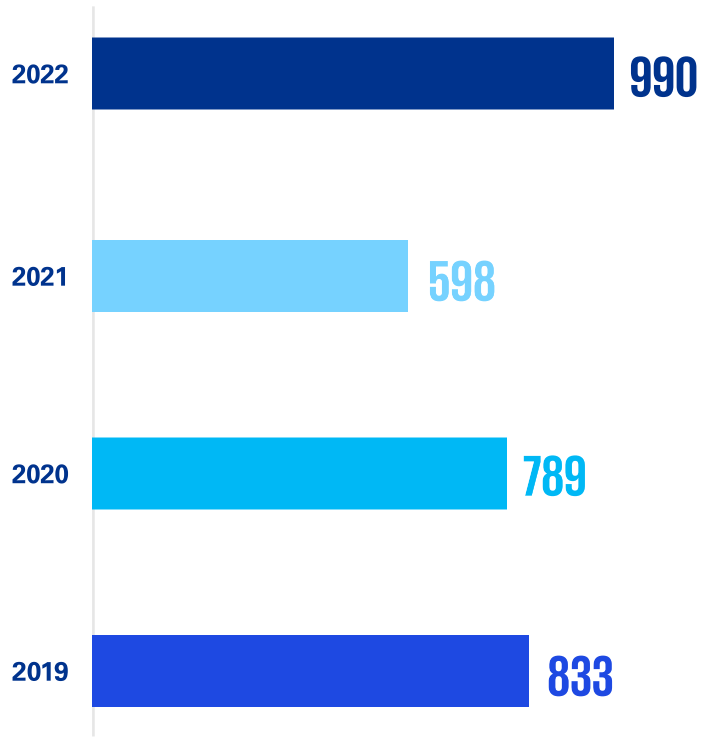
The European Bank for Reconstruction and Development (EBRD) invested a record EUR 990 million in 2022 in Poland. Of that total, 80% will support green and circular-economy projects (1 GW of renewable capacity in the short and medium term). This allowance will help Poland's capital markets after the war in Ukraine, where last year was also a record in investment received from EBRD.

The largest investment (EUR 170 million) was allocated to Cyfrowy Polsat, which is developing its sustainability sector.

The biggest infrastructure project (EUR 100 million) covers the construction of a new container terminal at the port of Gdańsk, which will help to diversify routes via Poland from other countries and reduce emissions. Among other green transport projects there is a tramway extension and an equity investment in an e-waste recycling facility in Kraków. To find a replacement for Russian gas, EUR 126 million will be placed with renewable energy developers (solar, wind, green bonds).

Since 1991 Poland has received cumulative investment of EUR 12.4 billion from EBRD, 92% of which has been invested as debt or equity in private-sector companies.

Annual EBRD Investment in Poland (EUR million)



Source: KPMG in Poland based on European Bank for Reconstruction and Developement data.

Typical acquisition process*

Acquisition process – key stages and schedule

Steps of the process

An acquisition is a complex and time-consuming process. The essential steps in the process are:

01 Market analysis

02 Identification and pre-selection of potential acquisition targets

03 Examination of transaction interest

04 Due diligence, valuation and analysis of returns

05 Negotiation and transaction closing

06 Integration

***For more information on this section please see our separate guide on acquisition process.**

How can we help you?

KPMG supports clients in all aspects of a transactions process, both the buy-side (investors) and the sell-side (vendors).

- M&A advisory services for the acquisition or sale of businesses
- Valuations for the acquisition or sale of businesses
- Ownership changes: Comprehensive legal support
- Financing
- Financial and tax due diligence
- Commercial due diligence
- Operational due diligence
- HR Deal Advisory & Change Management
- Post-Merger Integration (PMI) Assistance
- Real estate M&A and valuation services
- Carve-out assistance

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The Deal Advisory Department in Poland employs professionals with significant experience in a wide range of M&A transaction services. We have an integrated approach: from the beginning of your search for a potential target or preliminary consideration of business disposal, to drafting of the final documents, signing of the sale and purchase agreement, and integration of acquired entities.

Alina Wołoszyn
Partner, Head of Deal Advisory

Incentives for investors

Exemptions and grants for investments, R&D and other projects

Poland offers a broad system of support for businesses, covering both EU and national funds. The financial framework for 2021–2027, adopted by the European Parliament and the Council, is promising — the budget for Poland is EUR 72.2 billion from the Cohesion Policy and EUR 3.8 billion from the Fair Transformation Fund (EUR 76 billion in total). Moreover, Poland will also receive EU support for its National Recovery Plan of EUR 58.1 billion to rebuild the Polish economy after the Covid-19 pandemic.

In addition to the aforementioned measures, the Polish government also offers support under other programmes and measures, e.g.:

- Tax relief for conducting R&D activities (not classified as state aid)
- Tax exemptions in the Polish Investment Zone (formerly special economic zones)
- Horizon Europe programme
- Programmes operated by the National Fund for Environmental Protection and Water Management
- Government programmes
- New tax relief, e.g. for prototypes, innovative employees, and robotics

Investment phase

Investors can benefit from various types of incentives, such as grants and tax relief. Businesses can obtain funding for a single project from several sources simultaneously, combining the available sources of aid.

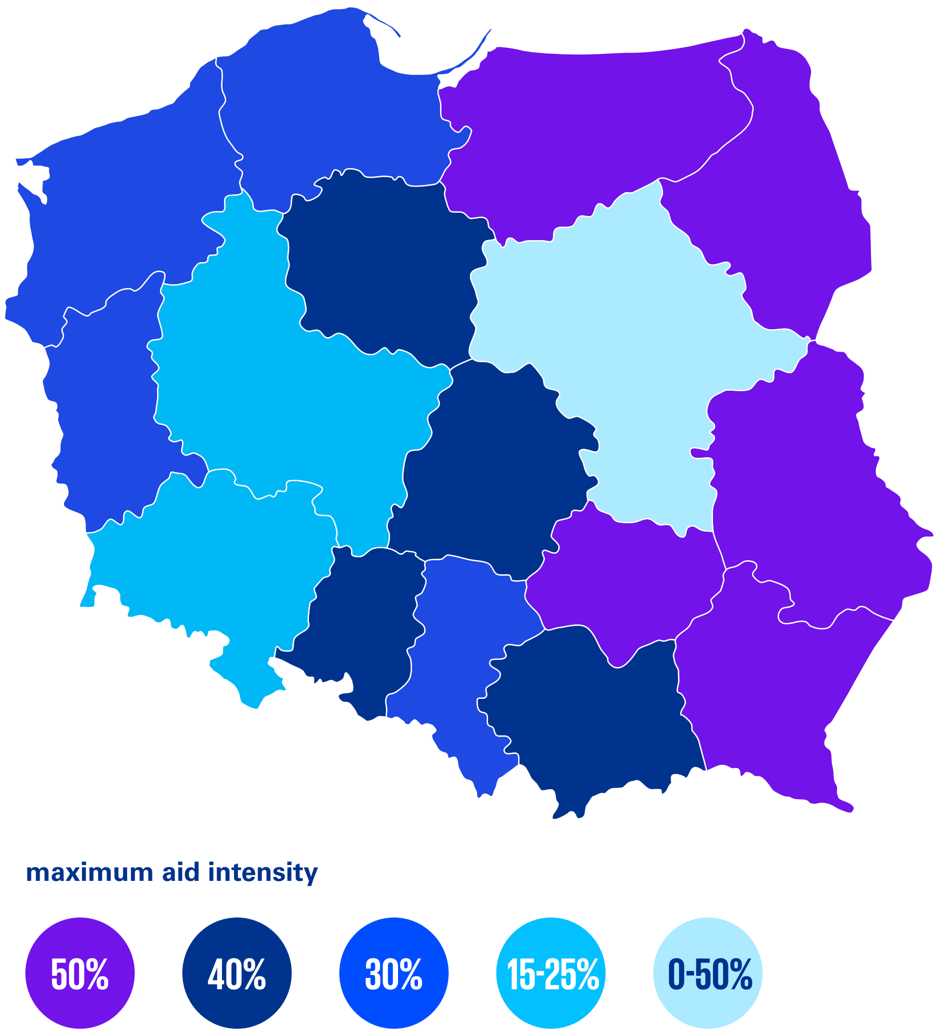
Tax exemptions in the Polish Investment Zone

Since their establishment two decades ago, special economic zones (SEZs) have been an attractive solution for investors seeking to start operations in Poland.

According to the new rules (starting from 2018), investors can obtain CIT or PIT exemptions in connection with a new investment implemented throughout Poland. In practice, this means that the whole country has become one large special economic zone — the Polish Investment Zone (PSI).

The tax relief threshold, i.e. the amount of unpaid CIT/PIT, is calculated as aid intensity (the maximum amount depends on the location and size of the business) multiplied by eligible costs (investment outlays or two years' worth of labour costs of new employees hired in connection with the investment).

Eligible costs to be supported under new investments include investment costs incurred during the validity of the relevant decision: land, fixed assets, modernisation of fixed assets, intangible assets, lease of land or buildings. The amount of support depends on the location of the project and the size of the enterprise. The maximum thresholds of state aid intensity within the 2021–2027 perspective are shown in the accompanying map (certain subregions may be eligible for increased state aid intensity due to temporary measures).



A new investment may lead to creation of a completely new business or development of an existing one (e.g. diversification, a fundamental change in the production process, or a boost in production capacity). Increased employment related to the new investment is also important.

To obtain an exemption, granted for a maximum period of 15 years, investors are required to meet certain quantitative criteria (e.g. minimum eligible investment costs) and qualitative criteria (certain rules relating to structural, scientific or human resources development).

It should be remembered that for an investment to be considered eligible for support, it must not begin before the application for project financing has been submitted or before a formal permit from the relevant institution has been received.

Following the change of legal regulations whereby the entire territory of Poland was included in a special economic zone, new investments located within the borders of existing SEZs will receive support for 15 years.

Real estate tax exemption

Aid may be also granted by a municipal council in the form of a real estate tax exemption. In this case, support is often granted as a form of de minimis aid which is exempt from the European Commission notification requirement.

On this basis, the total amount of de minimis aid granted per member state to a single undertaking cannot exceed EUR 200,000 over a period of three fiscal years (EUR 100,000 for undertakings operating in the road transport sector).

Government grant programme to support investments of significant importance for the Polish economy for 2011–2030

Form of support

Support is provided in the form of a grant based on an agreement between the minister for economy and the investor. The agreement lays down conditions for a cash grant, paid pro rata as the investor's investment commitments are fulfilled.

Who can apply for support?

Support is available for companies implementing investment projects that will boost the innovativeness and competitiveness of Poland's economy. Support is granted in the form of grants awarded in connection with the costs of creating new jobs and investment costs.

Support is granted for the following:

- Innovative investments and R&D
- Investments in regions at risk of exclusion
- Promoting specialised, highly paid and stable jobs
- Strategic manufacturing

Deadline for proposals

The programme will be implemented on a continuous basis until 2030, with grants available until the end of 2025.

Type of cash grants

Under the programme, support will be granted based on eligible costs for creating new jobs and eligible costs of investments. The amount of grants may be increased if training programs are offered to employees.

Under the Programme, support is granted based on:

1. The number of jobs created

Employment Grant				
Type of investment	**Minimum eligible costs (m PLN)**	**Minimum new employment**	**Other requirements**	**Maximum support (per each new job created, in PLN)**
Center for Advanced Business Services	1.5 or 0.3[1]	250 or 50[1]	Medium advanced processes	up to 12 000 or 15 000 [1, 2]
Business Process Excellence Center	1.5 or 0.3[1]	150 or 50[1]	Advanced and highly advanced processes	up to 12 000 or 15 000 [1, 2]
R&D Center	1 (under 100k per employee)	10[3]	Highly advanced processes	up to 15 000 or 20 000[1, 2]

2. Investment costs

Investment Grant				
Type of investment	**Minimum eligible costs (m PLN)**	**Minimum new employment**	**Other requirements**	**Maximum support (as a percentage of eligible costs)**
Strategic	160	100		up to 10% or 15%[1, 2]
Innovative	7	20	Innovativeness confirmed by the Ministry	up to 10% or 15%[1, 2]
R&D	1 (under 100k per employee)	10[3]		up to 15% or 20%[1, 2]

3. Supplement to the above cash grants

Training Grant
Maximum support (per each new job created, in PLN) - 25% or 50%[1, 2] of eligible training costs:

1) In medium-sized cities losing their socio-economic functions and in poviats or cities with poviat rights, where the unemployment rate is at least 160% of the national average unemployment rate
2) In 5 voivodships of Eastern Poland (warmińsko-mazurskie, podlaskie, lubelskie, świętokrzyskie, podkarpackie)
3) Only people with higher education

Higher levels of support are available for investment locations:

1) Investments in medium-sized towns that are losing their socioeconomic functions and in poviats or towns with poviat rights where the unemployment rate is at least 160% of the average unemployment rate in the country
2) In five voivodships of Eastern Poland: Warmińsko-Mazurskie, Podlaskie, Lubelskie, Świętokrzyskie, Podkarpackie

Operational phase

Grants

During the operational phase, businesses can take advantage of incentives associated with their business activity. The main areas of support under the 2021–2027 perspective include research and development, innovation, and environmental protection.

Businesses conducting R&D, i.e. work aimed at developing new products, services and technologies (or improving existing ones), will be eligible for support in the form of grants and repayable instruments offered under national and regional operational programmes, particularly within the European Funds for a Modern Economy programme (FENG), with a budget of EUR 7.9 billion, or through regional programmes. Innovations consist of developing new or significantly improved products, processes, marketing, or organizational solutions for a company. Innovative solutions may be developed inhouse or acquired from other companies or organisations. The maximum support is 65% of eligible costs for large enterprises, 75% of eligible costs for medium-sized enterprises, and 80% of eligible costs for small and micro enterprises.

Businesses will also be able to apply for financial support for projects promoting clean energy, energy efficiency, and activities benefitting the environment. Support will be provided for projects involving the efficient use of resources (e.g. investments reducing the consumption of raw materials for production), creating an energy-efficient economy (e.g. replacement of old production lines with new ones consuming less energy), reducing emissions (e.g. modernization of boiler houses) and using renewable energy sources, as well as projects reducing the effects of coal transformation in strictly defined provinces.

Support for this type of activity can be obtained through the programme European Funds for Infrastructure, Climate and Environment (FEnIKS), with a budget of EUR 24 billion, or through regional programmes.

Special support instruments have been prepared for micro, small and medium-sized enterprises which play a special role in sustainable economic growth. These programmes aim to simplify the implementation of innovative technologies by such entities, strengthen cooperation between science and business, and implement environment-friendly solutions.

If a project is to be realised with the support of public funds, the investor must remember to monitor the dates of calls for proposals under individual programmes/measures. These schedules are dynamic and are updated several times during the year.

Businesses in Poland will benefit additionally from sources destined to revive economies after the Covid-19 pandemic, such as the National Recovery and Resilience Plan, with a budget of PLN 158.5 billion, which will co-finance projects in areas of digital transformation, climate change, or resilience and competitiveness of the economy.

Tax relief for R&D activities

From 1 January 2016, businesses can benefit from new tax relief for carrying out R&D activities. The bonus takes the form of an additional deduction of eligible R&D costs from the tax base, and beginning from 2022 amounts to:

- 200% of salaries of employees engaged in R&D activities
- 100% of other related expenses on R&D activities (including R&D materials and R&D apparatus depreciation).

Eligible costs are to be declared in tax returns. Unlike grants, in the case of tax relief for R&D, a review of the eligibility for relief occurs only during tax inspections. Thus it is vital to:

- Ensure correct identification of R&D projects and eligible costs
- Possess documents confirming the execution of R&D projects and the legitimacy of assigned costs

Unlike R&D grants, tax relief covers incurred costs.

From 2018, a taxpayer who conducted business in a special economic zone on the basis of a permit during the fiscal year or on the basis of a Polish Investment Zone decision is entitled to a deduction only for eligible costs not taken into account by the taxpayer in the tax-exempt income calculation on the basis of the permit or decision.

New tax relief

From 2022, businesses can take advantage of new forms of income tax relief, i.e.:

Tax relief for innovative employees

(supplementing the tax relief for R&D activities)

The relief for innovative employees will allow businesses to reduce the amount of PIT advance payments on the salaries of their employees who spend over 50% of their working time in a given month on R&D. However, the relief applies only to the surplus that could not be deducted under the tax relief for R&D.

Tax relief for robotics

This relief enables taxpayers to deduct from the tax base an additional 50% of tax-deductible costs incurred for activities related to acquisition of industrial robots, along with machinery, peripherals and software necessary to operate them, in a given tax year. As defined by the law, an industrial robot is an automatically controlled, programmable, multitasking and stationary or mobile machine with at least three degrees of freedom, with manipulation or locomotion properties for industrial applications. The relief applies to costs incurred in 2022–2026.

Tax relief for the prototypes

The prototype tax relief allows taxpayers to deduct from the tax base an additional 30% of the costs (but not exceeding 10% of the amount of income derived from sources other than capital gains) of trial production of a new product and launch of a new product. The new product must be a result of the taxpayer's R&D activities. The prototype relief, like the R&D relief, has a strictly defined catalogue of eligible costs, e.g. purchase price or production cost of new machines, adaptation/improvement of fixed assets, materials and raw materials, expertise (obtaining certificates, approvals etc), and technology verification system (ETV) costs.

Tax relief for expansion

The expansion tax relief allows taxpayers to deduct from the tax base an additional 100% of expenses for expansion to new markets. This relief has a strictly defined catalogue of eligible costs, i.e. costs of participation in trade fairs, promotional and informational activities, packaging adaptation, preparing certification/registration documentation, and tender documentation. A condition for claiming this relief is an increase in revenues from the sale of products, or an increase in revenues from the sale of products not previously offered on a given market (domestic or foreign), within two years. The deduction is limited to PLN 1 million per tax year.

Innovation Box

Implemented in 2019, the Innovation Box (aka IP Box) offers preferential taxation of income earned from intellectual property rights. Together with incentives already in force, they allow businesses to receive financial support at every stage of the innovation process, from concept to commercialisation.

The Innovation Box should be regarded as a complementary element closing the chain of incentives. It is aimed at supporting businesses developing new or improving products, processes and technologies, enabling them to derive additional tax benefits from R&D and implementation of its results. Under the legislation, the Innovation Box will allow taxpayers to apply a preferential 5% income tax rate to income earned from IP rights. The greater the taxpayer's involvement in producing, developing or improving the innovative solution (i.e. R&D activity concerning an intellectual property right), the greater the potential tax benefit. The preferential rate applies throughout the period of intellectual property rights protection. The Innovation Box is complementary to the possibility of tax deduction within the R&D tax relief.

How can we help you?

KPMG offers its support at all stages in obtaining tax incentives and cash grants from EU and national funds.

- Mapping of company's activities eligible for cash grants and tax incentives
- Development of funding strategies & roadmaps
- R&D and IP Box incentive implementation
- Polish Investment Zone
- Assisting in obtaining financial support from EU funds and the state budget
- Identification and synchronization of Europe-wide funding activities
- Support in settlement of tax incentives and cash grants received

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The Grants & Incentives Team at KPMG in Poland provides dedicated services for entities interested in obtaining cash grants and tax incentives for their business.
With KPMG's comprehensive approach to clients' business, the high standards of our services, and the professional expertise, knowledge and experience of the Grants & Incentives Team, our clients can take advantage of development opportunities and respond to business challenges.

Kiejstut Żagun
Partner, Innovation, Grants and Incentives, Tax

Business services sector in Poland

Business services is one of the most important and fastest-growing sectors in Poland.

Poland is the regional leader for business services in Europe and a favourable location for investors to set up new business services centres.

Despite the recent Covid-19 pandemic, economic fluctuations and the war in Ukraine, Poland consistently continues to strengthen its competitive advantage in the global business services sector.

This industry in Poland is already mature, with more than 400,000 people employed in more than 1,500 business centres in major locations such as Warsaw, Kraków, Wrocław and the Tri-City.

The sustainable development and high-quality performance of the sector make investment in Poland attractive in terms of:

- High availability of well-educated talents and highly qualified workforce
- Cost attactiveness
- Attractive business environment
- Developed infrastructure
- Stable and strong economy
- Globally comfortable time-zone and climate
- Attractive investment incentive package
- Strategic alliances and partnerships

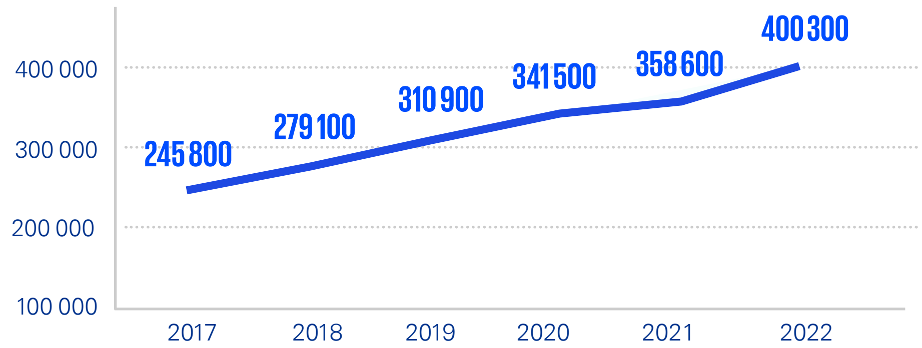
The global competition for talent will intensify in the years to come, and talent availability will be the most significant challenge for growth of the business services sector.

The great human potential, with highly qualified specialists and a quality talent pool with considerable linguistic skills, is a critical asset of the industry in Poland.

Poland is no longer perceived as an attractive destination only for simple transactional positions. The industry in Poland offers higher-end competencies required for more advanced, knowledge-intensive processes.

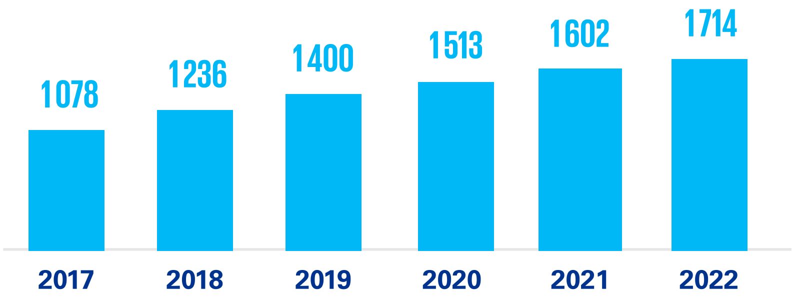
Advanced and complex positions, previously restricted to a limited group of headquarters, are currently available in Poland as the business services sector offers high-quality, top-level managers. Highly skilled workers are the most critical asset. The business services sector offers competitive salaries with a wide range of fringe benefits, which draw the attention of the labour market as one of the most attractive industries in Poland.

Employment in the business services sector in Poland



Source: KPMG in Poland based on ABSL *Business Services Sector in Poland* data.

Employment in the business services sector in Poland



Source: KPMG in Poland based on ABSL *Business Services Sector in Poland* data.

