Poland Country Profile

EU Tax Centre

June 2017

Key tax factors for efficient cross-border business and investment involving Poland

EU Member State Yes

Double Tax Treaties With:

Albania	Egypt	Jersey[a]	Nigeria	Syria
Algeria	Estonia	Jordan	Norway	Tajikistan
Armenia	Ethiopia	Kazakhstan	Pakistan	Taiwan
Australia	Finland	Kuwait	Philippines	Thailand
Austria	France	Kyrgyzstan	Portugal	Tunisia
Azerbaijan	Georgia	Latvia	Qatar	Turkey
Bangladesh	Germany	Lebanon	Romania	Ukraine
Belarus	Greece	Lithuania	Russia	UAE
Belgium	Guernsey[a]	Luxembourg	Saudi Arabia	UK
Bosnia and Herzegovina	Hungary	Macedonia	Serbia	Uruguay
Bulgaria	Iceland	Malaysia	Singapore	US
Canada	India	Malta	Slovakia	Uzbekistan
Chile	Indonesia	Mexico	Slovenia	Vietnam
China	Iran	Moldova	South Africa	Zambia
Croatia	Ireland	Mongolia	South Korea	Zimbabwe
Cyprus	Isle of Man	Montenegro	Spain	
Czech Rep.	Israel	Morocco	Sri Lanka	
Denmark	Italy	Netherlands	Sweden	
	Japan	New Zealand	Switzerland	

Note: (a) Applies to Individuals only.

Forms of doing business Capital companies (S.A., sp. z o.o.), Partnerships, Branches, Rep. Offices.

Legal entity capital requirements S.A. - PLN 100,000, Sp. z o.o. - PLN 5,000.

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Residence and tax system

A company is resident if either its legal seat or its place of management is located in Poland. Resident companies are taxed on their worldwide income. Non-resident companies are taxed only on their Polish source income.

Compliance requirements for CIT purposes

- Fiscal year is generally a period of 12 consecutive months;
- Monthly tax advance payments should be made (simplified monthly advances equal