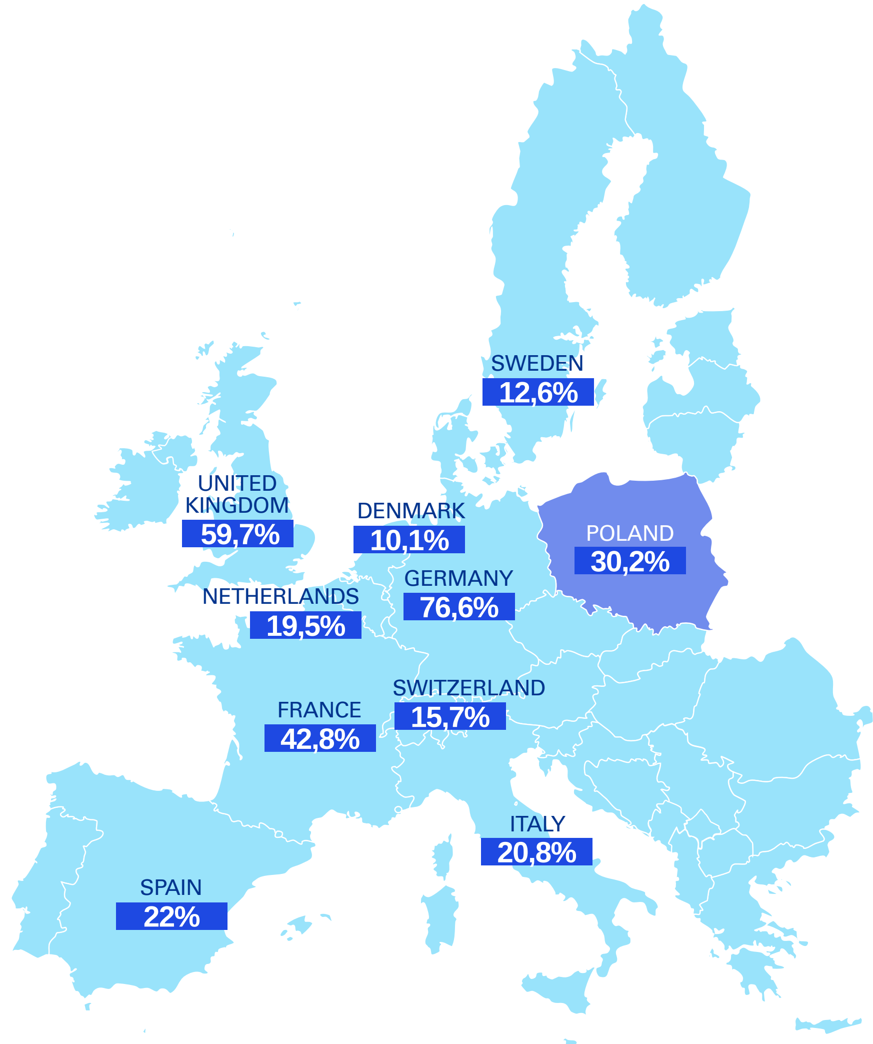
The industry in Poland is definitely a leader for knowledge-intensive business processes both globally and in the Central & Eastern Europe region.

Sustainable growth of the range of processes handled in the business services sector in Poland drives the increasing importance of front-office and mid-office processes and the decreasing level of transactional back-office processes.

There is a visible trend towards the increasing role of more comprehensive tasks generating higher added value for local organisations and global companies.

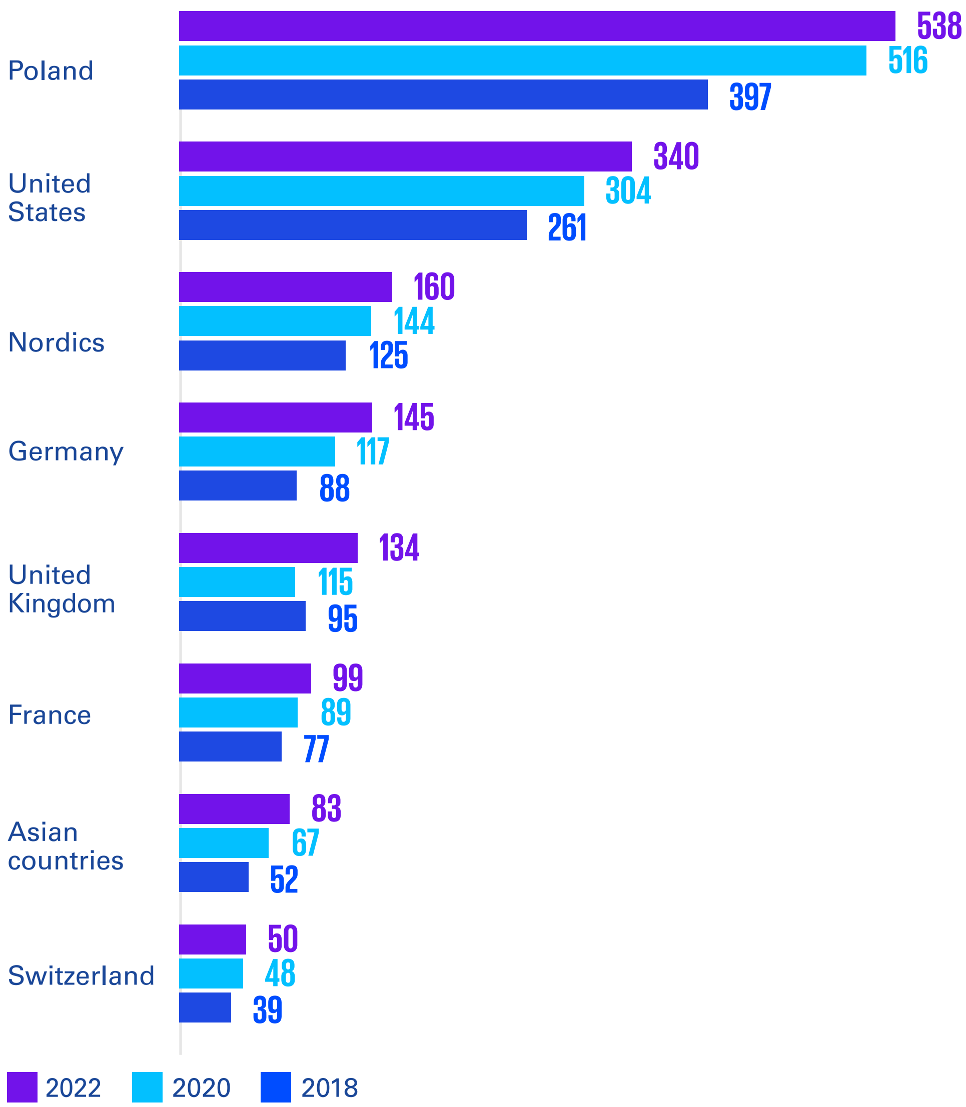
The Polish sector of business services provides a broad range of services to clients from all over the world. Germany (76.6%), the United Kingdom (59.7%), France (42.8%), the United States (40.3%) and Spain (22.0%) are the top five foreign locations of clients supported by business services centres in Poland.

Location of the Top European clients served by centers in Poland



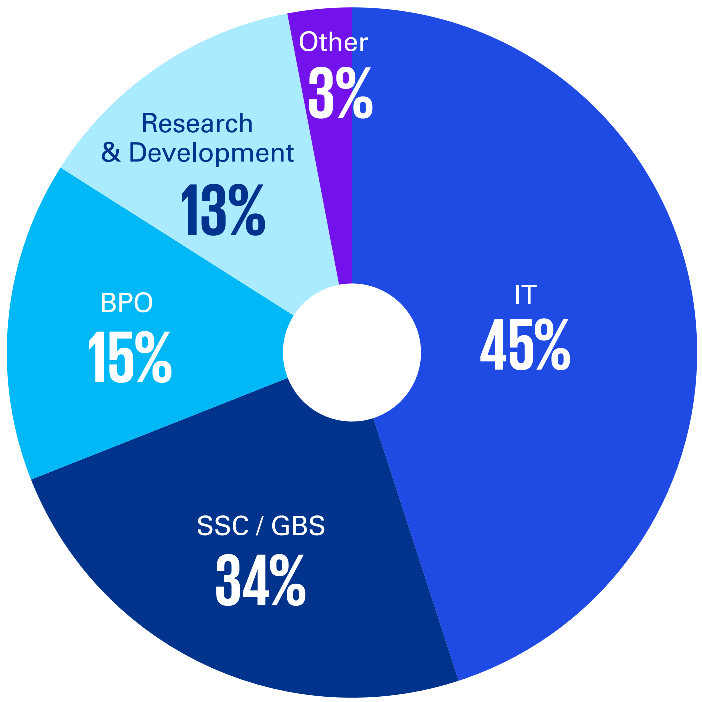
Source: KPMG in Poland based on ABSL *Business Services Sector in Poland* data.

Number of Business Services centers in Poland by the country of origin



Source: KPMG in Poland based on ABSL *Business Services Sector in Poland* data.

Number of Business Services centers in Poland by type



Source: KPMG in Poland based on ABSL *Business Services Sector in Poland* data.

How can we help you?

KPMG offers its support at all stages in obtaining tax reliefs and subsidies from EU and national funds.

- SSC set-up
- Feasibility Study and Strategy Design
- Target Operating Model Design
- SSC to GBS Transformation
- Change Management and Communication
- Migration Strategy and Transition Management
- Process standardisation and optimisation
- Operational excellence
- Managed Services and Operational Support

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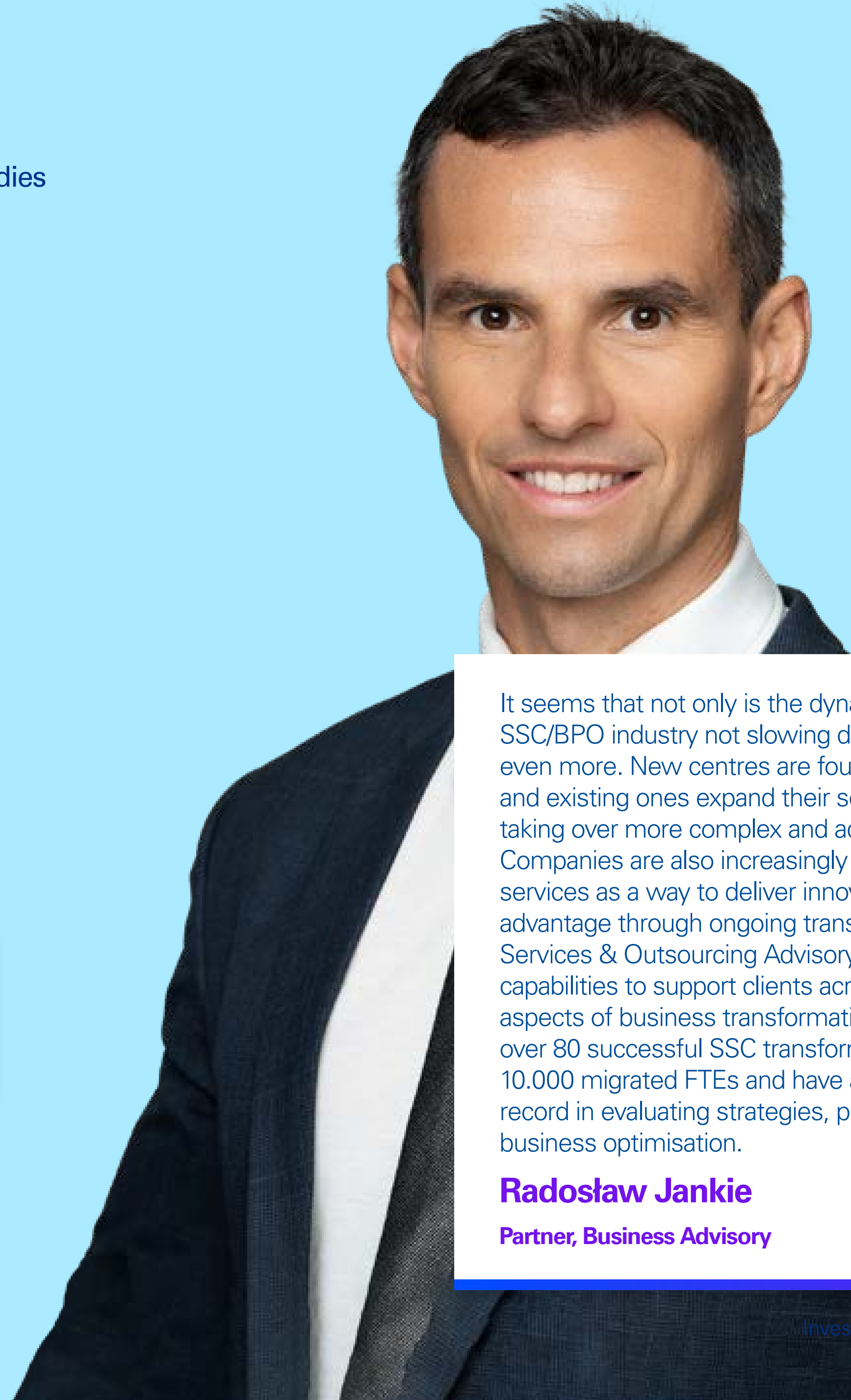
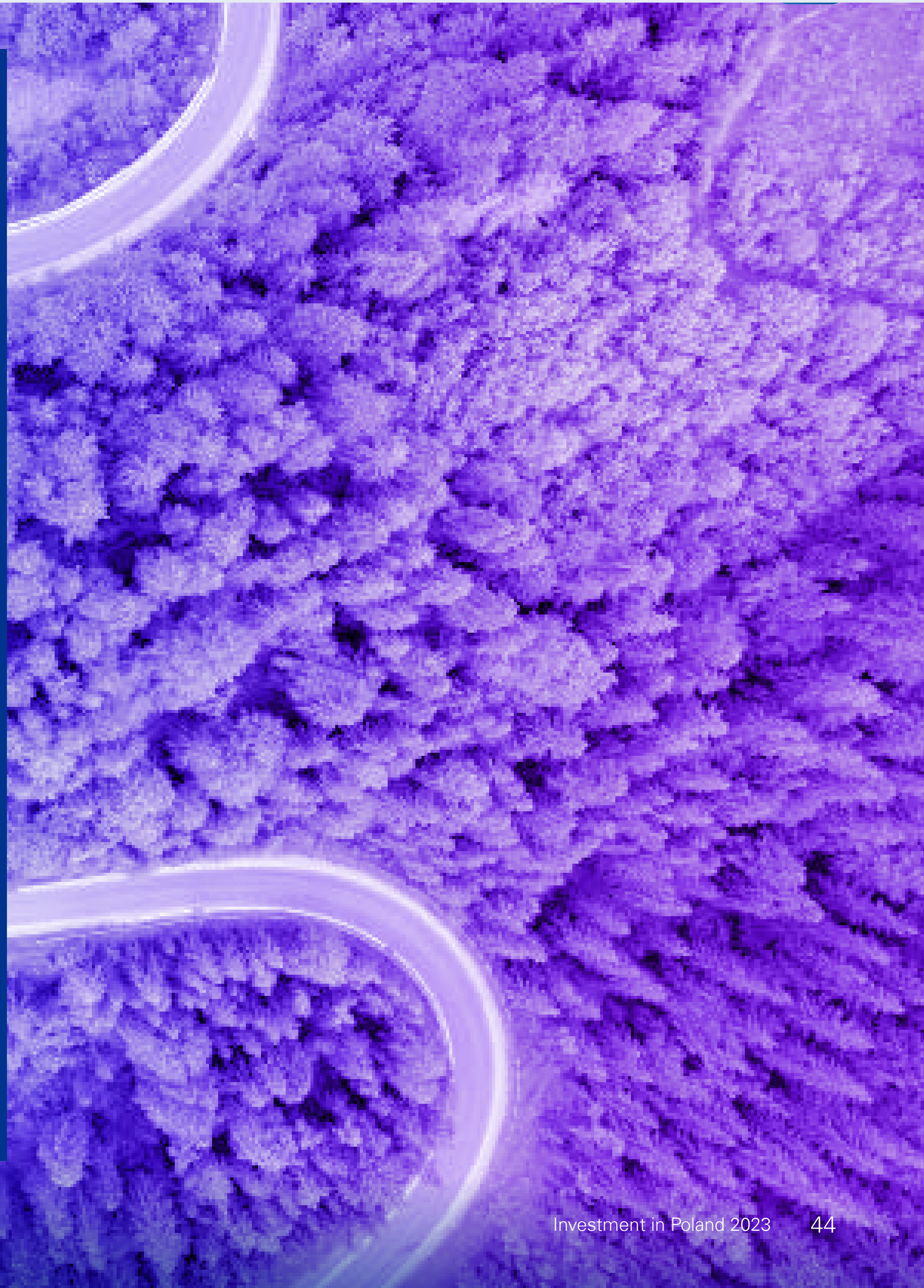


It seems that not only is the dynamics of the SSC/BPO industry not slowing down but is accelerating even more. New centres are founded on a daily basis and existing ones expand their service portfolio by taking over more complex and advanced processes. Companies are also increasingly exploring managed services as a way to deliver innovation and create advantage through ongoing transformation. Shared Services & Outsourcing Advisory Team have extensive capabilities to support clients across all functional aspects of business transformation. We have finalised over 80 successful SSC transformations with over 10.000 migrated FTEs and have an excellent proven record in evaluating strategies, process migration and business optimisation.

Radosław Jankie

Partner, Business Advisory

ESG trends and their influence on business in Poland



ESG regulations affect many parts of the Polish economy, including the energy, industrial, real estate, transport, and financial sectors. The introduction of more restrictive regulations regarding greenhouse gas emissions may affect the costs of doing business, especially in sectors generating high emission levels. Companies investing in low-carbon solutions can in turn benefit financially and become more attractive to investors.

Poland is to a significant extent a recipient of ESG standards and regulations, mainly EU practices. The European Union consistently implements its sustainability strategies through the European Green Deal and the set of regulations stemming from this strategy, including the Fit for 55 package and the energy independence plan RePowerEU.

Fit for 55

The Fit for 55 package was launched in December 2020 to help the EU meet its target of reducing greenhouse gas emissions by at least 55% by 2030 in comparison to 1990 levels. It is a comprehensive set of measures that includes funding and support for businesses to help them transition to a carbon-neutral economy.

Renewable energy:

One of its key aspects is the increased use of renewable energy sources. This creates significant investment opportunities for companies specialising in the development and implementation of technologies such as solar, wind or hydropower. Companies that already have an established position in the RES sector are to receive support in the form of stable financing and can count on growing demand for their goods and services. New entrants to the market will have the opportunity to create new niches and products in a still underdeveloped market.

Energy efficiency:

Fit for 55 also includes measures to improve the energy efficiency of buildings and transport. This represents an opportunity for companies specialising in energy-saving solutions such as smart home systems, insulation products and low-emission vehicles. EU strategies show the importance of saving and efficiency in heat and electricity use. Market analysis confirms a great lack of energy efficiency in production, but also for example in energy efficiency in construction, which is indicated as one of the main sources of emissions.

Low-carbon technologies:

The package includes support for implementation of low-carbon technologies, including research and innovation funding and tax incentives. This creates investment opportunities for companies specialising in the development of technologies such as carbon capture and storage, electric vehicles, and clean energy storage solutions. A lot of financial incentives (including tax relief) will be available in Poland to increase innovation and enable the introduction of new technological and process solutions.

EU ETS reform:

One of the key aspects of the package is the reform of the EU ETS emissions trading platform, with the goal of an overall 61% reduction in emissions by 2030 compared to 2005 levels in covered sectors. Reforms should mean a new allocation of allowances between countries, which has so far rewarded countries with the greatest emission reductions the most. It is assumed that the new distribution will increase the pool of allowances granted to Poland. As part of the EU ETS reform, it is also proposed to introduce a carbon price in the buildings and transport sectors. These sectors will most likely be covered by a separate ETS system, due to possible increases in fuel costs and maintenance costs for existing buildings.

Renovation of buildings and transport:

Improvements in energy efficiency of buildings and transport, including the introduction of minimum energy performance standards for vehicles and the renovation of public buildings. This policy goal represents an investment opportunity for companies specialising in energy-efficient building solutions: insulation products, energy-efficient lighting, and smart home systems. Construction and transport are becoming a priority for transition funding programmes. They are also an area of increasing regulation setting criteria for desirable activities, such as the EU taxonomy for sustainable activities.

Carbon Border Adjustment Mechanism (CBAM):

Policy tool is planned to launch on 1 October 2023. Its goal is to change the shape of global trade by creating a mechanism that will include the costs of GHG emissions in products imported to the EU, creating a level playing field for European companies required to use the EU ETS system. In the coming years it will shift from a reporting mechanism to a requirement to pay the difference between the carbon price in the original market and the one in the EU. In its initial phase it will already include products from emissions-intensive sectors, such as iron and steel, cement, fertilizers, aluminum, electricity, and hydrogen.

Corporate Sustainability Reporting Directive (CSRD)

CSRD will be the basic information tool for sustainable investments. It introduces obligations for investors to ensure that companies report their impact not only on climate and the environment, but also on employees, the local economy, and society. It is aimed at presenting investors with the most comprehensive overview of the company's opportunities and threats which are not reflected in traditional financial statements. Investors will be required to comply with the following rules:

- **Monitoring** reports on sustainable development of enterprises and assessing their quality
- **Disclosures** related to their sustainability strategies and activities
- **Integration** of sustainability information into investment decisions
- **Cooperation** with businesses to improve sustainability reporting

The criteria for application of CSRD will be determined by the level of turnover and employment of enterprises. It will apply to companies that meet at least two of three criteria: an average number of employees above 250 people, balance of total assets of more than EUR 20 million, or annual turnover of more than EUR 40 million.

CSRD aims to improve the transparency and quality of reporting on sustainable development by companies and to allow for comparing their performance on a European scale. Poland must comply with CSRD by 6 July 2024. Art. 4 CSRD will apply from 1 January 2024 for fiscal years starting on or after 1 January 2024.

Green Deal Industrial Plan

In response to concerns that targeted incentives for companies contained in the USD 369 billion Inflation Reduction Act in the US will cause the EU to lose its competitive advantage in clean technologies, the European Commission presented its Green Deal Industrial Plan on 1 February 2023. It aims to provide a more supportive environment for innovative, sustainable industrial activities, and to increase the EU's production capacity for net-zero technologies and products needed to meet Europe's ambitious climate goals.

This plan is based on four pillars:

Predictable, consistent, and simplified regulatory environment for zero-carbon industrial activities striving to achieve net-zero emissions

This will cover the Net-Zero Industry Act proposed by the Commission and specify the technical criteria and rules for classifying economic activities as sustainable, as well as regulations on critical raw materials, crucial for implementation of the EU Green Deal. The Commission will also propose reforms to the design of the electricity market and harmonized requirements for sustainability and circularity in public procurement.

Faster access to national and EU funding, facilitating the development and implementation of clean technologies in Europe

This includes a temporary adjustment of state aid rules, working with member states to ensure rapid and preferential funding, as well as a proposal to create a European Sovereignty Fund to boost research and innovation.

Increasing digital skills and environmental awareness in the economy

The Commission proposes to create Net-Zero Industry Academies to implement programmes to improve and change qualifications in strategic industries.

Open trade and strengthening the resilience of supply chains

The Commission is considering setting up Critical Raw Materials Clubs, protecting the single market against unfair trade in the clean tech sector, and developing a network of free trade agreements.

Extractive industries: The EU policy on strategic raw materials includes measures to increase the production of strategic raw materials in the EU. This represents an opportunity for companies specialising in the development and operation of new and existing mining projects. Forward-looking companies will be well positioned to take advantage of the growing demand for strategic raw materials necessary to produce a wide range of technologically advanced products.

Recycling: The EU policy also aims to improve the recovery and reuse of strategic raw materials, to reduce the need for new extraction and conserve resources. This is an opportunity for companies specializing in recycling, for example, rare earth minerals. Companies that can develop effective recycling solutions will be able to benefit from increasing demand for recycled raw materials and reduced dependence on imports.

International cooperation: Promoting international cooperation to ensure equitable and sustainable access to raw materials and avoid the exploitation of vulnerable countries and local communities. Companies that can develop sustainable and ethical solutions throughout their supply chains will be able to capitalise on the growing demand for responsibly sourced raw materials.

Alternative technologies: Reducing the demand for strategic raw materials, including through the development of new materials and innovative recycling of existing ones. Companies that can develop innovations (regardless of the current scale of their business) will gain the ability to increase their market share thanks to a set of financing tools and preferences within the EU, e.g. allowing companies to demonstrate reduction of emissions or compensation for low efficiency indicators.

By reducing dependence on imported raw materials and promoting sustainable use of resources, the EU aims to ensure that it has access to the materials it needs to achieve its grand vision of a Green Recovery and become independent not only of Russian fossil resources, but also other scarce materials beyond the control of EU industries.

National Recovery Plan

A crucial element of future regulatory changes stems from the milestones of the National Recovery Plan agreed between the Polish government and the European Commission. The plan aims to use a mix of grants and preferential loans to restart post-pandemic economic development by investing in areas of EU interest, such as creating a resilient, competitive, green, and digital economy. Achieving the agreed policy goals will be a requirement to receive European funding from the EU recovery fund NextGenerationEU.

Climate and energy-related measures and milestones set to be translated into legislative proposals or financial tools include:

- Support scheme for energy efficiency and renewables in companies, including those covered by the EU ETS
- Investment in energy transmission networks, smart electricity infrastructure and energy storage systems
- Unlocking onshore wind farm development and offshore wind construction in the Baltic
- Improving conditions for development of hydrogen technologies
- New legislation enabling trade in secondary raw materials in the spirit of a circular economy
- Legal framework and financial support for green urban transition thanks to a law on sustainable urban development and creating the Green Urban Transformation Instrument
- Fighting air pollution by amending the Energy Efficiency Act and the Clean Air programme provided by the National Fund for Environmental Protection and Water Management (NFOŚiGW)
- Investment in district heating systems, replacing heat sources, and improving energy efficiency in residential buildings (thermal modernisation and installation of RES)
- Focus on energy-efficient housing for low- and average-income households and raising energy efficiency in schools
- Supporting green and smart mobility by requiring cities above 100,000 inhabitants to purchase only low- and zero-emission buses as of 2025, and modernisation of 478 km of railway lines by 2026

Energy Policy of Poland until 2040 (EPP2040)

In March 2022, the Polish government set forth principles for an update of its main strategic document on energy policy. EPP2040, accepted by the government in early 2021, was seen as requiring revision due to the changed geopolitical context, with the Russian aggression on Ukraine and subsequent shifts, such as the view on using natural gas as a transition fuel.

The government wants to add a fourth pillar, energy security, to its previous three principles of a just transition, zero-emission energy system, and good air quality. While in the short term it accepts the possibility of increasing the use of existing coal-fired units to limit the scope of gas investments, it plans that about half of electricity generation in 2040 will come from renewable energy sources. The current document puts RES levels for 2040 at about 40%.

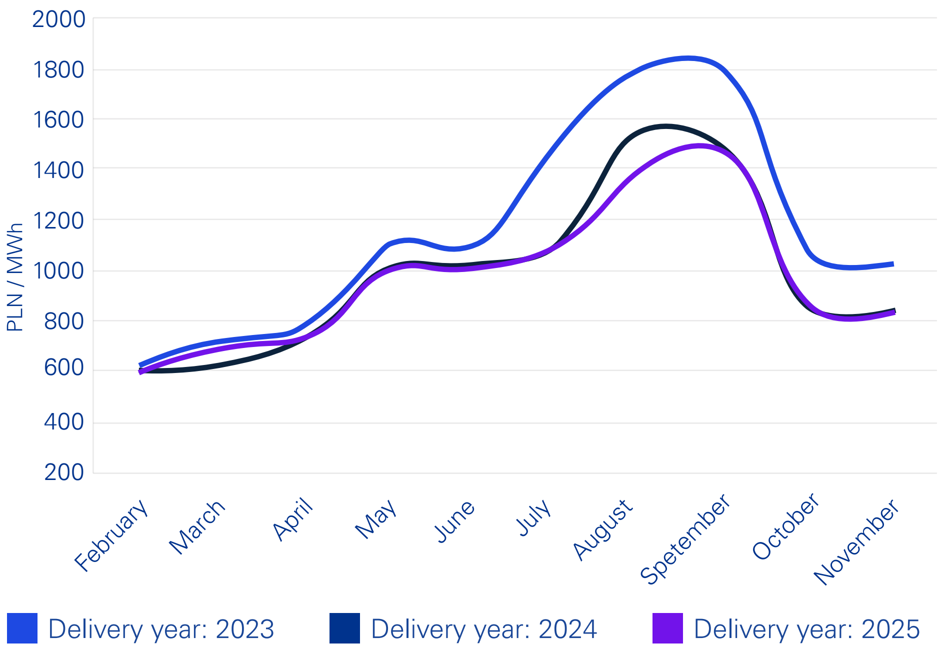
The principles set forth for the revision reaffirm commitments to supporting thermal modernisation, investing (in addition to wind and solar) in weather-independent RES, such as biomass or biogas, as well as investments in nuclear energy, including an interest in small modular reactors, as part of diversifying energy sources in the country and reducing reliance on fossil fuel imports.

Power purchase agreements in Poland

Against a backdrop of energy crisis and EU-wide decarbonisation plans, power purchase agreements (PPAs) are gaining momentum in Poland. These are long-term electricity supply agreements set between two parties — usually between a power producer and a customer — for 5 to 15 years. PPAs are commonly used as a tool to finance construction (investment costs) and operation (operating costs) of renewable energy plants, enabling development of new low-carbon energy sources.

The growing popularity of PPAs in Poland is strongly related to a constantly decreasing cost of energy (levelised cost of electricity — LCOE) generated by renewable power plants, as well as increasing costs of energy generated from conventional sources such as coal-fired power plants. PPAs allow for a long-term determination of electricity prices with constant or lower than market price volatility. The PPA formula allows companies to reduce or eliminate risks and challenges related to energy prices that companies have struggled with recently. Average prices of one-year futures concluded in recent months on the Polish Energy Exchange (TGE) are expected to outpace the average price of concluded PPAs during the upcoming three years.

In 2022 the Ministry of Climate and Environment presented a draft amendment to the Renewable Energy Act aimed at adapting Polish regulations to the requirements of the recast Renewable Energy Directive (RED II). This amendment aims to create a legal framework for developing PPAs, through introducing a definition of PPA. This solution is an attempt to anchor PPAs in the Polish legal order to better protect and support these agreements, mainly through limiting the impact of negative regulatory changes on PPAs.



A recent draft proposal to liberalise the onshore wind legislation in Poland may also have a positive impact on the physical and financial availability of PPAs. On the other hand, the adopted Act on Emergency Measures to Limit Electricity Prices and Support Certain Consumers in 2023 of 27 October 2022 may have a negative impact on the PPA market in Poland by temporarily introducing hindrances and minor restrictions.

There are several sources of information for estimating the volume and number of PPAs signed. It is generally assumed that several dozen (about 50) PPA agreements have been signed in Polan, but this number is significantly underreported, as companies (especially trading companies) often do not disclose this information publicly. It may be assumed that most wind or solar generation assets within the groups described earlier have some kind of PPA (mostly physical).

How can we help you?

KPMG offers its support at all stages in obtaining tax reliefs and subsidiesfrom EU and national funds.

- ESG Risk Management and implementation of ESG Regulations (EU Taxonomy, SFDR, TCFD)
- Sustainable Finance: Practical solutions for selection of green assets, design of green bonds frameworks, support in creation of "green" funds in accordance with SFDR
- Attestation of ESG-related disclosures
- Decarbonization strategy
- Carbon footprint calculation
- Strategy and energy transformation
- Power Purchase Agreements (PPA)
- Voluntary Carbon Markets (VCM)
- Circular Economy

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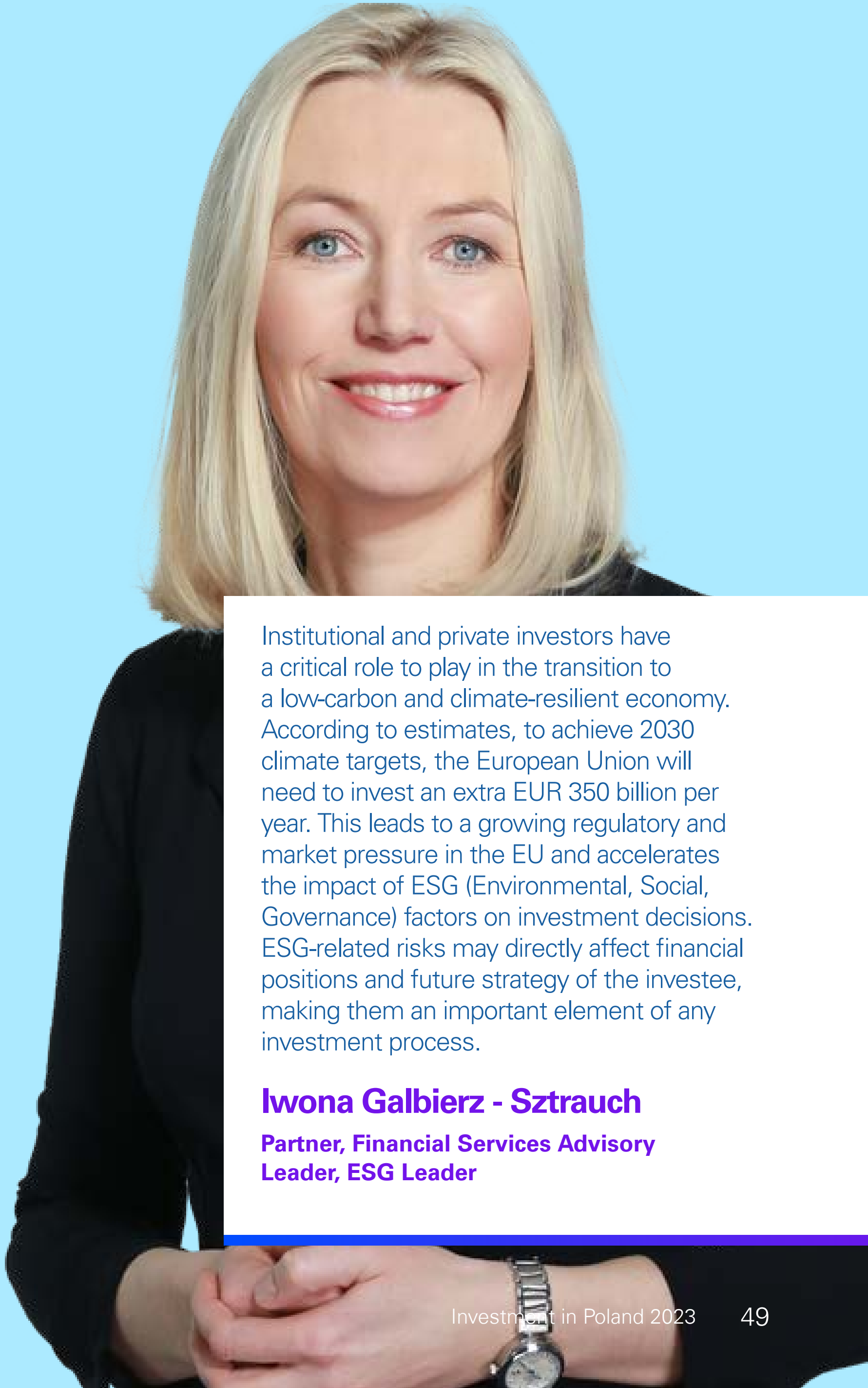


Institutional and private investors have a critical role to play in the transition to a low-carbon and climate-resilient economy. According to estimates, to achieve 2030 climate targets, the European Union will need to invest an extra EUR 350 billion per year. This leads to a growing regulatory and market pressure in the EU and accelerates the impact of ESG (Environmental, Social, Governance) factors on investment decisions. ESG-related risks may directly affect financial positions and future strategy of the investee, making them an important element of any investment process.

Iwona Galbierz - Sztrauch

Partner, Financial Services Advisory Leader, ESG Leader

Forms of conducting business activity

Forms of conducting business activity in Poland available to foreign entities

Legal status

Polish law distinguishes three groups of foreign businesses:

01 Foreign entities from member states of the European Union and member states of the European Free Trade Association who are parties to the Agreement on the European Economic Area, as well as foreign entities from countries that are not parties to the Agreement on the European Economic Area but enjoy freedom of establishment based on agreements signed by those countries with the European Union and its member states.

02 Citizens of countries other than member states who, for example, have obtained a permanent residence permit in the territory of Poland, a temporary residence permit, a tolerated stay permit, refugee status granted by the Republic of Poland, or other permits and permissions specified in Polish law.

03 Foreign persons other than those specified in points 1 and 2 above.

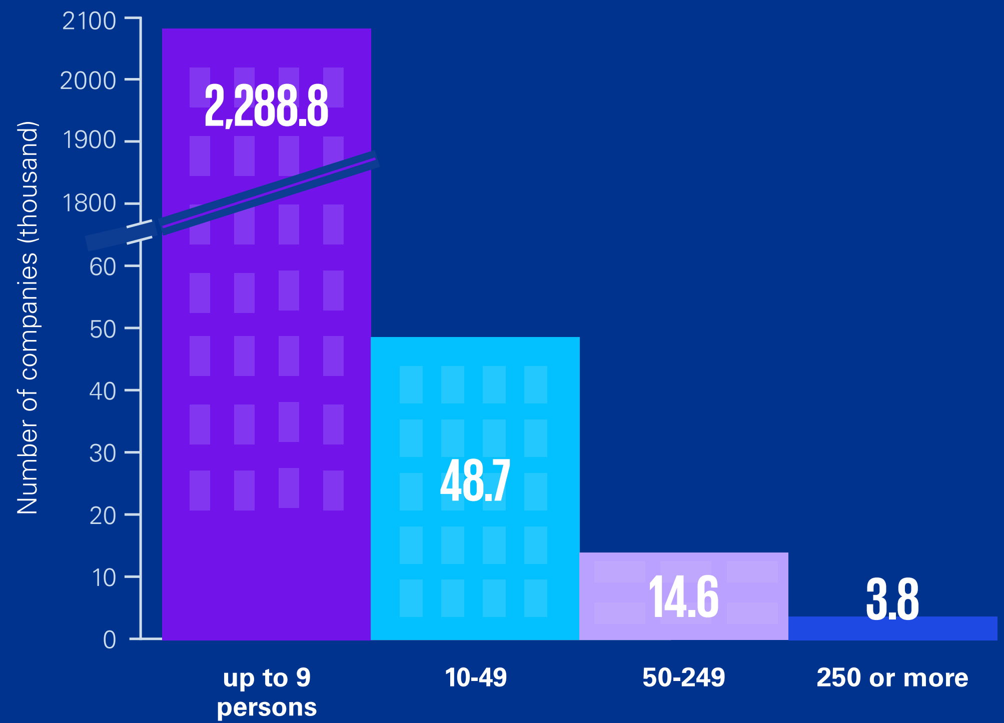
The first two groups benefit from the same legal options of doing business as Polish entities (i.e. sole proprietorship, partnerships and companies).

Entities included in the third group may take up and pursue business activities, but only in the following forms:

- Limited partnership (sp. k.)
- Joint-stock limited partnership (SKA)
- Limited-liability company (sp. z o.o.)
- Joint-stock company (SA), which differs from a limited-liability company not only in the required minimum share capital and other features, but also in that it can issue bearer shares; companies listed on the Warsaw Stock Exchange must have the status of a joint-stock company

It is also possible to establish a representative office or a branch of a foreign business in certain sectors of activity.

Number of non-financial companies in Poland, by employment (2021)



Source: KPMG in Poland based on Statistics Poland (GUS) data.

Choosing the form of investment

The choice of the legal form of business activity (investment) in Poland within the framework outlined above depends on a number of business-related, practical, or formal factors.

Taxation is among the main factors to consider before choosing the form of business in Poland. Other important criteria are the freedom of financial flows between the investor and the company in Poland (the investor's financing of the company's activity, payments from profit, exit from investment), as well as the scope of the investor's liability for the business in Poland, and the scope of protection for the investment, as defined by the generally applicable Polish regulations and international agreements. Another significant consideration is the degree of formalisation of activities and the scope of formal obligations related to the selected form of business.

For the reasons outlined above, foreign investors clearly prefer the limited-liability company *(spółka z ograniczoną odpowiedzialnością)* as the optimal formula for doing business in Poland, as illustrated in the table below.

Business entities with foreign capital, by legal forms in 2021

Limited liability companies	92.9%
Joint stock companies	3.3%
Limited partnerships	2%
Branches of foreign entrepreneurs	1.1%
Limited joint-stock partnerships	0.2%
Other legal forms	0.5%

Source: KPMG in Poland based on Statistics Poland (GUS) data.

Indeed, a limited-liability company has all the advantages and characteristics expected by investors. It is also a precise, clear and safe legal vehicle for conducting business in the form of a joint venture with other partners, whether Polish or foreign.

Unlike a joint-stock company, a limited-liability company is significantly deformalized, which makes it very easy for the investor to exercise control over the company.

In contrast, a joint-stock company is, by its nature, designed primarily for investments where the ownership structure is, or is expected to be, highly fragmented. Therefore, the legal format of a joint-stock company will be recommended if the investor plans to float the company on the stock exchange, as this legal form is required by law. Additionally, business in certain regulated areas (banking or insurance) must be conducted in the form of a joint-stock company, as long as such activity is not launched in the form of a branch of a foreign company.

Establishment of partnerships and corporations

Although the formalities required to start up a business in Poland have been significantly simplified, still a number of required steps and procedures need to be completed.

Activity conducted by individual business operators (natural persons, civil-law partnerships) is subject to disclosure in the Central Registration and Information on Business (CEIDG), while partnerships and corporations established under commercial law must be entered in the National Court Register (KRS). Both registers are centralised and can be universally accessed online.

Considering that the vast majority of foreign investments take the form of a corporation, the most important remarks related to the establishment of such companies are presented on the next page.

In principle, no special permit is required to establish a company with the participation of a foreign business owner. However, such permits may be necessary if a foreign investor joins an existing company which owns real estate.

Different rules apply if such a company seeks to run a business in regulated sectors such as banking, insurance, a range of other financial services, activities in the power and mining sectors, etc. In such cases, the company with a foreign owner is required to obtain relevant permits, licences, and approvals from the competent authorities, issued on the same terms and conditions as those applicable to companies involving only Polish business owners.

The Commercial Companies Code regulates all issues related to the establishment, operation, and dissolution of companies and partnerships, including limited-liability companies and joint-stock companies. The legal framework offers a lot of leeway for companies in framing their articles of association (*umowa spółki* in limited-liability companies or *statut* in joint-stock companies). Some provisions of the Commercial Companies Code are not mandatory and may be modified by the incorporating documents.

The articles of association and any amendments must be drawn up in the form of a notarial deed. One exception is a limited-liability company established online, where the articles of association are drawn up on an electronic form on the website of the Ministry of Justice.

The main differences between these two types of companies are specified on the next page.

Limited-liability company vs. joint-stock company

	Limited-liability company (sp. z o.o.)	Joint-stock company (SA)
Purpose	To carry out business activities for any purpose, as provided for by law	To carry out business and non-business activities
Number of founders (Polish or foreign)	At least one person (but if the founder is a limited-liability company, that shareholder must have more than one shareholder)	At least one person (but if the founder is a limited-liability company, that shareholder must have more than one shareholder)
Method of establishment	Simpler: signing the articles of association in the form of a notarial deed, or filling out online form + registering the company in court	More complicated: signing the articles of association + signing the notarial deed on subscription for shares (if the share capital is to be collected via public offering, the approval of the Polish Financial Supervision Authority is required) + registration in court
Operating restrictions	Restricted operations (not allowed to conduct business in areas such as banking or insurance or running a stock exchange)	Unrestricted
Minimum share capital	PLN 5,000	PLN 100,000
Shares	The initial capital may be divided into shares of equal or unequal value; preference shares entitle their holder to additional dividends or voting rights	Share capital is divided into shares of equal nominal value; types of shares: registered shares, bearer shares, preference shares, in-kind contribution shares, cash shares, silent shares and syndicated shares
Minimum nominal value of a share	PLN 50	PLN 0.01
Valuation of in-kind	Performed by the founders	By the founders, but the founders must draw up a report subject to examination by auditors appointed by the registry court (exceptions to this rule are permitted)
Legal status of shares	Shares are property rights and are not securities; in principle, share certificates are not issued	Shares are securities, and share certificates should be issued. Since 2021, share certificates have been replaced by an electronic register kept by authorized entities
Sale of shares issued in exchange for in-kind contribution	No restrictions; such shares may be sold after issuance provided no other restrictions apply	Such shares may not be transferred or pledged until the general meeting has approved the financial statements and accounts for the financial year during which the shares were paid for by in-kind contribution

	Limited-liability company (sp. z o.o.)	Joint-stock company (SA)
Trading in shares on the stock exchange	Not possible	Possible, subject to additional requirements
Capital increase	Generally, approval of the shareholders' meeting (in the form of a notarial deed) expressed by a 2/3 majority of votes is required unless the articles of association lay down stricter requirements; the articles of association may also authorize an increase in the share capital without any amendment to the articles of association, in which case the form of a notarial deed is not required and a simple majority of votes is sufficient to increase the share capital	Generally, approval of the general meeting (in the form of a notarial deed) expressed by a 3/4 majority of votes is required unless the company's bylaws lay down stricter requirements, with the exception of capital increases made up to the amount of the target share capital, for which a resolution of the management board is required
Mandatory audit	Only if certain conditions set out in the Accounting Act are fulfilled	At all times
Obligation to convene a meeting if the company suffers a loss in order to decide on the going concern status	If the loss exceeds the sum of the supplementary and reserve capital and half of the share capital	If the loss exceeds the sum of the supplementary and reserve capital and 1/3 of the share capital
Personal liability of shareholders for the liabilities of the company	The shareholders are not liable for the company's liabilities; indirect (economic) liability up to the amount of the investment made by the shareholder	The shareholders are not liable for the company's liabilities; indirect (economic) liability up to the amount of the investment made by the shareholder

	Limited-liability company (sp. z o.o.)	Joint-stock company (SA)
Personal liability of board members for the liabilities of the company	The Commercial Companies Code provides for personal joint and several liability of members of the management board, including liabilities for tax and social security arrears (however, the law provides for various restrictions in this respect) if enforcement proceedings against the company prove ineffective	If enforcement against the company proves ineffective, members of the management board are jointly and severally liable for tax arrears (however, the law provides for some limitations in this respect); liability for other liabilities is provided for under the general rules set out in the Civil Code, the Bankruptcy Law, and the Restructuring Law
Shareholders' right to share in profits	Enforceable by the shareholders' meeting's approval of the balance sheet and profit and loss account for the previous year, in the form of a shareholders' resolution on the payment of dividends (provided that the articles of association provide for such a resolution), unless the articles of association or the resolution of the shareholders' meeting provides otherwise	Enforceable by the general meeting's approval of the balance sheet and profit and loss account for the previous year, in the form of a shareholders' resolution on the payment of dividends, unless the company's articles of association or the resolution of the general meeting provides otherwise
Distribution of assets after liquidation of the company	Distribution of assets among the shareholders cannot take place until six months after the opening of liquidation was announced and creditors were invited to report claims	Distribution of assets to shareholders may not take place until one year after the opening of liquidation was announced and creditors were invited to report claims

In addition to concluding the aforementioned act of incorporation, the newly established company must be entered in the KRS system, and must also be registered for taxation and statistical purposes. The latter is done simultaneously with the procedure for entry in the National Court Register.

When a company starts hiring staff, it must make certain notifications and follow required procedures, including for social security of its employees. It must also obtain a work permit for the employment of foreign staff members wherever such consent is required under the relevant legislation.

Only natural persons, both Polish citizens and citizens of other countries, may be members of the company's governing bodies. These functions may be performed with or without compensation, and the individuals' physical presence in Poland is not required.

For the company to be registered, it is necessary, in accordance with the relevant European regulations, to indicate the beneficial owner of the new business. Members of the company's governing bodies must also be assigned a PESEL number (a number assigned in the Polish system of citizen registration). Members of management boards must also have an electronic signature, since the use of an electronic signature is required in certain procedures related to the management of company affairs (e.g. signing annual financial statements).

Representative offices and branches of a foreign business

Foreign natural and legal persons, including banks, insurance companies and foundations, may establish representation in Poland. The establishment and operation of any kind of representation is regulated by Polish law.

Foreign entities may establish two forms of representation: a representative office or a branch of a foreign business. The scope of permissible activities for a representative office is much narrower than that for a branch. Branches may conduct business activity within the scope of business corresponding to the activity conducted by the foreign business in its home country. A representative office may only engage in advertising and promotion of the foreign business.

Branch

Business activity within a branch may commence after the branch has been entered in the commercial register of the National Court Register (KRS).

A foreign business which sets up a branch is required to appoint a person at the branch authorised to represent the foreign business. The foreign business must also:

- Use, with reference to the branch, the original name of the foreign business together with the name of the business's legal form translated into Polish, adding the words "branch in Poland" *(oddział w Polsce)*.
- Keep separate accounts for the branch in the Polish language in accordance with accounting regulations.
- Report any changes in the factual and legal situation to the minister for the economy, e.g. when liquidation of the foreign business has been opened or the business has lost the right to conduct business activity.

The provisions of the Commercial Companies Code pertaining to liquidation of a limited-liability company apply accordingly to the liquidation of a branch of a foreign business.

A foreign business which runs a branch is subject to income tax in Poland with respect to the income obtained in the territory of Poland, unless the relevant tax treaty provides otherwise.

The sale or supply of services carried out through a branch is subject to VAT in accordance with the regulations based on the EU VAT Directive (Council Directive 2006/112/EC).

Moreover, the foreign business is required to keep separate accounts in the Polish language in accordance with the applicable accounting regulations and to keep the tax registers required by Polish tax law.

Representative office

A foreign business entitled to establish a representative office is a foreign person conducting business activity abroad or a Polish person conducting business activity abroad.

Representative offices are subject to entry in the register of representative offices kept by the Minister of Entrepreneurship and Technology (except for representative offices of banks and credit institutions). To register a representative office, it is necessary to enclose an excerpt from the foreign register together with a translation into Polish, or other document which specifies the seat and rules of representation for the representative office. Moreover, a person authorised to represent the representative office should be indicated together with a declaration of acceptance. A representative office may be established for only two years, with the possibility to extend this period for two more years.

A representative office may also be set up by foreign persons appointed by an act of the competent authority of their country of establishment to promote the economy of that country. Such a representative office may only engage in the promotion and advertising of the economy of that country.

The minister may refuse to enter a representative office in the register if not all requirements have been fulfilled. The minister may also delete a representative office from the register if the provisions of Polish law are not complied with.

Joining existing companies

Foreign businesses may also acquire shares in existing Polish companies, either by purchasing shares from existing shareholders or by subscription for new shares in the increased share capital of an existing company.

This type of investment may be subject to certain restrictions or procedures. In particular, it must be examined whether such an investment, which will constitute a kind of economic consolidation, requires the approval of an antitrust authority: depending on the volume of the planned transaction, either a national antitrust authority (in Poland, the Office of Competition and Consumer Protection, UOKiK) or the European Commission. Moreover, the consent of the Polish authorities may be required if an investor from a non-EEA country acquires or takes up more than 50% of the share capital of a Polish company that owns real property. Specific restrictions and related procedures will apply if the target company owns any agricultural real property.

The regulations introduced in connection with the Covid-19 pandemic provide for protection for Polish enterprises operating in specific areas of the economy against acquisition by foreign businesses.

Investment income and liquidation of operations

Funds for opening and conducting business activity in Poland may be invested as share capital of a company or in other forms, such as loans or additional payments to the company provided by a foreign investor. In those cases, note should be taken of the existing tax rules related to thin capitalisation.

Funds invested by the foreign owner may be recovered either as repayment of loans or additional payments, or as dividends paid and disclosed in approved financial statements of the company. Polish commercial law also provides for the possibility of paying advances against the planned dividends.

Other business transactions between a Polish company and its foreign shareholder must be closed in compliance with the tax requirements applicable to transfer pricing.

In principle, investors can decide to dissolve and liquidate the company at any time. The liquidation (winding-up) procedure is conducted under court supervision. A number of formalities must be completed under the procedure, including public notification of potential creditors, who can lodge their claims against the company during a period of three months.

Funds remaining in the company after all creditors' claims and liabilities have been settled (liquidation sum) are paid out to the shareholders.

Foreign investors participate in the company's profits and receive relevant payments, as mentioned above, on the same basis as Polish investors.

How can we help you?

We offer comprehensive legal advisory services in relation to M&A transactions as well as any corporate issues, from company incorporation, through comprehensive day-to-day legal services and company restructuring, to the conclusion of the company's legal existence.

- Mergers and acquisitions
- Company law / corporate services
- Banking and finance
- Energy Law
- Compliance and risk management
- Real Estate Law
- Labour Law
- Bankruptcy and restructuring
- IP
- GPRD

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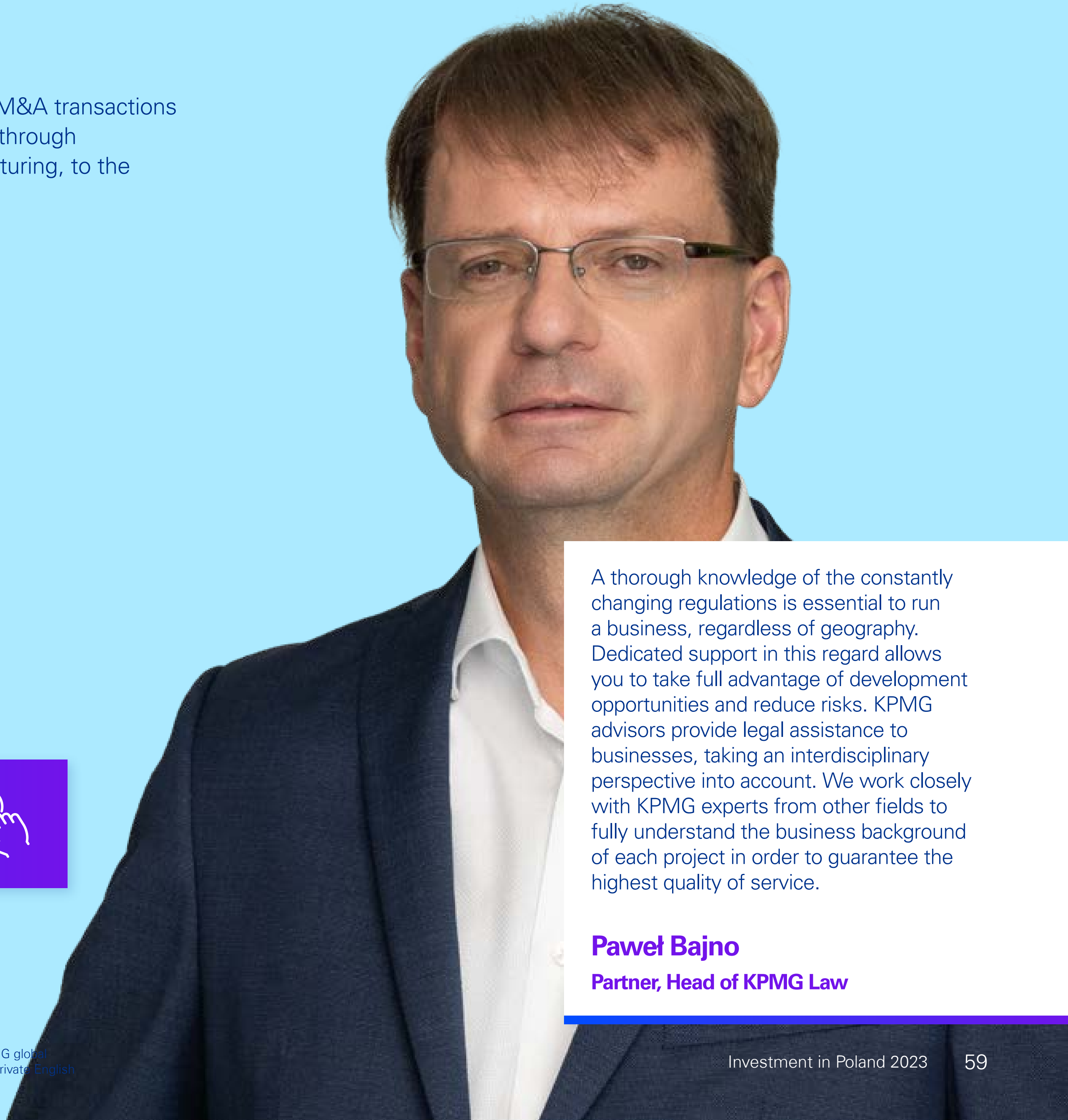
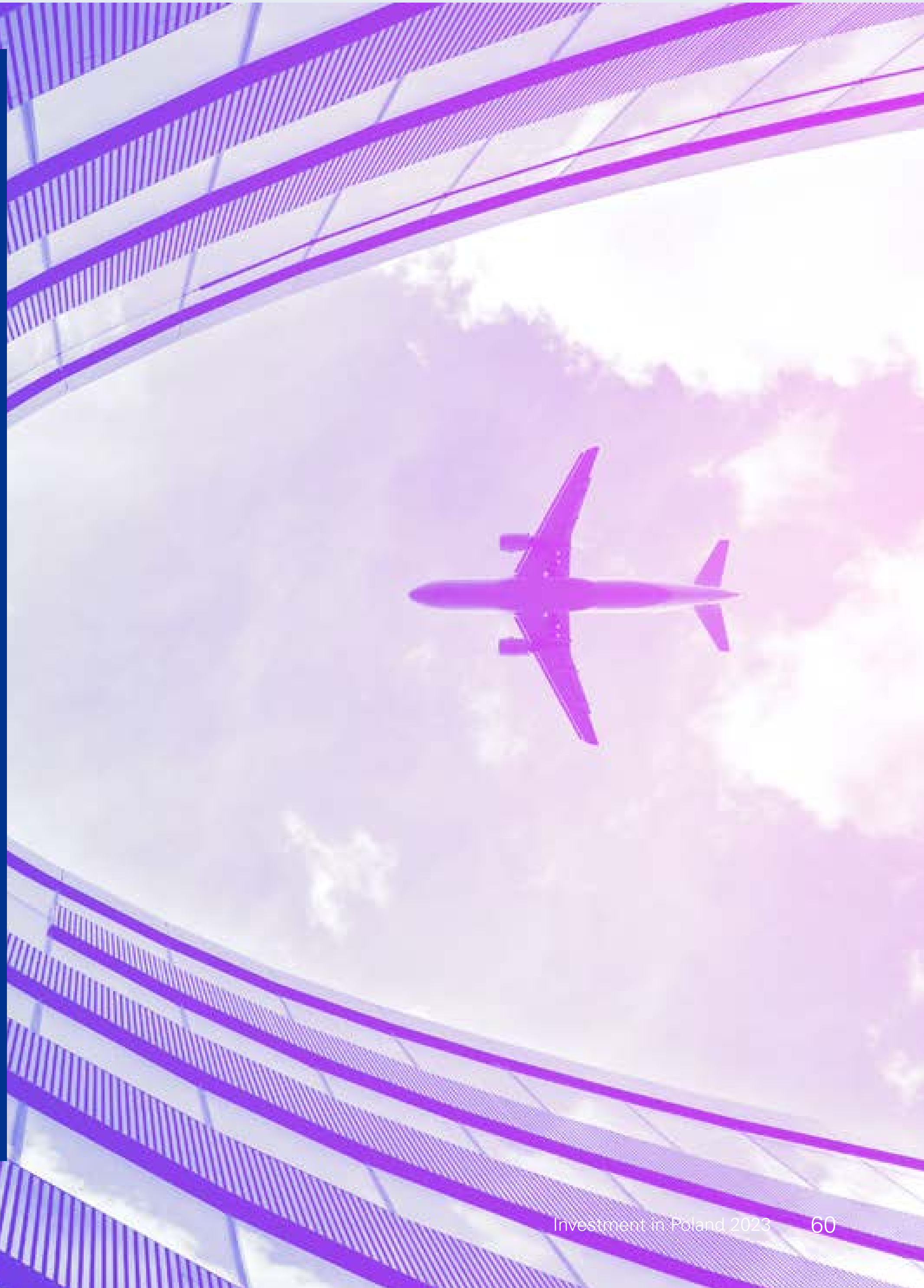


A thorough knowledge of the constantly changing regulations is essential to run a business, regardless of geography. Dedicated support in this regard allows you to take full advantage of development opportunities and reduce risks. KPMG advisors provide legal assistance to businesses, taking an interdisciplinary perspective into account. We work closely with KPMG experts from other fields to fully understand the business background of each project in order to guarantee the highest quality of service.

Paweł Bajno

Partner, Head of KPMG Law



Tax regulations

Polish tax system

The Polish tax system is based on self-assessment. The Polish tax authorities have the power to undertake a tax audit in the five years after a tax liability arises and to reassess the amount of that tax liability. If a tax audit has been carried out and a decision is issued by the respective authorities, then that period is usually regarded as being effectively closed (it is difficult for the authorities to re-open periods once a decision is issued).

According to a resolution of the Supreme Administrative Court, this limitation period for corporate income tax is also applicable irrespective of settlement of tax losses reported from previous periods.

The obligation to pay CIT arises three months after the end of the fiscal year. The tax liability in PIT arises in April of the following calendar year. Both taxes are paid in the advance payment system during the tax year, and after the end of the year the difference is paid or the tax overpayment is refunded. VAT and social security withholdings are paid in the following month. Interest on overdue tax can be levied on any unpaid amounts. As of December 2022 the general rate of penalty interest was 16.5% per annum. The penalty interest rates may be subject to change depending on the basic Lombard loan interest rate, which is variable and set in accordance with the provisions on the National Bank of Poland, calculated as 200% of the basic Lombard loan interest rate plus 2%, except that the penalty interest rate may not be lower than 8%.

Polish tax law is subject to constant changes. New regulations are included in the report.

Tax rulings

Under Polish tax law, the taxpayer has the right to apply to the Director of the National Tax Information for an interpretation of tax provisions. Such a tax ruling, if adhered to, should safeguard the position of the taxpayer filing the request as long as the background presented in the application for the ruling corresponds to the actual facts and the legal regulations based on which the tax ruling was issued are still binding in respect to the transaction.

If the tax ruling refers to future events, it protects the taxpayer against any future reassessments (i.e. payment of tax arrears, penalty interest and penal fiscal liability). If the tax ruling refers to past events, the protection is limited to penalty interest and penal fiscal liability.

The Minister of Finance may issue general tax interpretations of a similar nature, but they are addressed to all taxpayers.

Mandatory disclosure rules

Reporting obligations known as mandatory disclosure rules (MDR) have been imposed in Poland under the Tax Ordinance.

These provisions transposed EU Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6).

Based on the Polish MDR regulations, tax arrangements which satisfy certain criteria specified in the Tax Ordinance must be reported to the head of the National Revenue Administration (KAS).

However, the Polish MDR provisions went further and extended the reporting obligations beyond DAC6. The Polish MDR provisions include additional hallmarks that may trigger the MDR reporting obligation. As a result, the Polish MDR regulations cover not only tax arrangements that include hallmarks under DAC6, but also other transactions (including domestic and other cross-border transactions, as well as VAT transactions).

Reporting obligations may be imposed on various entities participating in the arrangement: either on the entity developing the tax arrangement, the taxpayer itself, or an entity supporting implementation of the tax arrangement.

Poland is a country with one of the highest penalties when considering MDR obligations, as not submitting information subject to MDR reporting or submitting such information after the deadline may result in a penal fiscal sanction (imposed on individuals from within the taxpayer's financial / management structure) in the form of a fine up to about PLN 33.5 million (about EUR 7.5 million).

General anti-abuse clause

A general anti-abuse clause (GAAR) is included in Polish tax law. On the basis of the GAAR regulations, activity undertaken, in particular, with the aim of achieving a tax benefit that is contradictory in the given circumstances to the subject and aim of the regulation of the tax act should not result in achieving such tax benefit, provided that the manner of action was artificial (tax avoidance). Therefore, a justified business case should be in place when performing any restructuring involving Polish entities. To confirm that the GAAR does not apply to the given action/operation/transaction, the taxpayer is entitled to obtain a protective opinion.
However, so far application for a protective opinion has not been a common practice in the Polish market. Therefore, a strong business justification should be in place when performing any restructuring involving Polish entities.

Moreover, a further penalty sanction in the form of an additional tax liability resulting from application of the GAAR might be applied.

Corporate income Tax

Generally, CIT in Poland is levied on all taxable income. The standard CIT rate of 19% is payable on income. There is also a reduced rate of 9% CIT which may be applicable (with the exception of capital gains), but availability of this rate is limited to entities starting their activity and so-called "small taxpayers," whose:

- Revenues for the current tax year do not exceed the PLN equivalent of EUR 2 million, and
- In the case of entities continuing their activity, their sales revenues, including VAT, for the previous tax year did not exceed the PLN equivalent of EUR 2 million.

Taxable income in Poland is calculated as taxable revenues reduced by eligible costs incurred to generate those revenues, or in order to retain or secure a source of taxable revenue.

However, there is a long list of exceptions, i.e. expenses that cannot be treated as tax-deductible costs despite the underlying purpose of generating revenue. Non-deductible costs include for example contractual penalties resulting from the supply of defective goods or services, entertainment costs, accrued but unpaid or written off interest, etc.

Since 1 January 2021, CIT obligations have been extended to limited partnerships and general partnerships (in which the general partners are not only natural persons) having their registered office or place of management in the territory of Poland.

Essentially, this means that the income generated by limited partnerships (and certain general partnerships) which, up to 1 January 2021, were treated for CIT purposes as tax-transparent entities, is covered by CIT at the partnership level. Subsequently, there is also taxation on payments made to partners at the partner level. The new regulations provide under certain conditions a tax exemption on the portion of revenue earned by limited partners due to participation in a limited partnership (up to PLN 60,000 of revenue annually).

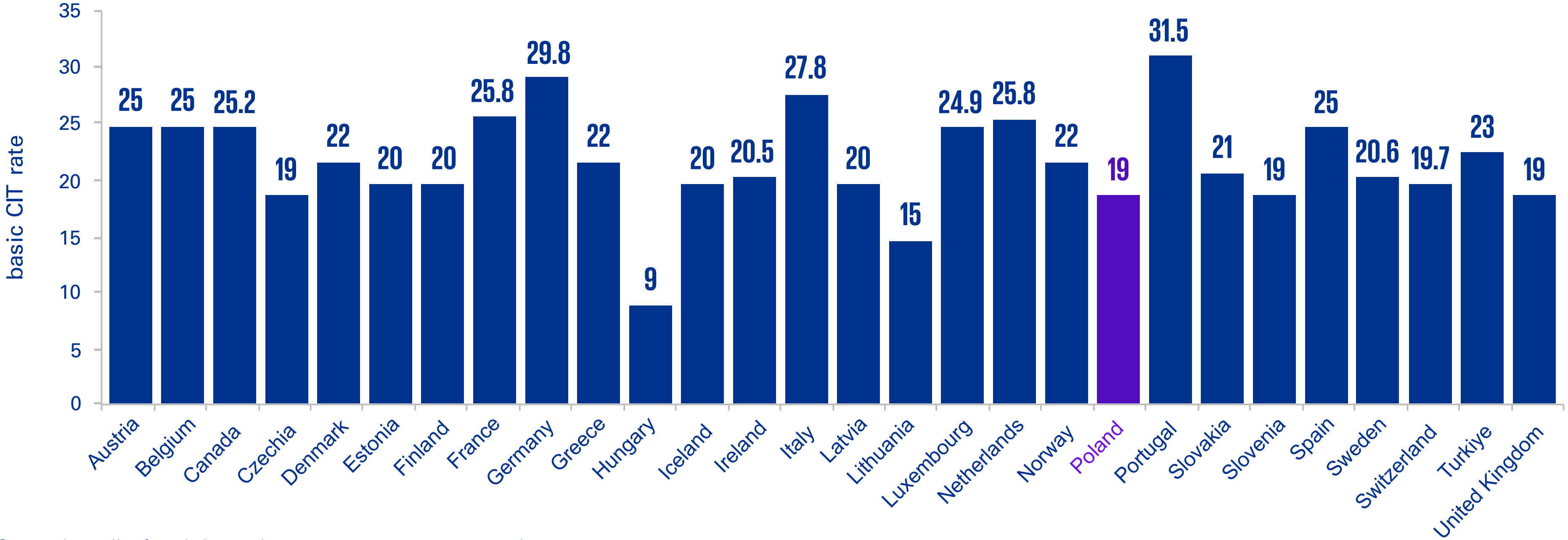
"Estonian CIT"

As of January 2021, the model commonly referred to as "Estonian CIT" was implemented in the Polish CIT Act. The main feature of this model is that eligible CIT payers will not have to pay income tax until they decide to distribute the company's earnings.

The Estonian CIT scheme, envisaged only for: limited partnership, partnership limited by shares, limited-liability companies and joint-stock companies, may be applied only by companies meeting a number of criteria; among others the company's shareholders are only natural persons, the company does not hold shares in other companies, revenues from passive activities must constitute less than half of total revenues (as well as conditions related to employment).

In general, the subject of lump-sum taxation, as a rule at the 10% or 20% rate, will be the income corresponding to the net profit designated for distribution, earned during the lump-sum taxation period, or the net profit transferred to cover losses reported prior to the lump-sum taxation period.

Corporate Tax Rates in Europe



Source: https://taxfoundation.org/corporate-tax-rates-europe-2023/

CIT rates in the EU

On average, European OECD countries currently levy a corporate income tax rate of 21.5 percent.

The basic CIT rate in Poland of 19% is therefore lower than the EU average.

Two sources of income (business and capital)

There are two separate sources of income in the Polish CIT Act:

- Capital gains (e.g. income from participation in profits of legal persons, licence fees, profits from transfer of shares/partnership, disposal of receivables previously purchased)
- Income from business profits

The two sources need to be settled separately for tax purposes. As a result, losses and costs can be settled only within each income source (business or capital respectively).

As of 1 January 2021, corporate income tax settlement on the sale of shares in certain real estate companies by a foreign shareholder was shifted to the Polish real estate company (if certain conditions are met). The foreign shareholder is obliged to transfer the amount of tax due to the real estate company before the tax payment deadline, i.e. by the 20th of the month following the month in which the income was generated.

Moment of settlement of tax costs

The costs directly relating to taxable income are, as a rule, recognised in the year in which the corresponding revenue was gained, even if such costs are incurred after the end of the tax year but before the date when the financial statement or annual tax return is filed. Other direct costs should be recognised in the subsequent tax year.

Costs indirectly connected to taxable income are deductible on the date they are incurred. They are deemed to have been incurred if they were entered into the accounting books on the basis of an invoice or other accounting document.

Foreign exchange differences

The CIT Act allows two methods of calculation of foreign exchange differences for tax purposes: the "tax method" and the "accounting method." Under the tax method (applicable by default), FX constitutes taxable income or tax-deductible costs only when realised. Under the accounting method, FX gains or losses crystalise for tax purposes when accrued in the accounts.

Tax losses

Reported tax losses may be utilised within the next five consecutive years. Generally, 50% of a tax loss incurred in a year may be utilised, with the right to one-off utilisation of PLN 5 million of a loss (the remaining part of the loss is subject to the 50% per year rule). Recently, additional limitations regarding utilisation of tax losses were introduced when the taxpayer took over another entity or enterprise, or part of an enterprise is acquired or contributed.

Tax depreciation

Fixed assets and intangibles are generally expensed for income tax purposes by way of tax-deductible write-offs.

There are three depreciation methods foreseen by the provisions: straight-line depreciation, reducing balance depreciation, and depreciation based on individual rates.

Maximum depreciation rates under the straight-line method are set out in the CIT Act, e.g. 2.5% p.a. on buildings and, in principle, 4.5% p.a. on infrastructure.

Rates for each asset can be reduced (depreciation period extended) at the beginning of the depreciation period or at the beginning of each year (these can also be increased back to the maximum values later on, if desired). In some special cases foreseen in the CIT Act, the depreciation rates may also be increased by multiplying the statutory rates by a certain factor. Individual (higher) depreciation rates are also available for second-hand assets.

Land cannot be depreciated for tax purposes. Based on rules implemented in 2022, tax depreciation is additionally limited for real estate assets, and tax depreciation of real estate assets for real estate companies is limited to the value of accounting depreciation.

The chosen method of tax depreciation should be applied across the whole period of the asset's tax depreciation.

Earning stripping rules

Generally, interest is tax deductible in Poland when paid or capitalised to the loan principal (i.e. on a cash basis, not an accrual basis), subject to earning stripping rules and arm's-length restrictions.

Net financing costs are excluded from tax deductible costs in the amount in which the surplus of debt financing costs exceeds the higher of 30% of tax EBITDA or PLN 3 million (safe harbour). Net financing costs cover all costs related to obtaining financial resources from other entities, including but not limited to interest, fees, commissions, penalties and costs of hedging. Please note that the net financing costs included in the initial tax value of the asset and depreciated also need to be considered for the purpose of earnings stripping rules.

The surplus of net financing costs is to be understood as the excess of debt financing costs deductible in the given tax year over the interest-like revenues subject to the tax in the given tax year. Interest-like revenues include interest received / capitalised to the loan principal, positive foreign exchange differences, and other revenues economically equal to interest that could fall into a category of net financing costs.

The financing cost excluded from the tax-deductible costs in the given tax year is subject to deduction within the successive five years under the limits applicable in the particular year.

Interest deductibility is denied in case of financing provided by a related party for capital transactions (unless the financing was received before 2022).

Fiscal grouping

In Poland, a tax capital group may be formed by limited-liability, joint-stock, or simple stock companies with their registered office in Poland provided that the following conditions are met:

- The average qualifying share capital of the companies in the group may not be lower than PLN 250,000 (about EUR 55,000).
- The Polish parent company must hold at least 75% of the Polish subsidiaries' shares directly.
- None of the group companies should have outstanding tax liabilities at the time of concluding the tax capital group agreement.

Any tax loss arising prior to formation of the tax capital group may be settled by the tax capital group if certain conditions are met: (i) if the company acting as an independent taxpayer could utilise the tax loss, (ii) the loss was incurred by the company no earlier than in the fifth tax year preceding the tax year of the tax capital group for which the deduction is made, and (iii) the company whose loss is deducted is in a tax income position in the year when the loss is deducted and the amount of such deduction is limited to 50% of the tax loss incurred and up to the taxable income of such company.

Upon dissolution of the tax capital group, a member company is able to carry forward the tax losses incurred before becoming a member of the tax capital group, if not utilised by the tax capital group (however, the five-year period when tax losses could be utilised also includes tax years in which the company was a member of the tax capital group).

From 1 January 2022, the subsidiaries are allowed to hold shares in other companies forming a tax capital group.

Once the tax capital group is established, the following additional conditions must be met:

- The members of the tax capital group may not benefit from CIT exemptions.
- All transactions between members of the tax capital group and related non-group parties must be at arm's length.

If any of these conditions are not satisfied, the tax capital group is dissolved with retroactive effect, except for the situation where the profitability ratio is not met. The group must be established for at least three years, based on a written agreement. To extend the tax period of the capital group, a new agreement must be concluded, or the existing agreement amended, subject to notification and registration by the head of the competent tax office.

The companies forming a tax capital group are jointly and severally liable for their income tax liabilities for the period of validity of the tax capital group agreement.

The obligation to prepare a transfer pricing local file does not apply to controlled transactions between the members of a tax capital group.

From 1 January 2023, VAT grouping is also possible in Poland.

Controlled foreign companies rules

Certain income or gain derived by foreign subsidiaries owned by Polish taxpayers is taxed in Poland. Taxpayers may be obliged to pay 19% CIT in Poland on income derived by foreign entities if they qualify as "controlled foreign companies" (CFC).

The CFC rules apply if the following criteria are satisfied:

- The subsidiary is considered a CFC because its seat or place of management is in a blacklisted country (practising harmful tax competition), or in a country with which Poland has not concluded an agreement with an exchange of information clause.
- At least one-third of the income/gain derived by the subsidiary is passive, e.g. gain from the disposal of shares, interest income, IP income or provision of certain intangible services.
- Such income/gain is tax-exempt in the subsidiary country or the tax paid is lower than 25% of the liability to be paid if the foreign company were a tax resident in Poland, or
- No genuine economic activity is carried out by the subsidiary.

Still, if the foreign company conducts genuine economic activity in the country of its seat (an EU/EEA country) and it is taxed there on its worldwide income, then no CFC taxation in Poland would arise.

Minimum income tax

In 2022, a new levy, minimum income tax, was introduced into the Polish regulatory framework, but its applicability was suspended until 1 January 2024. This will apply to entities with a tax loss (reported from business profits from operational activities, not from a capital source), or CIT taxpayers whose tax profit/taxable revenues ratio is below 2%.

In a nutshell, the rate of this new minimum tax is 10%, and the tax base is the sum of:

- 1.5% of the value of revenues other than from capital gains
- "Excessive" costs of debt financing paid to related parties (generally exceeding 30% of so-called tax EBITDA)
- Costs of qualified services or intangible rights paid directly or indirectly to related parties exceeding 5% of tax EBITDA plus PLN 3 million

The amount of the minimum income tax due will be deductible from CIT calculated according to general rules for three consecutive tax years after the given tax year for which the tax was paid.

Restructuring

From 1 January 2022, regulations related to restructuring were also significantly changed. In particular, the following amendments were introduced:

- Only the first exchange of shares could be neutral if the conditions for tax neutrality are met.
- The neutrality of mergers and demergers is to depend on whether the shares in the acquired or divided entity were acquired as a result of an exchange of shares or another merger or demerger.

Polish holding company

A Polish holding company and new taxation rules for such entities have been introduced into Polish tax law. The changes are intended to encourage foreign and Polish investors to incorporate holding entities in Poland.

The conditions to apply the new regime for a Polish holding company include the holding company holding at least 10% of the shares in the subsidiary for at least one year, not being part of a fiscal group, and carrying out genuine business activity.

If certain conditions are met, the Polish holding company will be tax exempt on:

- Dividends received from its subsidiary
- Capital gain realised on disposal of shares in the subsidiary to an unrelated entity

However, this rule is not applicable to the exemption of capital gains on the sale of shares in real estate companies.

Profit-shifting tax

The rules limiting the shifting of profits to related entities in jurisdictions with low effective taxation constitute a new source of income subject to taxation at source.

Profit-shifting is understood as costs paid directly or indirectly to a related entity, where:

- Income (revenue) of a related entity is taxable at a tax rate lower than 14.25% or exempt from this tax
- Such costs constitute at least 50% of the revenues earned by that entity
- A related entity transfers at least 10% of its revenues to another entity
- The sum of these costs incurred for related entities is at least 3% of the total tax deductible costs for this year.

The regulations on profit-shifting tax will not apply to the costs paid to a related entity that is subject to tax on all its income in an EU member state (or a member state of the European Economic Area) and conducts real economic activity in that state.

Witholding tax

Under Polish law, a 20% withholding tax (WHT) applies to interest, royalties and fees for services provided in the field of entertainment, show or sporting activities and fees for intangible services paid abroad (such as advisory services, accounting services, advertising, management and control services, data processing, employee recruitment, guarantees and sureties, and similar types of services). Dividends paid by Polish tax-resident companies to foreign entities are subject to 19% WHT in Poland.

However, the domestic WHT burden may generally be reduced or eliminated under tax treaties to which Poland is a party or based on the EU's Interest and Royalties Directive or Parent-Subsidiary Directive, implemented directly in the Polish CIT Act. Nevertheless, to apply the treaty rates or WHT exemption provided in the CIT Act, according to the CIT Act the payer should hold the relevant documentation, i.e. a valid certificate of tax residence of the recipient, and in the case of payment of dividends and interest, an additional statement confirming that the recipient is not considered an entity that is CIT-exempt on its worldwide income in its country of establishment.

In the case of interest and royalties, the statement should also confirm that the recipient is the beneficial owner of the interest received. If the payer does not possess such documentation, the statutory WHT rates should be applied.

Changes to WHT regime in Poland

As of 1 January 2022, WHT obligations depend on whether a payment relates to passive income and is made to a related party, and whether the PLN 2 million threshold of those payments has been exceeded:

- Below the threshold of PLN 2 million, the Polish WHT remitter may apply the WHT relief, provided that all conditions are met (in particular, holding a tax residency certificate and performing due care procedures).
- Above the threshold of PLN 2 million, the basic concept is that the Polish WHT remitter should collect and pay WHT at domestic rates (20% or 19%, depending on the particular payment type). However, this regime applies to passive income payments made only to related parties (e.g. interest and royalties) and might be eliminated (and the WHT relief at source might be applied) if a WHT clearance opinion is obtained or the WHT remitter's statement is submitted.

The payee or remitter may apply to the tax authority for an opinion on WHT relief in respect to interest and dividends based on the relevant EU directives or tax treaty. The opinion should be issued within 6 months of the application. The opinion is valid for 36 months and is subject to a fee of PLN 2,000.

Another solution is the WHT remitter's statement which needs to be submitted to the tax authorities prior to payment of the tax and should confirm that (i) the tax remitter possesses the documents required by law justifying the application of the particular tax preference and (ii) having verified the documents, the tax remitter is not aware of any circumstances excluding application of the given WHT relief. The statement is valid until the end of the given tax year. It is filed electronically. By the last day of the month following the year in which the first statement was submitted, for confirmation purposes a second statement needs to be provided to the tax authorities.

A taxpayer who paid WHT in Poland at domestic rates is entitled to seek a refund.

Beneficial ownership, genuine business activity, substance requirements

As indicated in the section above, the remitter is obliged to demonstrate due care when applying preferential withholding taxation. Therefore, the Polish remitter is obliged to examine the status of the beneficiary of the payment as the actual recipient of the receivables, including its business substance.

Furthermore, with the new WHT regime in Poland, new provisions on beneficial ownership, genuine business activity and substance requirements have been introduced. The beneficial owner is understood as an entity fulfilling all the following criteria:

- It receives payments for its own benefit and decides on its own on further use of the payments.
- It bears the economic risk of loss of all or part of the receivable.
- It is not an intermediary, representative, trustee or other entity obliged to transfer all or part of the receivable to another entity.
- It conducts genuine business activity in the origin country, and the receivables are connected with that activity.

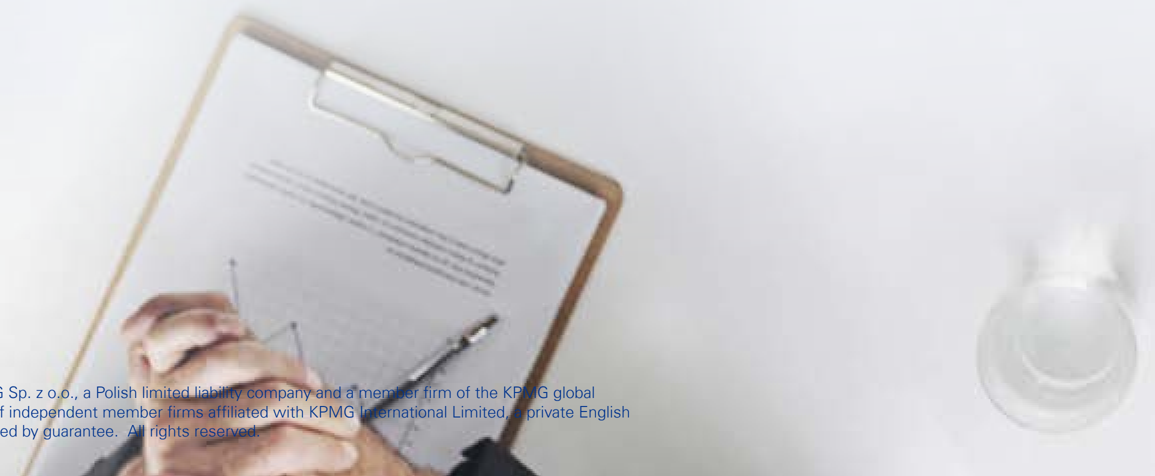
Support in WHT reporting

When evaluating whether business activity is genuine, a number of detailed criteria should be taken into account.

On the other hand, the concept of substance of foreign companies has not yet been established in the Polish tax authorities' practice. However, given the recent developments in the Polish tax law, from the Polish perspective it is becoming increasingly essential to ensure certain functions and assets at the level of the holding company that is the recipient of income derived from a Polish source. The economic substance of such entity may be tested by the Polish tax authorities.

Based on a warning issued by the Ministry of Finance, for an entity not to be considered a shell company, a number of criteria will be taken into account (this list is generic and not exhaustive, and the tax authorities may expect different prerequisites to be met in different cases):

- The entity should have premises at its disposal enabling business operations, i.e. not employing domiciliation or fiduciary services.
- The entity should not employ exclusively administrative staff.
- The entity's bank account should be operated by a bank in its state of residence and handled by staff there.
- If needed, the entity should seek advice from local advisors before foreign firms.
- Accounting, corporate and legal records should be kept at the entity's premises in the state of tax residence.



Transfer Pricing

Transfer-pricing requirements

Polish tax law contains transfer-pricing provisions based on OECD guidelines. Nevertheless, significant changes in Polish transfer pricing rules were introduced in 2019.

The transfer-pricing provisions affect a wide group of obligated taxpayers. The threshold of at least a 25% stake, based on which entities can be considered related parties, also applies to instruments other than shares that determine ownership dependency. Thus, relations will be determined e.g. by the proportion of participation units or investment certificates held, and thus the catalogue of affiliated entities additionally includes, among other things, investment funds. The new regulations also address the issue of personal relations.

There are transfer-pricing documentation obligations in Poland. The purpose of preparing the documentation is evidencing that the transfer prices in the intra-group transactions are in line with those that would have been set by unrelated parties.

There are thresholds for transactions to qualify for the documentation requirements:

- PLN 10 million for goods and for financial transactions
- PLN 2 million for services and other types of transactions
- PLN 500,000 for tangible, service and other transactions with an entity with its residence, registered office or management board in a tax haven
- PLN 2.5 million for financial transactions with an entity with its residence, registered office or management board in a tax haven

The Polish documentation rules follow the concept of local file and master file documentation.

Transactions between two local related parties may be exempt from the obligation to possess transfer-pricing documentation if, in a given tax year, neither of the parties benefits from a tax exemption or declares a tax loss. The same exemption applies in the event of a tax loss for a tax year beginning after 31 December 2019 in which a state of epidemic threat in connection with Covid-19 was in force throughout the territory of Poland, if the entity obtained total revenues in that year at least 50% lower than the total revenues obtained in the corresponding period immediately preceding that year.

Significantly, each transaction subject to the documentation obligation should be accompanied by an analysis of compliance with the arm's-length principle. In other words, in Poland such transfer-pricing analysis now constitutes an obligatory element of the documentation for each transaction described in the local file (except for those to which safe harbours apply). Beginning from 2021 and onwards, taxpayers in Poland that are micro or small enterprises are not obliged to prepare transfer-pricing analyses.

Pursuant to the amended regulations, the benefit of safe harbours in transfer pricing is applicable to two categories of transactions, that is, low value-adding services and certain categories of financial transactions (loans, credit and issuance of bonds).

The Polish transfer-pricing provisions directly oblige related entities to fix the conditions of transactions at an arm’s-length level at the stage of price-setting. There is an obligation for taxpayers to file a statement to the tax authorities in which the responsible persons must certify not only that the taxpayer possesses the transfer-pricing documentation, but also that the conditions applied in transactions with related parties are consistent with the arm’s-length principle.

Taxpayers are required to provide information on transactions with related parties in an electronic form called TP-R, which replaced the earlier paper form CIT-TP. TP-R requires a much wider range of information, including presentation of the results of transfer-pricing analysis in a structured and specified manner. The obligation to provide information on the TP-R form also applies to local transactions that meet the criteria for excluding them from the obligation to prepare transfer-pricing documentation.

Specific transfer-pricing penalties, in the form of an additional tax liability, are imposed in the event of a decision on incorrect pricing in a controlled transaction. They are equal to 10% of the overstated loss or understated income. In certain cases, the additional tax liability may double or triple, and thus amount to up to 30% of that figure.

At the end of 2019, the act introducing the dispute resolution mechanism entered into force in Poland. It adapts the EU regulations on settlement of double-taxation disputes to the Polish provisions (implementation of Council Directive (EU) 2017/1852). This act also contains an amendment of regulations regarding advance pricing agreement and systematizes the current mutual agreement procedures (MAP) based on the EU Arbitration Convention or tax treaties.

Advance pricing agreements

Taxpayers can apply to the Minister of Finance for an advance pricing agreement (APA). The APA procedure should be completed within 6, 12 or 18 months respectively for unilateral, bilateral and multilateral procedures. The APA can be concluded for a maximum of five fiscal years and expires at the end of the applicant’s fiscal year. If key elements of the agreement have not changed significantly, the APA may be renewed in a simplified procedure. The APA application fee is 1% of the value of the transaction that is the subject of the agreement. Depending on the type of APA, the fee is no less than PLN 5,000 for unilateral agreements concerning only domestic entities and no more than PLN 200,000 for bilateral or multilateral agreements.

Besides the primary purpose of the APA, which is to eliminate the risk of the transfer-pricing method being questioned in a related-party transaction (transfer-pricing risk), the APA allows taxpayers to avoid limitations on tax deductibility of certain fees for intangible services during the period covered by the APA.

Family foundation

General information

On 22 May 203 regulations introducing institution of family foundation will come into force.

In principle, a family foundation is an entity set up to manage the family company's assets and secure property for the group of individuals indicated by the founder, most often members of their family, providing for more efficient family business succession.

Family foundations shall possess legal personality and will be required to have their seat in the territory of Poland. Setting up a family foundation is to take place based on a notarial memorandum of association or a testament including a declaration on establishing a family foundation. Family foundations may be established only by an individual in a full legal capacity or a group of such individuals, who will be jointly referred to as a founder (a family foundation set up under a testament can only have one founder).

Each family foundation must be entered into the family foundation register.

The group and the scope of rights of the foundation beneficiaries is determined by the founder. A family foundation beneficiary can be either a natural person or a non-governmental organization conducting public benefit activities. A founder may also be a beneficiary.

It should be noted that the foundation is precluded from conducting business activity, but may be involved with operational activity, understood as activity aimed at passive multiplication of assets.

Taxation

Since the family foundation income of the founder and beneficiaries is subject to personal income tax, it will not be liable to inheritance and donation tax.

Importantly, property passed and payments made to a natural person as a result of the foundation's dissolution will be subject to personal income tax, the amount of which will depend on the degree of kinship between the beneficiary and the founder. Only a portion of property passed and payments made to a founder or founder's relatives belonging to the closest kinship group as a result of the foundation's dissolution will be exempt from personal income tax. It will correspond to the proportion appropriate for this founder specified in the inventory of property.

Family foundations will enjoy a subjective exemption from corporate income tax. This means that the exemption will cover free-of-charge acquisitions of assets, e.g., from the founder (providing a family foundation with assets will be tax-neutral), as well as income obtained by the family foundation from the activities it carries out, to the extent permitted by the Act on the Family Foundation.

However, no exemption will be available in income tax on payments made by the foundation to a beneficiary or a founder, as well as on property transferred in connection with the dissolution of the family foundation. The tax will be set at 15% of the value of payments rendered or made available by the foundation, directly or indirectly, to the beneficiary or the founder or of the revenue corresponding to the value of property transferred to support development of the family foundation.

It should be also noted that hidden profits will be taxed at 15% CIT and income from rental and lease of enterprise or its organized part or assets used to conduct business activity by the founder, beneficiary or entities associated with it will be taxed at 19% CIT.

Personal Income Tax

Residency

As a rule, according to the Personal Income Tax Act, individuals may be subject to limited or unlimited tax liability in Poland, depending on whether their place of residence for tax purposes is located in Poland.

The term "place of residence" is defined in the PIT Act. According to these provisions, an individual should be considered a "resident" (having a place of residence in Poland) if:

- They have their centre of personal or economic interests in Poland (i.e. the person's "centre of vital interests" is in Poland), or
- They stay in the territory of Poland for a period or periods exceeding in an aggregate 183 days during the given tax year (which in Poland is the same as the calendar year).

Only one of these conditions needs to be met for an individual to be considered a tax resident of Poland.

However, it should be pointed out that the Polish tax provisions determining tax residency should be applied taking into consideration the provisions of tax treaties concluded by Poland. An individual who has their place of residence in Poland will be subject to worldwide taxation in Poland (i.e. in accordance with the unlimited tax liability principle). In consequence, not only employment income will be taxed in Poland, but also any other private income derived in Poland or abroad (such as bank interest, dividends, exercise of stock options, rental income), unless an international tax treaty limits the right of Poland to tax such income.

A person who is not considered a tax resident of Poland will be subject to Polish taxation on a limited basis, that is only on income derived from work performed in Poland or sources in Poland (any other income derived from non-Polish sources will not be subject to tax in Poland). Please note that salary or benefits received for work performed in Poland are considered Polish-source even if physical payment is made to a bank account outside Poland. Moreover, such a person will be able to take advantage of preferential taxation (20%) on certain types of income available to non-residents (e.g. board fees or fees paid under management or personal services contracts).

Taxable income

Taxable income includes most cash and non-cash benefits earned from employment or self-employment. Income tax is levied on the following types of income of individuals:

- Income from business activities
- Rental income
- Income from capital gains
- Income from the sale of movable or immovable property
- Other income

In particular, income such as per diem for business trips (up to statutory limits), refunds of business travel expenses, and costs of professional training if requested by the employer, is exempt from taxation.

Taxation of employment income

Income received by an individual under an employment contract concluded with a Polish entity is always subject to Polish PIT in accordance with progressive rates of 12% and 32%. Please see the table below for details. The amounts referred to are in PLN.

INCOME	TAX	
up to PLN 120,000	12%	Minus tax-free allowance of PLN 3,600
over PLN 120,000	PLN 10,800 + 32% of excess over PLN 120,000	

The tax-reducing amount is subject to review by the minister for public finance.

The minister for public finance shall submit to the Council of Ministers by 15 September of a given year a proposal to change the tax-reducing amount for the next year if the amount of minimum subsistence for a single-person household as determined by the Institute of Labour and Social Studies is higher than 1/12 of the quotient of the tax-reducing amount and the tax rate.

As a rule, all types of salary and benefits received by an individual in the form of both in-cash and in-kind earnings resulting from employment constitute taxable income regardless of where paid. Typical items include:

- Base salary
- Overtime pay
- Various allowances (some only over a certain limit)
- Awards and bonuses
- Cash equivalent for unused holiday leave
- Value of non-cash benefits
- Housing provided by the employer
- Tax covered by the employer for the employee
- Company pension plan payments made by the employer (not part of the mandatory social security system)

Poland operates a monthly tax payment system. In case of local employment contracts, the Polish tax system requires the Polish employer to withhold tax advances from the employee's pay each month.

In the case of foreign employment relationships (i.e. individual working in Poland on the basis of an employment contract with a non-Polish entity), the Polish tax system requires individuals to pay 11 monthly tax advances during the year, from January to November (expatriates included). The tax for December is paid at the time of filing the annual tax return, by 30 April of the following year. No tax declarations need to be filed during the tax year. The tax payment for December should be made at the same time the annual declaration is filed. Any balancing payment of tax should also be made by that date.

Your e-PIT—new rules for filing tax returns

In addition to the methods of filing tax returns by the taxpayer functioning until the end of 2018 (in paper or electronically via the e-Deklaracje online filing system), a service consisting of preparing the tax return by the National Revenue Administration (KAS) has been introduced (without the need for the taxpayer to submit any additional application).

KAS fills out tax returns for some taxpayers (especially those working on the basis of Polish employment contracts in Poland) based on information from remitters, data provided by the taxpayer in the tax return for the previous year, and data contained in KAS's own registers and other state registers (e.g. Social Insurance Institution with regard to the amounts of social security and health insurance contributions paid, and the PESEL register in connection with data for purposes of applying the child relief deduction).

Forms prepared and made available by KAS include PIT-28, PIT-37, PIT-38 and PIT-36. From 1 February 2021, "Your e-PIT" is part of the "e-Tax Office," which offers more services than just filing the tax declaration. For instance, it is possible to file some applications and form such as ZAP-3 (to update the taxpayer's data in the tax office) or an application for a tax clearance certificate.

The taxpayer can log in to "e-Tax Office" using:

- Trusted profile, e-identity document, or electronic banking via login.gov.pl
- Mobile application mObywatel
- Authentication data (PESEL/NIP number) and amount of income from previous tax years

Withholding and payment obligations

Where individuals work under an employment contract with a Polish company and perform the work within the territory of Poland, the employer (tax remitter) withholds tax at progressive tax rates of 12% and 32% of the taxable base. These rates are applied if the employee's remuneration exceeds the respective income tax threshold. The tax withheld by the employer must be paid to the tax office by the 20th of the month following the month in which the tax was withheld.

Where individuals perform work in Poland as employees of a foreign (non-Polish) company, the foreign employer does not have a withholding tax obligation, and the employees themselves should pay the tax advances no later than the 20th of the month following the month in which the income is derived.

Separate provisions apply to individuals who receive income from sources other than an employment contract (for example personal service contracts or remuneration for management board and supervisory board members). In the case of non-residents, such income is generally subject to a 20% flat-rate final tax, which is paid by the 20th day of the following month.

Taxation of investment income and capital gains

Interest and dividend income is subject to a flat rate of 19%.

The capital gains tax regime applies to the disposal of investment assets, for example shares of stock or investment fund units. The tax rate on such gains is also 19%. Polish tax residents who receive investment income sourced from outside Poland (e.g. shares listed on foreign stock exchanges, or interest paid from non-Polish bank accounts) are also subject to tax on this income. However, if such income was also taxed abroad, the foreign tax can be deducted pro rata from the Polish tax liability (proportional deduction) and in line with tax treaties signed with Poland.

Tax registration

Currently, individuals who only receive employment contract income are generally no longer required to obtain a tax identification number (NIP) from the Polish tax office and can use their PESEL number (personal identification number) as their identification number for tax purposes. A NIP number is required in certain other circumstances, e.g. self-employed individuals.

As of 1 June 2021, new provisions modifying the existing framework for granting tax identification numbers to foreigners performing work in Poland came into force. Natural persons, regardless of whether they are covered by the registration obligation or not, are required to obtain a PESEL number for tax purposes.

Importantly, according to announcements by the Ministry of Finance, it will be unacceptable for remitters to submit statements (e.g. PIT-11) lacking taxpayer identification numbers or containing erroneous numbers (e.g. strings of digits like ones and nines). Furthermore, failure to include the tax identification number may prevent submission of the statements via the electronic system, which is currently the only acceptable mode of submitting PIT-11 and IFT-1R forms.

Additionally, lack of a tax identification number will make it impossible for the taxpayer to generate an individual account number for a tax micro-account, via which tax liabilities are to be settled, and will disrupt the taxpayer's access to the "Twój e-PIT" service used for making individual submissions of annual returns.

Methods of avoiding double taxation of foreign income

Individuals who are considered Polish tax residents are obliged to declare their worldwide income in Poland. Declaring all income in Poland (also income gained abroad) does not mean that it is taxable in Poland. To avoid double taxation, there are bilateral treaties on avoiding double taxation in force. The provisions of tax treaties take priority over domestic tax regulations.

There are two methods of eliminating double taxation in treaties to which Poland is a party:

- Exemption with progression method
- Credit method

If income taxed abroad is tax-exempt in Poland under a tax treaty, it can be added to the taxable income in order to calculate the effective tax rate applicable only to the taxable part (exemption with progression).

If, according to the provisions of tax treaties, income earned abroad should be subject to the credit method, any tax paid abroad can be claimed as a credit in Poland. This credit is limited to the amount of tax due on the foreign income. Where such a credit claim is less favourable than double-tax relief under the exemption with progression method, the taxpayer may prepare a separate calculation of the tax due applying the exemption with progression method. The taxpayer can then claim the difference as a tax deduction, called "abolition relief." It should be noted that starting from 2021, the amount of this relief cannot exceed PLN 1,360, even if the difference between the double-taxation avoidance methods is more substantial.

Solidarity levy

The solidarity levy (starting from 2019) was introduced by the Act on the Solidarity Fund for Persons with Disabilities.

These provisions introduce into the PIT Act a new tax, payable at the rate of 4% on the surplus of total income above PLN 1 million obtained in the tax year, to which the taxation rules set out in Art. 27, 30b, 30c and 30f of the PIT Act apply, reduced by the amount of social security contributions and the amounts referred to in Art. 30f(5) of the PIT Act (i.e. amounts reducing the taxable base for the income of a controlled foreign company).

This income includes income taxed according to the progressive tax scale (rates of 12% and 32%), e.g. from employment contracts, civil contracts, business activities, and capital gains (e.g. from the sale of securities or shares) as well as CFC. Business operators who have chosen flat-rate tax are also obliged to pay the solidarity levy if their income exceeds the threshold.

Income to which the new levy applies does not include some types of income subject to flat-rate tax (e.g. interest and dividend income).

The taxpayer is obliged to pay the solidarity levy by 30 April of the year following the tax year. Notably, the taxpayer will also be obliged to submit an additional declaration on the amount of the solidarity levy for the tax year (DSF-1).

Taxation of unrealized capital gains (exit tax)

In the case of individuals, the exit tax is imposed on the change of a taxpayer's tax residency if, as a consequence, Poland loses (fully or partially) the right to levy tax on income derived from the sale of an asset owned by the taxpayer as a result of the change of the country of residence (for natural persons) or the registered seat or place of effective management (for legal entities) to another country.

In the case of natural persons, assets not related to business activity will also be subject to taxation (e.g. shares in companies) — this regulation concerning personal property will apply only if a taxpayer has been a Polish tax resident for at least five years within the 10-year period before the change of tax residency.

The exit tax basis is calculated as the surplus of the market value of the transferred asset, as of the date of the transfer, over its tax value (as defined in Polish law).

The tax rate is:

- 19% for CIT and PIT payers, if the tax value of an asset is determined.
- 3%, only for PIT payers, if the tax value of an asset is not determined (i.e. if according to separate provisions tax-deductible costs on the transfer of an asset cannot be recognized).

In the case of natural persons, only the transfer of assets with a market value exceeding PLN 4 million will be subject to taxation (calculated for an individual transaction or several transactions during a period of one year).

Taxpayers will be obliged to submit tax returns and report the amount of income subject to exit tax by the 7th day of the month following the month in which the income arose. At that point taxpayers shall also be obliged to pay the tax.

Exemptions from taxation

From 1 January 2022, it is possible to benefit from new exemptions. The following exemptions were introduced into the Polish tax system:

- Return relief
- Relief for 4+ families
- Relief for working seniors

Revenue of up to PLN 85,528 is tax-exempt. The limit also covers the sum of all applied forms of relief. The exemption applies only to selected revenue categories. To use every kind of exemption, a raft of conditions must be satisfied.

Return relief. Relief for taxpayers returning to Poland is intended for individuals who:

- Became Polish tax residents, and
- For the last three years were non-residents of Poland for tax purposes and, among other conditions, are Polish nationals.

The exemption is intended for individuals who transferred their place of residence to Poland, thus becoming Polish tax residents, after 31 December 2021. The exemption can be applied for four consecutive tax years, starting from the year when the taxpayer transferred their place of residence to Poland or starting from the beginning of the following year.

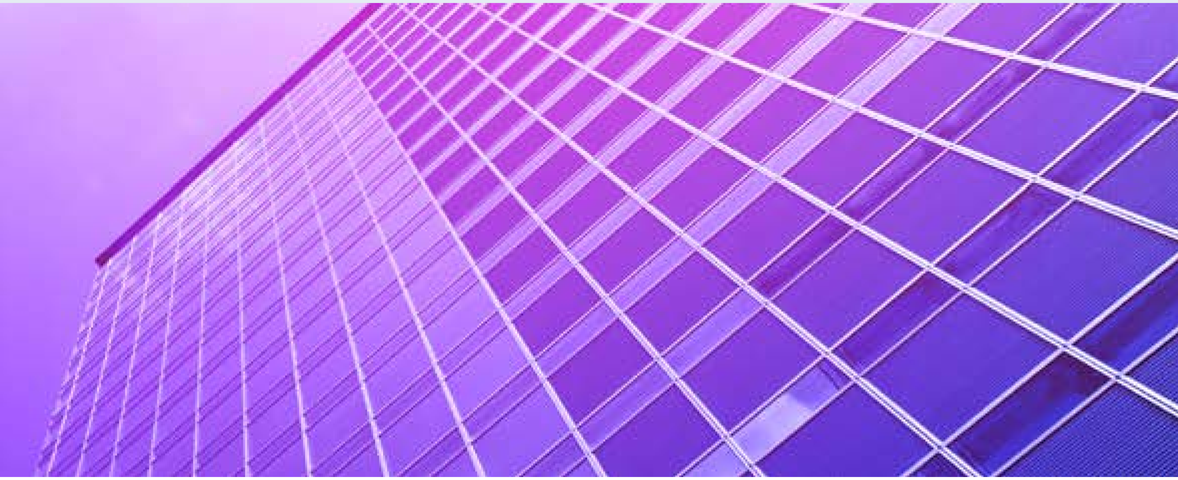
Relief for 4+ families. This exemption applies to a taxpayer who in the given tax year, in relation to at least four children, acted as a legal guardian (if the child lived with them), or performed the function of a foster parent (based on a court decision or an agreement concluded with the county executive [starosta]), and in the case of adult children pursuing their education, performed the maintenance obligation incumbent on them or acted as a foster parent.

A taxpayer benefiting from the exemption must submit information, between 15 February and 30 April of the year following the tax year, according to the established formula, on the number of children and their PESEL numbers, or in the absence PESEL numbers, the children's names and dates of birth.

The taxpayer is exempt from the obligation to submit this information if, in the submitted tax return in which a deduction under the child relief was made, they stated that they also benefited from the exemption for 4+ families (the right to the exemption and relief must apply to the same children).

Relief for working seniors. This exemption can be applied to income earned by female taxpayers age 60 or over, and male taxpayers age 65 or over. This solution is aimed at taxpayers who are covered by the social security scheme and despite being entitled, do not receive benefits on account of a retirement or family pension from the Social Insurance Fund, retirement or family pension for farmers, or retirement or family pension paid out to professional soldiers and officers of uniformed services (including allowances due after discharge).

Relief for young taxpayers. Relief for young taxpayers can be applied to income from employment, a contract of mandate, statutory maternity pay, and undergraduate or post-graduate internships for taxpayers under 26 years of age.



Social security

The system consists of three pillars to which payments are made. The first two are obligatory, the third is not.

- Social Insurance Institution (ZUS)
- Open-ended pension funds (OFE)
- Voluntary pension funds (IKE, IKZE, PPK, PPE)

In the first pillar, contributions are split between the employee and the employer. The employer is obliged to pay social security contributions on its behalf and on behalf of the employee.

Social security contributions are made in respect of income derived under employment contracts, service contracts, business activity, etc.

The following table depicts the obligatory Polish social security contributions (the following rates are applicable):

CONTRIBUTION TYPE	EMPLOYEE SHARE (PERCENTAGE)	EMPLOYER SHARE (PERCENTAGE)	TOTAL (PERCENTAGE)
Pension insurance*	9.76	9.76	19.52
Disability insurance*	1.50	6.50	8.00
Sickness insurance	2.45		2.45
Accident insurance		0,67 – 3.33	0.67 – 3.33
Guaranteed benefits fund		0.10	0.10
Additional retirement fund (only in certain cases)		1.50	1.50
Labour fund		2.45	2.45
Total – up to limit	13.71	19.48 – 22.14	33.19 – 35.85
Total – past limit	2.45	3.22 – 5.88	5.67 – 8.33
Health insurance**	9.00		9.00

* Contributions to pension and disability funds are limited to an annual cap set at 30 times the national average monthly salary estimated for a particular year (for 2023, the cap is set at PLN 208,050).

** The gross amount reduced by the employee share of pension, disability and sickness insurance constitutes the assessment basis to calculate the obligatory health insurance contributions (9% of income).

The second pillar consists of public pension funds (OFE) and a subaccount at ZUS. Contributions can be transferred only to a subaccount at ZUS, or part of the contributions can be transferred to a subaccount at ZUS and the other part transferred to a public pension fund of the employee's choice.

The three-pillar scheme is currently under reconstruction. The open-ended pension funds are to be transformed into specialized open-ended investment funds. All assets gathered by OFEs will automatically be moved to ZUS. However, the employee may decide to transfer all of their means gathered by OFE to an individual subaccount (IKE) created for each employee. Transferring funds to IKE will require payment of additional fees.

Although the assets in IKE will be private property of the employees (i.e. not the government's), they could be withdrawn either after reaching the compulsory retirement age, directly to the employee, or in case of the employee's death, to their heirs.

It should also be noted that generally, social security applies to income derived under a Polish employment contract and/or Polish service contracts, business activities, etc, depending on the given situation. As a rule, social security does not apply to foreign-sourced income. However, in case of seconded employees, their total income can constitute the basis for Polish social security assessment, regardless of whether it is subject to taxation in Poland or abroad.

Social security of EU citizens in Poland

The EU provisions on social security do not implement one uniform social security system in the form of a single European system for all EU member countries.

Each EU member state may retain its own domestic social security system and design different regulations. However, the EU provisions on social security have general legal force, apply directly in all member states, are binding on everyone to whom they apply, and have to be observed by national authorities and administration, social security institutions, and courts. In cases where provisions of national law are in conflict with EU rules, the EU rules have priority.

Liability for Polish social security may be determined based on general EU provisions (such as the place of performance of work) or based on Polish provisions if a local contract is concluded.

Generally, a person who has exercised their right to move within the EU may not be placed in a worse position than a person who has always resided and worked in one member state. To avoid a situation where migrant workers are either insured twice or not at all, the EU provisions on social security determine which national legislation applies to a migrant worker in each particular case.

Individuals working in Poland who are EU member state nationals should be covered by the EU social security regulations. Depending on the individual circumstances of each assignee, they may be subject to social security in their home country, the country of their employment, or the country where work is actually performed. Each case should be investigated carefully to determine the appropriate social security contribution payment requirements and obligations.

Posting of workers and immigration issues

Act on Posting of Workers

The Act on Posting of Workers incorporates into Polish law the EU's Posted Workers Directive (2018/957). The goal of the directive is to establish a common framework of provisions, measures and control mechanisms for more efficient and uniform action in the field of posting of workers.

The period of posting is limited to 12 months. After this period, posting is still possible, but the posted workers must be guaranteed an additional set of terms and conditions of employment mandatorily applicable to workers in the member state where the work is carried out.

It should be kept in mind that this will not apply to procedures, formalities and conditions of conclusion and termination of the employment contract, including non-competition clauses as well as supplementary occupational retirement pension schemes.

The maximum posting period may be extended to 18 months if the service provider submits a motivated notification. The duration of the posting shall also cover the period for which the posted worker is replaced by another posted worker performing the same task at the same place.

After the end of the posting period, the status of posted workers shall be equal to the status of local workers, but under the "principle of advantage," the mandatory domestic rules of the host state shall not prevent application of those terms and conditions of employment in force in the posting state which are more favourable to workers.

Equal treatment in terms of remuneration is one of the ground rules. A posted worker shall be remunerated on the same terms as the comparable permanent workers in the host state ("equal pay for equal work").

The requirement of equal pay for equal work is associated with the obligation on the member states to provide information on remuneration laid down by laws, industry and regional collective agreements, with the possibility of verifying market benchmarks by employers.

With the introduction of new provisions, the powers of the labour inspectorate have been extended.

Work permit/visa requirements

Citizens of countries with which Poland has signed agreements on visa-free travel may remain within the territory of Poland (without performing work) for periods of usually up to 90 days in a 180-day period. However, citizens of certain other countries still require a visa to enter Poland.

If an individual would like to stay longer in Poland, a temporary residence permit or visa is usually required. EU citizens should register and obtain confirmation of their stay in Poland.

Work permits are generally required for foreign individuals who are not EU citizens. Generally, the procedure for obtaining this document requires the involvement of the employer where the work is to be performed.

Although EU citizens do not need a work or residence permit to live and work in Poland, if they stay for longer than 90 days they are required to obtain a registration confirmation document.

VAT

Scope of taxation

General information

The Polish VAT system is harmonised with EU law and is based on Council Directive 2006/112/EC. VAT is charged on:

- Supply of goods and provision of services within the territory of Poland, for consideration
- Export and import of goods
- Intra-EU supplies of goods
- Intra-EU acquisitions of goods performed within the territory of Poland, for consideration

Additionally, under certain circumstances, VAT is charged on free-of-charge supplies of goods or provision of services, but with some exemptions (e.g. for supplies of small-value gifts and samples).

VAT was designed as a tax on consumer spending, rather than on businesses. Registered VAT payers are entitled to deduct the tax they have incurred on purchases (input VAT) from the tax they have charged on taxable activities (output VAT).

Intra-EU supplies of goods

Intra-EU supply of goods constitutes supply where the goods are dispatched from the territory of Poland to the territory of another EU member state. Also, the movement of the taxpayer’s own goods from the territory of Poland to another EU member state for business purposes constitutes “deemed” intra-EU supply of goods.

Generally, intra-EU supply of goods is subject to the 0% VAT rate, provided that the supplier:

- Supplied the goods to a purchaser with a valid and proper EU VAT number
- Obtains proper documentation confirming that the goods were delivered to another EU member state
- Is registered for EU VAT purposes when submitting the VAT return where the transaction is reported and submits the EU Sales/Purchase Listing (VAT-UE) form reporting the transaction

The documents needed to apply the 0% VAT rate are primarily signed consignment documents (CMR), but if it is not possible to obtain such document, an unsigned CMR should be gathered with additional documentation confirming the delivery of goods, e.g. a statement signed by the purchaser, business correspondence, payment confirmation, warehouse documentation, etc.

If such documentation is not available, the transaction is taxed at the domestic VAT rate, subject to future correction when the documents are obtained.

Intra-EU acquisitions of goods

Intra-EU acquisition of goods constitutes acquiring the right to dispose of the goods as an owner within the transaction where the goods are dispatched from another EU member state to Poland for business purposes of the purchaser.

Additionally, the taxpayer's movement of its own goods from another EU member state to Poland for business purposes constitutes "deemed" intra-EU acquisition of goods.

Intra-EU acquisition of goods is in principle neutral, as the taxpayer reports in the VAT return both output and input VAT at the same time. However, if the taxpayer reports intra-EU acquisition upon the tax point without having an invoice, domestic rules require that the deduction of input VAT is reversed after three months (when an invoice is not received by that time), subject to recovery when the invoice is obtained. Nevertheless, these rules are not applicable when the taxpayer reports the intra-EU acquisition with delay when already having an invoice, and are planned to be abolished altogether from the VAT Act as of July 2023 (as part of the SLIM VAT 3 package).

Generally, entities performing intra-EU acquisitions are obliged to register for VAT purposes in Poland, but under certain circumstances it is possible to apply call-off stock simplification to avoid registering. This procedure may be applied if the goods are introduced into the warehouse in Poland for the purpose of future supply to a Polish purchaser. The supplier may not have its registered office or fixed establishment in Poland to apply this simplification. As of 2020, the call-off stock simplification rules have been harmonized within the EU.

Export of goods

Export of goods is understood as dispatch of goods from Poland to a destination outside the EU. There are two types of export:

- Direct export, when transport is handled by the supplier
- Indirect export, when transport is organised by a purchaser without a registered office or fixed establishment in Poland

Export is subject to the 0% VAT rate, provided that export documents are obtained. If the export procedure is initiated in Poland, the IE599 electronic notification is the appropriate document which should be obtained in order to apply the 0% VAT rate. Export may take place from Poland also when the export procedure has been initiated in another EU member state, provided that the intention of export was expressed when the goods were dispatched from Poland. In that case, appropriate export documents issued in the member state of export should be gathered.

If export documentation is not gathered, the taxpayer may hold off reporting the transaction for one period, in case the taxpayer has a document confirming that the customs procedure has been initiated (IE529 electronic notification).

Should the export documents still not be gathered in the next period, the transaction should be reported at the domestic VAT rate. Subsequent receipt of the customs documents allows the taxpayer to report the transaction with the 0% VAT rate in the current VAT return and report the transaction at the domestic VAT rate with a negative value (for exports it is not necessary to correct past periods).

Import of goods

Transport of goods from outside the EU to Poland constitutes import of goods. Upon importation the customs authorities generally impose customs duties and calculate import VAT, and the taxpayer makes the payment of VAT within 10 days.

Under the standard procedure, the taxpayer is entitled to recover the paid VAT in the period of receipt of the customs document (ZC299 electronic notification) or three following periods.

There is also the possibility to settle import VAT neutrally in the VAT return. For that purpose, the taxpayer should:

- Present recent (not older than 6 months) certificates or statements confirming lack of arrears in social security contributions and taxes
- Present confirmation of registration as an active VAT payer
- Make customs notification through a direct or indirect representative

Import of services

The acquisition of services by a Polish taxpayer from a foreign service supplier constitutes import of services. As a rule, import of services is neutral, as output and input VAT are reported in the same VAT return.

Sales to individuals

Sales of goods and services to individuals who are not carrying out business activities are generally (with some exceptions) recorded using fiscal cash registers.

Currently, certain types of businesses (e.g. car workshops) are obliged to use online cash registers which automatically send copies of the issued receipts to the tax authorities. This obligation has also been extended e.g. to hotels, providers of gastronomic services, suppliers of coal, hairdressers, cosmetic services, healthcare and dental services, legal services, etc. Taxpayers performing other services or supplies are entitled to use standard cash registers, but it is planned that as of 2024 it will be possible to purchase only online cash registers.

Moreover, if the sale is confirmed first with a receipt, and then the taxpayer would like to request an invoice, the receipt must contain the purchaser's tax number. If the receipt lacks this information, the supplier cannot issue an invoice for the transaction.

Distance sales to individuals —e-Commerce Package

In July 2021 a reform of distance sales rules entered into force, known as the e-Commerce Package. It introduced a uniform distance sales threshold for the whole EU of EUR 10,000, beyond which the place of supply is shifted to the destination member state (where the B2C customer is located). Thus, when the taxpayer exceeds this threshold (counted for all customer sales within the EU), VAT registration is required in all EU member states to which distance sales are made.

Alternatively, suppliers may use the One-Stop Shop solution, registering in their own member state and settling distance sales to other member states in their own country of registration. This optional solution allows sellers to avoid the obligation to register for VAT in other EU member states.

The e-commerce reform provides for tightening import VAT regulations, opening up the possibility for applying the Import One-Stop Shop for non-EU entities importing goods into the EU. The reform also imposes certain obligations on e-commerce platforms which enable purchases for EU consumers from non-EU suppliers.

VAT groups in Poland

As of 2023, VAT groups were introduced in Poland. To form a VAT group, the participating entities need to be simultaneously financially, economically, and organizationally related throughout the duration of the VAT group. The entities also must have their registered offices in Poland, or conduct business through a branch in Poland.

In the case of a VAT group, internal transactions between members of the group will be considered outside the scope of VAT, thus potentially improving cash flow. Only transactions with external taxpayers will constitute standard VAT-able transactions.

The financial relationship condition will be met when one of the taxpayers which is a member of the VAT group directly holds more than 50% of the shares in the share capital or more than 50% of voting rights in administrative, management or supervisory bodies or more than 50% of the right to participate in profit of each of the other group members.

An economic relationship will exist when:

- The main activities of the members of the VAT group are of the same nature.
- The types of activities carried out by members of the VAT group are complementary and interdependent, or a member of the VAT group carries out activities entirely or largely used by other members of the VAT group.

Lastly, an organisational relationship will exist when:

- The entities are legally or factually, directly or indirectly, under common management, or
- The entities organise their activities wholly or partly in concert.

National e-Invoicing System (KSeF)

On 1 January 2022 the National e-Invoicing System (KseF) was launched, and a new structured invoice (e-invoice) is now available for issuing. Currently, this system is purely optional for taxpayers, subject to consent by the purchaser, but Poland obtained a derogation decision from the EU allowing it to introduce this system as mandatory for Polish-based entities as of 1 July 2024.

A structured invoice is issued according to the published schema in .xml format and uploaded electronically via an application programming interface to KseF. Thus, taxpayers need to ensure that their systems correctly implement this functionality, if they wish to utilize KseF for invoicing purposes.

Output VAT

Tax point

As a general rule, the tax point arises upon the supply of goods or performance of the service.

But there are also exceptions to this general rule. As an example, in the case of advance payments, the tax point arises when the advance is received, and in the case of supplies of electricity, telecommunications services or lease, when the invoice is issued, but not later than the payment deadline. Also, for construction services the tax point occurs upon issuance of an invoice, but no later than within 30 days from completion of the works.

In the case of intra-EU supplies and acquisitions, the tax point arises upon issuance of an invoice, but no later than the 15th day of the month following the month when the supply or acquisition took place.

In the case of imports of goods (except for some special procedures), the tax point arises when the customs duty arises.

Tax base

The tax base for VAT generally constitutes everything due to the taxpayer for effecting the supply from the purchaser or third person, excluding the amount of tax.

The tax base is different in the case of, for example, imports of goods (reflecting in particular, the customs value of the goods increased by customs duty, excise tax, costs of commission, insurance, and transport to the first destination in Poland, etc).

VAT invoice

The supply of goods or provision of services should be documented with a VAT invoice, issued as a rule no later than the 15th day of the month following the month of the supply. An invoice may also be issued prior to the supply, but generally no earlier than 60 days prior to the supply.

Invoices may be issued in paper or electronic form and should include mandatory data listed in the VAT Act. All invoices should ensure authenticity of origin, integrity of data, and readability of the document. Electronic exchange of invoices requires the acceptance of the purchaser — acceptance is deemed, unless the purchaser does not agree with such method of invoice receipt.

In 2022 Poland also introduced structured invoices (e-invoices), which are exchanged between taxpayers through the National e-Invoicing System. Through the end of

2023 this system is optional, but from 1 July 2024 this system may become obligatory for taxpayers based in Poland.

Import and export of goods should be documented with a customs document (electronic notification).

VAT rates in Poland

The standard VAT rate in Poland is 23%. The standard rate applies as a default rate, and therefore it covers all supplies of goods and services not entitled to reduced rates or the 0% rate.

The reduced VAT rates applied in Poland are 8% and 5%.

The 8% VAT rate covers, among other things, the sale of certain building and construction services relating to housing for individuals, services connected with food (with some exceptions), pharmaceuticals and medical equipment, passenger transport, accommodation services etc.

The 5% VAT rate applies mainly to agricultural products, food (including readymade meals, milk, dairy products, etc). This rate also applies to books (including e-books) and professional periodicals.

In addition, the 0% VAT rate is applied e.g. to food as a temporary relief measure due to high inflation.

The 0% VAT rate, in addition to exports and intra-EU supplies of goods, applies to transport services related to the import and export of goods (under certain conditions described in the VAT Act), as well as inward processing services or supplies of aircraft or sea vessels.

Currently, if the taxpayer has doubts as to the proper VAT rate on supplies, it is possible to apply to the tax authorities for Binding Rate Information (BRI). In the BRI, the authorities assess the standpoint of the taxpayer and confirm what VAT rate should be applied for the supply.

The standard VAT rate in Poland is **23%.** The standard rate applies as a default rate, and therefore it covers all supplies of goods and services not entitled to reduced rates or the 0% rate.

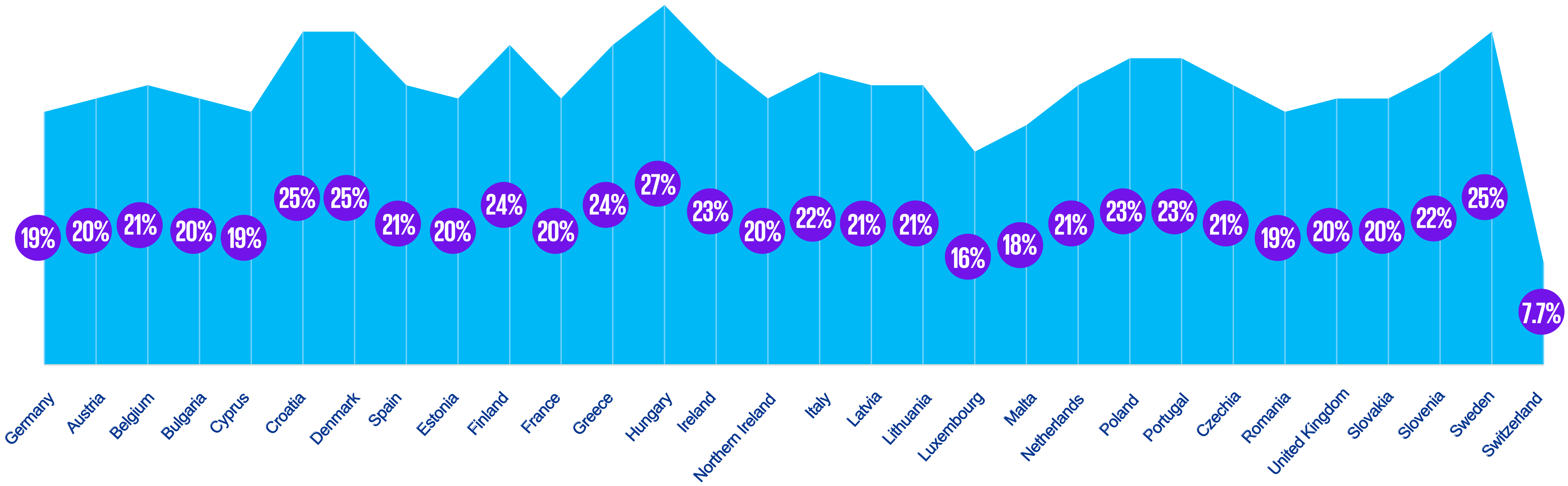
The reduced VAT rates applied in Poland are: **8%** and **5%.**

The **8%** VAT rate covers, among other things, the sale of certain building and construction services relating to housing for individuals, services connected with food (with some exceptions), pharmaceuticals and medical equipment, passenger transport, accommodation services etc.

The **5%** VAT rate applies mainly to agricultural products, food (including readymade meals, milk, dairy products, etc). This rate also applies to books (including e-books) and professional periodicals.

In addition, the **0%** VAT rate is applied e.g. to food as a temporary relief measure due to high inflation.

2023 VAT Standard rates in EU



Source: https://www.eurofiscalis.com/en/vat-rates-in-eu/

Due to the Covid-19 pandemic and high inflation, there are numerous changes in VAT rates throughout the EU.

Exemptions

Following the EU VAT Directive, Polish VAT law provides exemptions from VAT for certain goods and services, including medical, financial, insurance, education, public postage, some cultural and similar services, and others, as well as the importation of certain goods and the sale of second-hand goods.

Input VAT

General rule

The taxpayer is generally entitled to reduce output VAT (resulting from sales) by the amount of input VAT incurred on the purchase of goods and services related to its VAT-able activity.

Input VAT related to transactions that are VAT-exempt or not subject to VAT is not deductible.

If input VAT relates to both types of supplies (taxable and exempt), the taxpayer should use the pro-rata method for determining the amount of deductible input VAT (if the preciseassignment of this input VAT to a taxable sale is not possible). Moreover, if input VAT relates to both business activities, as well as activity not subject to VAT (this applies mainly to the public sector and foundations), the so-called pre-pro-rata method for determining the amount of deductible input VAT should also be applied (if the precise assignment of part of this input VAT to business activity is not possible).

Time of deduction

Timelines for VAT deduction are strictly regulated. As a rule, the right to deduct input VAT arises:

- In the case of domestic purchases of goods or services and import of goods — in the period in which the tax becomes chargeable, but not earlier than upon receiving a VAT invoice or customs document documenting the given transaction.
- In the case of intra-EU acquisition of goods — in the period when the tax point for a given transaction arises, provided that the taxpayer receives an invoice within three months following the month in which tax point for that transaction arose, and reports output VAT in the correct VAT return. However, if the taxpayer reports intra-EU acquisition upon the tax point without having an invoice, domestic rules require that the deduction of input VAT is reversed after three months (when the invoice is not received by that time), subject to recovery when the invoice is obtained (the requirement of having an invoice is planned to be abolished from the VAT Act as of July 2023, within the SLIM VAT 3 package).
- In the case of import of services, deemed (non-commercial) intra-EU acquisition of goods and other purchases subject to reverse charge — in the period when the tax point for a given transaction arises, on the condition that the taxpayer reports output VAT in the correct VAT return.

Input VAT may alternatively be deducted in one of the three following periods.

If VAT was not deducted in the aforementioned periods, the taxpayer may amend the VAT return submitted for a period in which the right to deduct VAT arose or the VAT return for one of the three following periods in order to include (deduct) the VAT. However, deduction is possible only within five years from the beginning of the year in which the right to recover input VAT arose.

Limitations of recovery of input VAT

The VAT on hotel and restaurant services is non-recoverable, except for:

- The purchase of ready meals intended for passengers by a taxpayer providing passenger transport services
- Accommodation services purchased for resale (for so-called re-invoicing).

Limitations on input VAT deduction apply to expenses related to passenger cars (e.g. purchase or leasing of passenger cars as well as fuel). Generally, it is possible to deduct 50% of input VAT, but when a car is deemed to be used only for business purposes and formal requirements are met, full deduction is possible.

Reverse-charge mechanism

If services are provided in the territory of Poland by a supplier with no registered office or fixed establishment in Poland, VAT with respect to the transaction should generally be self-charged by the recipient under the reverse-charge mechanism. This does not apply to services connected with immovable property, if the supplier is registered for Polish VAT.

If goods are supplied in the territory of Poland by a supplier with no registered office or fixed place of business in Poland, VAT with respect to the transaction should generally be self-charged by the recipient under the reverse-charge mechanism. This rule does not apply if the supplier is registered for Polish VAT.

Split payment

In mid-2018 Poland introduced a voluntary split-payment mechanism. As of 1 November 2019, split payment is obligatory in certain situations.

Application of the split-payment mechanism means that the purchaser pays the gross amount to the supplier, but only the net amount is transferred to the general bank account of the supplier, whereas the VAT amount is transferred to a technical VAT account, where the funds are locked and may be used only for the purpose of paying VAT to suppliers or for payment of tax liabilities or customs duties to the tax authorities or customs agencies.

Obligatory split payment is applicable when the payment is made as a bank transfer, the gross invoice value is at least PLN 15,000, and the invoice includes at least one item from annex 15 to the VAT Act. This annex lists 150 items subject to obligatory split payment, such as coal, certain metals or scrap, certain electronic goods like computers, processors, hard drives or SSDs, cellular phones, car parts, construction services, etc.

In the case of payment to the supplier, the purchaser applies split payment by choosing a special payment option and in the transfer order includes:

Gross value of payment

Invoice number

VAT amount

VAT ID of the supplier

If the transaction is subject to obligatory split payment, the supplier should include a special annotation on the invoice, *mechanizm podzielonej płatności* ("split-payment mechanism"). However, lack of such annotation does not free the purchaser from verification of whether this obligation arose.

Lack of payment via split payment when the transaction was subject to this payment method triggers various sanctions for the purchaser and the supplier. The supplier may be subject to a 30% VAT sanction when the invoice is missing the mandatory split-payment annotation. However, no sanction is imposed when despite this lack, the purchaser makes the payment via split payment.

The purchaser may also be subject to a 30% VAT sanction when no split payment has been applied. This sanction is not imposed if the supplier settles VAT liability with the tax authorities. However, lack of split payment when the invoice included the required annotation also triggers income tax consequences, as the expense may not be treated as a tax-deductible cost in this case. Moreover, fiscal penalties may be imposed for infringing the split-payment obligation.

VAT registration requirements

VAT registration

An application for VAT registration generally must be filed with the tax office before the first taxable supply is performed. Once registered, taxpayers obtain the status of active VAT payers and are indicated on the so-called White List available on the website of the Ministry of Finance.

Taxpayers that intend to perform intra-EU transactions must additionally register for EU VAT. After registration, they receive an EU VAT number and are included in the EU VIES database.

There are some exceptions to the general obligation to register, e.g. for small businesses.

Businesses with total annual sales for the preceding tax year of less than PLN 200,000 are not required to register for VAT (but may register voluntarily), unless their sales for the particular year exceed the registration threshold.

The aforementioned exemptions from VAT registration do not apply to foreign taxpayers (without their registered office or place of residence in Poland), or to taxpayers supplying certain goods/services specified in the VAT Act (legal or jewellery services, new means of transport, goods subject to excise tax with some exceptions, and others).

Fiscal representative

Generally, taxpayers that have no registered office or fixed establishment in Poland or other EU country are required to appoint a fiscal representative. However, as of 1 January 2021, this requirement does not apply to taxpayers with a registered office or fixed establishment in Norway or the United Kingdom.

The fiscal representative is jointly liable with the taxpayer for the tax obligation that the fiscal representative settles for and on behalf of the taxpayer.

Removal of active VAT payer from VAT registry

The head of the tax office has a right to remove a taxpayer from the VAT register in cases specified in the VAT Act, such as:

- Failure to file a VAT return for three consecutive months
- Submission for six consecutive months of zero VAT returns, with no sales or purchase transactions indicated
- When it is not possible to contact the taxpayer or its representative
- When the taxpayer or its representative fails to appear before the tax authorities when ordered to do so

White List

The head of the National Revenue Administration (KAS) maintains a so-called White List of VAT payers, i.e. entities registered, deleted or restored to the VAT register.

Among other things, the White List provides a list of bank accounts of the taxpayer notified to the tax authorities as accounts tied to business activity.

Pursuant to regulations applicable from 1 January 2020, if a payment for a transaction between active VAT payers exceeding PLN 15,000 is not made to the seller's bank account disclosed in the White List and some additional requirements are met, the purchaser:

- May not include the expense as a deductible cost for PIT and CIT purposes
- Will be jointly and severally liable with the seller for the unsettled VAT on the transaction

Purchasers may avoid these sanctions by submission of a special notification to the head of the purchaser's tax office (via the ZAW-NR form) or make a payment using the split-payment mechanism.

Refund of surplus input VAT

If input VAT exceeds the amount of output VAT in the settlement period, the taxpayer is entitled either to carry forward the surplus to the following settlement period(s) or to apply for a refund.

The standard deadline for a VAT refund is 60 days from the date when the VAT return is submitted. Under certain conditions, this deadline may be shortened to 25 or 15 days. The 25-day deadline also applies when a taxpayer requests a refund into the taxpayer's VAT account (technical account used for split payment, where the funds may be used for limited purposes).

As a rule, taxpayers issuing only e-invoices in KSeF, subject to meeting additional conditions, are able to benefit from the shortened 40-day deadline for VAT refunds.

However, these deadlines may be extended by the tax authorities if an additional audit regarding the refund is necessary.

Refund of VAT to non-residents

Foreign taxpayers not registered for Polish VAT may claim a refund of input VAT incurred on the purchases of goods and services in Poland.

Refunds of input VAT can only be made to foreign taxpayers if the VAT would be refundable to a Polish taxpayer for the purchase of such goods or services.

Furthermore, taxpayers from outside the EU can only claim a refund if their home country makes VAT refunds to Polish VAT payers (reciprocity rule). EU taxpayers should submit their application for a VAT refund to the Polish tax office via their local tax authorities. Travelers from outside the EU can also claim a refund of VAT on purchases in Poland.

Reporting and payment requirements

General information

As a rule, all VAT payers are obliged to file a VAT return and pay VAT liability monthly by the 25th day of the month following the given settlement period (or the next business day, if the 25th is not a business day). Quarterly submission of VAT returns is allowed only in some specified cases, not during the 12-month period after VAT registration.

The VAT return is submitted in the form of a SAF-T V7M or SAF-T V7K file, comprising both the VAT return and the VAT register (covering information about purchases and sales). The SAF-T V7M and SAF-T V7K files require entities to disclose a specific set of additional data such as the group of goods and services, procedures determining the type of sales transactions, and types of sale and purchase documents.

Taxpayers making intra-EU supplies and intra-EU acquisitions of goods or intra-EU supplies of services must also file an EC Sales List monthly, by the 25th day of the month following the given settlement period (or the next business day, if the 25th is not a business day).

The SAF-T V7M or SAF-T V7K file and EC Sales/Purchase Listing must be filed electronically.

INTRASTAT Declarations

INTRASTAT declarations must be filed for intra-EU flow of goods. Generally, these should be submitted to the customs chambers on a monthly basis, by the 10th day of the following month. The obligation to submit INTRASTAT declarations arises if the value of arrivals or dispatches of goods exceeds statistical thresholds published annually by Statistics Poland (GUS). For 2023 the basic threshold for arrivals was PLN 5 million and for dispatches was PLN 2.7 million.

Bad-debt relief

Polish regulations enable taxpayer to recover VAT charged for the supplies of goods or services if a debtor (purchaser) does not pay for an invoice within 90 days after the payment deadline date specified in the contract or invoice, and certain formal requirements are met.

At the same time, the debtor (purchaser) is obligated to correct the deducted VAT amount resulting from an invoice if the amount due under the invoice is not paid within 90 days after the due date set forth in the contract or invoice. On 15 October 2020, the Court of Justice of the European Union issued a judgment on Polish bad-debt relief (C-335/19, E. Sp. z o.o. Sp. k.) holding that the Polish legislation making the reduction of the VAT taxable amount subject to certain formal requirements is incompatible with the EU VAT Directive.

As a result of the judgment, these formal requirements have been abolished. As of October 2021, relief became available also in situations where the debtor is in liquidation proceedings, ceased to be an active VAT payer, or is a natural person (consumer) or VAT-exempt taxpayer. In situations where the debtor is not an active VAT payer, the use of bad-debt relief depends on meeting additional conditions.

And from 1 October 2021, the deadline for benefiting from bad-debt relief was extended from two to three years (starting from the end of the year in which the invoice was issued).

VAT sanctions (additional VAT liability)

The tax authority will assess an additional VAT liability (30% of the understatement of a VAT liability or overstatement of a VAT refund) in cases specified in the VAT Act, such as:

- Understatement of VAT liability reported in a VAT return (30%)
- Overstatement of VAT refund claimed in a VAT return (30%)

The additional VAT liability will be 100% if the understatement/overstatement resulted from fraud.

The additional VAT liability may be limited in certain situations to 20% or 15%, and in some cases is not imposed at all.

How can we help you?

- Mandatory Disclosure Rules: support in MDR reporting
- Advisory regarding General Anti-Avoidance Rules (GAAR)
- CIT automation tool
- WHT reporting
- TPR Assistant: TPR reporting tool
- Increase the efficiency of VAT settlements: VAT Groups, National e-Invoicing System (KSeF)
- Family business: New solutions for seamless family business succession
- Reliefs and subsidies: Polish Investment Zone, supporting R&D works, IP Box

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KPMG tax advisors support companies from various sectors of the economy in any issues related to tax, law and accounting. Our dedicated Tax Technology Practice supports clients in tax compliance and in improving their performance by automating taxation issues and regulations. Teamed with our technology advisors from the Business Advisory, we implement and upgrade finance and tax systems powered by our strategic alliance partners like Microsoft or SAP.

Paweł Barański

Partner, Head of Tax and Legal

Statutory financial statements and reporting requirements

Key features of financial statements prepared by entities in Poland

Reporting obligations and mandatory audit of financial statements prepared by entities in Poland

The statutory financial statements of entities in Poland consist of the following elements:

- Balance sheet
- Profit and loss accounts
- Notes to the financial statements, including the introduction to the financial statements, additional information and explanations

Financial statements prepared by entities subject to a mandatory annual audit also include a statement of changes in equity and a cash flow statement.

Financial statements of the following entities are subject to mandatory audit:

A. Annual consolidated financial statements of capital groups, and annual financial statements of certain other entities regardless of their size, including but not limited to banks, insurers, pension funds, credit unions, joint-stock companies and payment institutions

B. Annual accounts of limited-liability companies, general partnerships, limited partnerships, civil-law partnerships, and undertakings of natural persons which satisfied at least two of the following three criteria for the preceding financial year:

- Employment of at least 50 people (average annual employment, expressed in FTEs)
- Balance sheet total of at least EUR 2.5 million (i.e. the total assets in the balance sheet at the end of the financial year amounted to the PLN equivalent of at least EUR 2.5 million)
- Sales revenue of at least EUR 5 million (i.e. net revenue from the sales of goods and products, services and financial operations for the financial year amounted to the PLN equivalent of at least EUR 5 million)

C. Regardless of the size of the entities, the following are also subject to mandatory audit:

- Financial statements of companies acquiring other entities, for the financial year in which the merger occurred
- Annual financial statements of undertakings prepared in accordance with IFRS
- Annual consolidated financial statements of investment funds with separate subfunds as well as individual annual financial statements of the subfunds

Mandatory disclosures applicable to companies listed on the Warsaw Stock Exchange

In 2022, there were 416 companies listed on the Warsaw Stock Exchange, 318 of them on the primary market and the other 98 on the OTC market. Of all companies listed on the WSE, 45 are foreign entities.

Companies listed on the WSE have the option of preparing their financial statements in accordance with International Financial Reporting Standards (IFRS). In practice, most companies listed on the WSE do apply IFRS. However, the obligation to prepare financial statements in accordance with IFRS applies to consolidated statements of capital groups and banks listed on the WSE.

Companies, including parent undertakings listed on the WSE, are obliged to prepare and publish a number of documents with a pre-determined content. The most important of them are the quarterly, semi-annual and annual reports. The content of such reports and their publication dates are presented in the table.

Issuers on EU regulated markets are required to prepare their annual financial reports in the European Single Electronic Format (ESEF), including XBRL tags embedded in the human readable XHTML format of IFRS consolidated financial statements. A major addition to ESEF requirements for FY 2022 is application of block mark-ups for whole sections of the notes in the consolidated financial statements. Preparers are required to tag any disclosures that correspond to IFRS concepts on the list in Annex II of Regulation (EU) 2019/815.

	QUARTERLY FINANCIAL REPORTS	SEMI-ANNUAL FINANCIAL REPORTS	ANNUAL FINANCIAL REPORTS
Content of the statements	• Condensed financial statements for the last quarter • Concise description of the issuer's material achievements or failures for the last quarter	• Semi-annual financial statements • Semi-annual directors' report on the user's activities, containing a description of the main risks to the company • Auditor's report on the review of the financial statements for the six-month period	• Annual financial statements • Letter from the CEO discussing the issuer's most important achievements or failures for the financial year and the growth prospects for the next financial year • Annual directors' report or manager's report on the issuer's activities • Non-financial report • Auditor's report on the audit of the financial statements for the financial year
Publication dates	• No later than 60 days after the end of the quarter	• No later than three months after the end of the six-month period	• No later than four months after the end of the financial year

Legal foundation

The Polish Accounting Act of 29 September 1994 with subsequent amendments (Polish Accounting Standards or PAS) sets out the accounting rules and includes requirements for the statutory audit. The Accounting Act applies to entities with their registered office or place of management in Poland.

Differences between PAS and IAS

Excluding IFRS16 and IFRS 15, Polish Accounting Standards do not deviate significantly from IFRS. Although there are some differences between the standards, they do not generally have a significant impact on the financial position or performance of entities. Some selected differences between PAS and IFRS are presented on the next page.

	PAS	IFRS	IMPACT ON FINANCIAL STATEMENTS
Recognition of revenue	• No detailed guidelines as to when revenue is to be recognized • In general, revenue is recognized when significant benefits of ownership of goods or services have been transferred to the buyer	• 5-step model for revenue recognition; detailed guidelines including revenue recognition related to repurchase, ageancy relationships, licences and regulations on other elements related to sales, such as guarantees or right to return goods	• Significant difference in revenue recognition is possible
Valuation of stocks	• Possibility to capitalise forex differences • Possibility to apply the LIFO stock costing method	• No possibility to capitalise forex differences • No possibility to use the LIFO stock costing method	• Possible impact on P&L and balance sheet
Tangible fixed assets	• Possibility to use one-off depreciation • No detailed guidelines for general overhauls • Fair value measurement not possible	• No possibility to use one-off depreciation • General overhaul costs must be recognised during the useful life • Fair value measurement possible	• Possible impact on P&L and balance sheet
Valuation of intangible assets	• Fair value measurement not possible	• Fair value measurement possible	• Possible impact on P&L and balance sheet
Deferred tax	• Possible exemptions from deferred tax accounting	• Obligation to recognise deferred taxes	• Possible impact on P&L and balance sheet
Business combination	• Negative goodwill recognized in the balance sheet and depreciated	• Gain from a bargain purchase recognized in P&L	• Possible impact on P&L and balance sheet of acquirer
	• There are regulations for business combinations under common control	• Goodwill depreciation not allowed, annual impairment test required • Lack of regulations for business combinations under common control	
Leased assets and liabilities	• Operating leases and rental arrangements—recognition as operating expenses of a given period, thus impacting the entity's performance in the financial year	• All leases (including rental arrangements) are, as a rule, recognized in the balance sheet as the right-of-use assets with a corresponding lease liability	• Significant difference in amounts recognized in balance sheet (fixed assets; financial liabilities; deferred taxes) • Significant impact on P&L is possible
Financial instruments	• Classification and measurement based on the category of financial instruments • No detail quidance for impairment of financial instruments; rather based on the model of incurred losses	• Classification and measurement based on the business model applied to group of assets • Impairment calculation based on the model of expected lossess	• Possible impact on P&L account and balance sheet

Polish accounting standards vs. IFRS

In the absence of specific regulations regarding classification, measurement and presentation of certain transactions in the Polish Accounting Act, entities can apply Polish Accounting Standards, which are to some extent based on, but not fully compliant with, IFRS. The application of Polish Accounting Standards is not obligatory. The entity can choose to incorporate all or selected national standards into its accounting policies. Once incorporated, a selected Polish Accounting Standard should be applied in full; selective application of the standard is not permitted.

Where no relevant national standard exists, entities may apply IFRS.

Impact of forex differences on financial statements

The official currency in Poland is the Polish zloty (PLN). Poland applies a free-floating exchange rate system. In the last ten years, the value of the zloty in relation to the US dollar and the euro has decreased, but this trend has taken a significantly different pace for each of the two currency pairs. Naturally, the fluctuating exchange rates of these currencies have had a major impact on the performance of Polish entities involved in the export or import of materials, goods or services, and entities with foreign currency loans. In particular, this is the case with entities which do not use financial instruments to hedge their forex position, a practice which is not very common in Poland.

Undertakings which have their registered office in Poland and prepare their annual financial statements in accordance with IFRS have the option to choose a currency other than the Polish zloty for the presentation of their financial statements. However, in practice this is rare. On the other hand, undertakings which prepare their annual financial statements in accordance with PAS should use Polish currency to present their statements and other financial data.

PLN vs. USD

The lowest average monthly PLN/USD exchange rate in the last ten years was recorded in May 2011, whereas the highest average monthly exchange rate was recorded in October 2022. Ultimately, the difference between these rates was 78%. The value of the US dollar also proved to be more volatile than that of the euro. The highest annual increase in the value of the US dollar compared to the same month of the previous year was 26%, while the greatest decline was 18%.

PLN vs. EUR

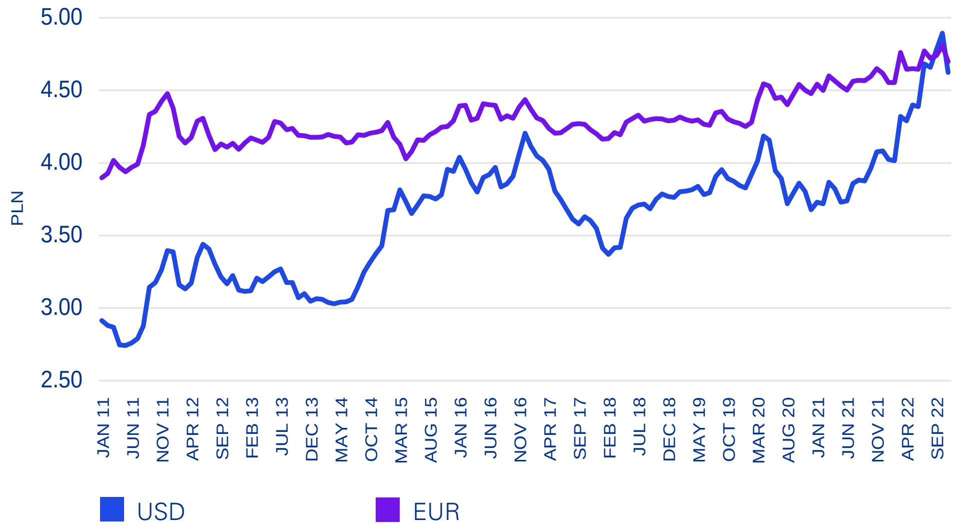
The lowest average monthly exchange rate between the Polish zloty and the euro in the last ten years was recorded in January 2011, while October 2022 saw the highest average monthly exchange rate. Ultimately, the difference between these rates was 23%. The value of the euro has been much more stable in comparison with the US dollar. The highest annual increase in the value of the euro compared to the same month of the previous year was 12%, while the greatest decline was 9%.

Polish zloty versus the US dollar and the euro in the last 10 years

	USD	EUR
Lowest average monthly exchange rate	2.7149	3.8704
Highest average monthly exchange rate	4.2049	4.5450
Highest nominal difference	1.463	0.6746
Highest nominal difference, in %	53%	17%
Highest annual increase versus the same month of the previous year, in %	26%	12%
Highest annual decrease versus the same month of the previous year, in %	18%	9%

Source: KPMG Poland based on National Bank of Poland.

Average monthly exchange rates: USD and EUR



Source: KPMG Poland based on National Bank of Poland.

How can we help you?

KPMG in Poland offers independent audit and assurance services, as well as comprehensive support in preparation of financial statements.

- Financial statement audit
- Support in public or private offering (comfort letters, IFRS or US GAAP conversion)
- ESG assurance preconditions audit
- FS Converter: financial statement generator
- XBRL Tool for listed companies
- Other assurance services

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KPMG in Poland offers independent audit services designed to enhance the credibility of information prepared by companies for investors, creditors and other stakeholders, and to meet regulatory requirements. Our specialists identify potential risks and provide valuable information, enabling our clients to manage their business effectively. KPMG's position was confirmed by winning the title of the best audit company in Poland seven times.

Marek Gajdziński
Partner, Head of Audit

Which investment destination to choose?

Southern Macroregion

EUR 7.7 billion
the largest share of EU funds for 2021-2027

Source: Ministry of Development Funds and Regional Policy.
The data refer to planned regional programmes in the EU–Poland Partnership Agreement.

7.8 million people
the biggest population

Source: Statistics Poland (GUS), 2022 data.

The Southern Macroregion consists of two provinces (also called voivodeships): Małopolska and Silesia. The largest cities in these provinces are Kraków, the former seat of Poland's kings, and Katowice, the largest city in the Upper Silesia industrial region. Małopolska province is famous for its tourist attractions. Every year, Kraków is the Polish city most visited by foreign tourists. In addition, this part of Poland is home to the Tatra Mountains, the highest in the country, which attract many mountain hiking enthusiasts.

The Southern Macroregion is the most populated area in Poland. Nearly 8 million people live there. The strong urbanisation of the region contributes to investment in road infrastructure. According to the most recent data, the macroregion had the densest network of public roads, including express roads and motorways. Moreover, the number of such routes is constantly rising. Some of them are part of the Baltic–Adriatic corridor of the Trans-European Transport Network (TEN-T), directly connecting the macroregion with Czechia and Slovakia, and indirectly with countries in the centre and south of the continent.

Industry is the strongly dominant economic sector in this part of the country. Silesia province is home to the Katowice Special Economic Zone, which brings together several hundred investors from around the world. In 2021, for the fifth time, it was voted the best economic zone in Europe in the Financial Times ranking. The dominant sector is the automotive industry. Investments are supported by EU funds, of which EUR 7.7 billion has been earmarked for the Southern Macroregion provinces for 2021–2027.

Southern Macroregion in numbers

Population (H1 2022)	7,788,883
Population density (per sq. km) (2021)	284
GDP per capita (2021) Converted at NBP's average annual exchange rate for 2021	EUR 14,811
Unemployment rate (BAEL) (Q4 2022)	1.9%
Average monthly gross wages and salaries in the enterprise sector (2022) Converted at NBP's average annual exchange rate for 2022	EUR 1,466
Express roads and motorways (per 100 sq. km) (2021)	2.1 km
Number of university students (2021)	262,957
Number of universities (public and non-public) as of April 2023	55
Maximum aid intensity under the Polish Investment Zone Support for medium-sized and small/micro enterprises is increased by 10 and 20 percentage points respectively	30–40%
Key sectors	Energy and raw materials Automotive BPO/SSC

Source: KPMG in Poland, based on Statistics Poland, Eurostat, POL-on

North-Western Macroregion

3 out of 5

biggest commercial seaports in Poland

1.9

the lowest unemployment rate

Source: Statistics Poland (GUS), 2022 data.

The North-Western Macroregion comprises the provinces of West Pomerania, Lubusz and Wielkopolska. The largest cities are Szczecin, Zielona Góra and Poznań respectively. A major advantage of this macroregion is its excellent geographical position: a direct border with Germany, a location on the Oder River or the Baltic Sea. Three of the five largest Polish cargo ports are located here. This makes the north-western part of Poland an excellent corridor for trade with the whole world.

The North-Western Macroregion is the second most populous in Poland (over 6.1 million), but its population density is the second-lowest in the country (92 per sq. km). The share of the unemployed is clearly the lowest in Poland (1.8% in 2022). The average monthly salary was EUR 1,281. There are 51 universities in the North-Western Macroregion, which ranks it third in the country. Szczecin is home to the Maritime University, which trains future naval officers.

The most important sectors are services and industry, which employ 1,607,000 and 929,000 people respectively. Due to the specific characteristics of the region, the highest investment is allocated to industrial processing (42%), retail and wholesale trade and vehicle repair (27%). Subsidies of EUR 4.7 billion from EU funds are planned for the region for the period 2021–2027.

North-Western Macroregion in numbers

Population (H1 2022)	6,124,020
Population density (per sq. km) (2021)	92
GDP per capita (2021) Converted at NBP's average annual exchange rate for 2021	EUR 14,613
Unemployment rate (BAEL) (Q4 2022)	1.8%
Average monthly gross wages and salaries in the enterprise sector (2022) Converted at NBP's average annual exchange rate for 2022	EUR 1,281
Express roads and motorways (per 100 sq. km) (2021)	1.6 km
Number of university students (2021)	163,919
Number of universities (public and non-public) as of April 2023	51
Maximum aid intensity under the Polish Investment Zone Support for medium-sized and small/micro enterprises is increased by 10 and 20 percentage points respectively	25–40%
Key sectors	Retail and wholesale trade Automotive Tobacco and alcohol

Source: KPMG in Poland, based on Statistics Poland, Eurostat, POL-on

South-Western Macroregion

3.8 million people

second-lowest population

EUR 1,441

third-highest average monthly gross wage

Source: Statistics Poland (GUS), 2022 data.

The South-Western macroregion comprises the Lower Silesia and Opole provinces. The region's capitals are Wrocław, the third most populous city in the country, and Opole.

The macroregion is home to nearly 3.9 million inhabitants, around 17% of whom live in Wrocław. The per capita GDP of EUR 15,604 in 2021 was the second-highest in the country, and the gross monthly salary ranked third in 2022 (EUR 1,459). In this macroregion, according to the most recent data available, there are more than 137,000 students at 38 public and non-public universities, including nearly 107,000 in Wrocław, which is a popular academic city.

The South-Western Macroregion attracts a large share (36%) of all investment outlays in industrial processing in Poland and employs a workforce of 533,000. Opole province includes a fragment of the Katowice Special Economic Zone, which significantly contributes to the development of the region. According to the agreed distribution of money from European funds for 2021–2027, the macroregion will receive EUR 3.3 billion. The grants will allow further investment not only in industry, but also in road infrastructure. The length of express roads and motorways per 100 sq. km in 2021 was higher than the average for Poland as a whole, and road investments are still increasing.

South-Western Macroregion in numbers

Population (H1 2022)	3,837,246
Population density (per sq. km) (2021)	131
GDP per capita (2021) Converted at NBP's average annual exchange rate for 2021	EUR 15,604
Unemployment rate (BAEL) (Q4 2022)	3.5%
Average monthly gross wages and salaries in the enterprise sector (2022) Converted at NBP's average annual exchange rate for 2022	EUR 1,459
Express roads and motorways (per 100 sq. km) (2021)	1.8 km
Number of university students (2021)	137,358
Number of universities (public and non-public) as of April 2023	38
Maximum aid intensity under the Polish Investment Zone Support for medium-sized and small/micro enterprises is increased by 10 and 20 percentage points respectively	25–40%
Key sectors	Metal mining Automotive Electromobility

Source: KPMG in Poland, based on Statistics Poland, Eurostat, POL-on

Northern Macroregion

EUR **5.4** billion

high use of EU funds

Source: Ministry of Development Funds and Regional Policy data referring to planned regional programmes in the EU–Poland Partnership Agreement

1,552,000

high number of people employed in the service sector

Source: Statistics Poland (GUS), 2022 data.

The Northern Macroregion consists of three provinces: Kujawy–Pomerania, Warmia–Mazury, and Pomerania. The largest cities are Bydgoszcz, Olsztyn and Gdańsk. The region is highly developed in tourism. Its location by the Baltic Sea and in the land of lakes attracts tourists from Poland and abroad every year. The northern part of the country is also a traditional sea gateway to global markets. Pomerania province is home to two of the largest ports in the country. The port of Gdańsk is the fourth-largest port in terms of trans-shipment on the Baltic Sea. The second local port is in Gdynia. It receives a large number of ships thanks to factors such as well-developed ferry transport. In addition, the international Baltic–Adriatic Corridor route, which passes through five countries and ends in Italy, begins in Gdańsk.

In H1 2022, the Northern Macroregion had a population of nearly 5.8 million people, the third-highest figure in Poland. Despite this, the population density is low (95 people per sq. km in 2021). The region has 46 universities with over 164,000 students. Gdynia is home to the largest maritime university in the country, which trains merchant fleet officers and engineering and management personnel for the maritime economy.

The lower-than-average level of urbanization is tied to the high share of agriculture in employment in the region, with 230,000 people working in that sector — the third-highest result in the country. The real estate sector also plays an important role in the north of Poland. These three provinces attract the second-largest share of all real estate investment outlays. Investments are supported by EU funds, of which EUR 5.4 billion has been earmarked for the Northern Macroregion for 2021–2027.

Northern Macroregion in numbers

Population (H1 2022)	5,739,999
Population density (per sq. km) (2021)	95
GDP per capita (2021) Converted at NBP's average annual exchange rate for 2021	EUR 12,887
Unemployment rate (BAEL) (Q4 2022)	3.1%
Average monthly gross wages and salaries in the enterprise sector (2022) Converted at NBP's average annual exchange rate for 2022	EUR 1,332
Express roads and motorways (per 100 sq. km) (2021)	1.2 km
Number of university students (2021)	164,784
Number of universities (public and non-public) as of April 2023	46
Maximum aid intensity under the Polish Investment Zone Support for medium-sized and small/micro enterprises is increased by 10 and 20 percentage points respectively	30–50%
Key sectors	Petrochemicals Fish and meat processing Paper and cardboard production

Source: KPMG in Poland, based on Statistics Poland, Eurostat, POL-on

Central Macroregion

2.01 km /100 sq. km

the second-highest density of express roads and motorways

Source:Statistics Poland, 2021 data

3.6 million people

the lowest population

Source: Statistics Poland (GUS), 2022 data.

The Central Macroregion comprises the Łódź and Świętokrzyskie (Holy Cross) provinces. The region's capitals are Łódź, a city whose economy was for many years based on textiles, and Kielce, which is famous for its thematic trade fairs devoted to various industries.

The Central Macroregion has the smallest population (3.6 million). Despite this, the population density was 120 people per sq. km in 2021, slightly lower than the national average. Workers in the enterprise sector could expect an average monthly salary of EUR 1,267 in 2022. The agricultural sector also accounts for a large share of employment in the region, with 191,000 workers.

Development is supported by EU funds, of which EUR 4.2 billion has been earmarked for the Central Macroregion for 2021–2027.

Central Poland is an excellent geographical location, not only characterised by its proximity to Warsaw, the country's capital, but also a good transport hub. According to the most recent data, there are 2.01 km of express roads and motorways per 100 sq. km. Two motorways running across the country from north to south (A1) and east to west (A2) intersect near Łódź. In addition, the international road E75 runs through here, connecting nine European countries from Norway to Greece. There are also many transport projects planned in this region in connection with construction of the Solidarity Transport Hub in the neighbouring province.

Central Macroregion in numbers

Population (H1 2022)	3,567,781
Population density (per sq. km) (2021)	120
GDP per capita (2021) Converted at NBP's average annual exchange rate for 2021	EUR 1,335
Unemployment rate (BAEL) (Q4 2022)	4.0%
Average monthly gross wages and salaries in the enterprise sector (2022) Converted at NBP's average annual exchange rate for 2022	EUR 1,267
Express roads and motorways (per 100 sq. km) (2021)	2.0 km
Number of university students (2021)	90,797
Number of universities (public and non-public) as of April 2023	33
Maximum aid intensity under the Polish Investment Zone Support for medium-sized and small/micro enterprises is increased by 10 and 20 percentage points respectively	40–50%
Key sectors	Petrochemicals Fish and meat processing Paper and cardboard production

Source: KPMG in Poland, based on Statistics Poland, Eurostat, POL-on

Eastern Macroregion

EUR 6.0 billion

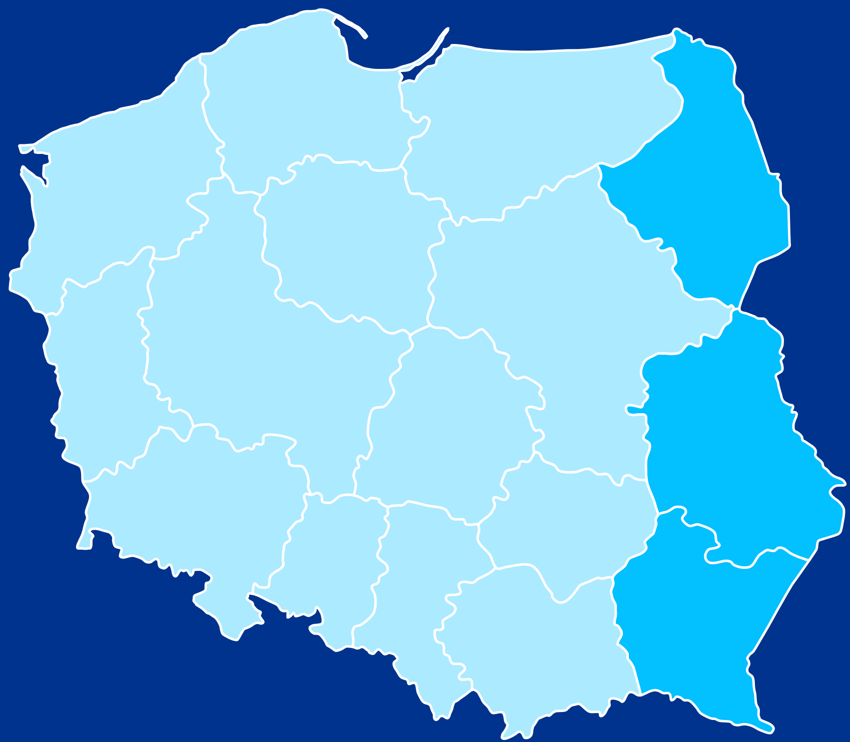
second largest share of EU funds planned for 2021-2027

Source: Ministry of Development Funds and Regional Policy data referring to planned regional programmes in the EU–Poland Partnership Agreement

326,000

the highest number of people working in agriculture

Source: Statistics Poland (GUS), 2022 data.



Along Poland's eastern borders are three provinces: Lublin, Podkarpacie and Podlasie, which form the Eastern Macroregion. The province capitals are Lublin, Rzeszów and Białystok. This macroregion borders with five countries: EU member states Lithuania and Slovakia and non-EU countries Belarus, Russia and Ukraine. The North Sea–Baltic Sea TEN-T transport corridor passes through this area.

The Eastern Macroregion is home to more than 5.2 million people, but the population density was the lowest in the country at 83 people per sq. km in 2021. In the region, workers can expect the lowest average monthly salary in the country of EUR 1,190. At the same time, the unemployment rate is the highest, at 4.5%. For this reason, support from the Polish Investment Zone for the eastern provinces ranges from 50% for large companies to 70% for small businesses. At the same time, a decision to grant support within the Polish Investment Zone may be issued in this region for the longest period, which means that the exemption can be enjoyed for 15 years. According to the plan for distribution of money from European funds for 2021–2027, the Eastern Macroregion will receive the largest pool of funds, EUR 6.0 billion. This value does not take into account the European Funds for Eastern Poland programme, which has a larger geographic range but mainly includes these three eastern provinces.

The high forest cover and low population density means that agriculture has a major impact on the region's economy. The percentage of people employed in this sector was by far the highest of all macroregions, with 326,000 people working in this sector.

Eastern Macroregion in numbers

Population (H1 2022)	5,257,935
Population density (per sq. km) (2021)	83
GDP per capita (2021) Converted at NBP's average annual exchange rate for 2021	EUR 10,594
Unemployment rate (BAEL) (Q4 2022)	4.5%
Average monthly gross wages and salaries in the enterprise sector (2022) Converted at NBP's average annual exchange rate for 2022	EUR 1,190
Express roads and motorways (per 100 sq. km) (2021)	0.9 km
Number of university students (2021)	141,569
Number of universities (public and non-public) as of April 2023	42
Maximum aid intensity under the Polish Investment Zone Support for medium-sized and small/micro enterprises is increased by 10 and 20 percentage points respectively	50%
Key sectors	Dairy and cheese making Tyre production Aerospace production

Source: KPMG in Poland, based on Statistics Poland, Eurostat, POL-on

Mazovia Province Macroregion

83

the biggest number of universities

Source: POL-on, 2023 data

EUR 1,681

the highest average monthly gross wage

Source: Statistics Poland (GUS), 2022 data.

The only macroregion consisting of only one province is the Mazovia Province Macroregion. This independent region is represented by Poland's capital, Warsaw, and its adjacent counties. Its excellent location in the centre of the country offers many opportunities for residents and investors. The city is also an excellent base for tourists. Warsaw has Poland's largest airport, which is well connected to the city centre.

The region is home to more than 5.5 million inhabitants, almost 1.9 million of whom live in Warsaw, Poland's largest city. With so many people in a small area compared to other macroregions, the region is the second most densely populated in the country. An aspect that attracts people to this province is the highest average monthly salary by far. In 2022, it was EUR 1,643. The GDP per capita (EUR 23,673 in 2021) is more than 50% higher than in the microregion that ranked second in this category. The Mazovia Province Macroregion has the largest number of universities in the whole country (83). Two of the three largest universities in the country, the University of Warsaw and the Warsaw University of Technology, are located here.

Investment outlays in the region account for 35% (in Q3 2022) of investments from the country as a whole. As a large part of the labour market is in Warsaw, the service sector plays an important role here, employing a workforce of 1,797,000. Of all money invested in Q3 2022 in IT in Poland, 80% goes to this region. The outskirts of Warsaw, on the other hand, are becoming an increasingly popular location for logistics centres and warehouses every year. This makes transport and storage the sector with the largest share of investment outlays (32%). The importance of this sector in this area of Poland is linked to the development of the public road network. Four European roads intersect in Warsaw, one of which is a section of the North Sea–Baltic Corridor TEN-T route. Because it has the highest level of development, the region will receive the smallest share of European funds for 2021–2027, at EUR 2.1 billion.

Mazovia Province Macroregion in numbers

Population (H1 2022)	5,511,491
Population density (per sq. km) (2021)	155
GDP per capita (2021) Converted at NBP's average annual exchange rate for 2021	EUR 23,673
Unemployment rate (BAEL) (Q4 2022)	2.6%
Average monthly gross wages and salaries in the enterprise sector (2022) Converted at NBP's average annual exchange rate for 2022	EUR 1,643
Express roads and motorways (per 100 sq. km) (2021)	1.4 km
Number of university students (2021)	254,654
Number of universities (public and non-public) as of April 2023	83
Maximum aid intensity under the Polish Investment Zone Support for medium-sized and small/micro enterprises is increased by 10 and 20 percentage points respectively	25–50%
Key sectors	Business services Media and ICT Food production

Source: KPMG in Poland, based on Statistics Poland, Eurostat, POL-on

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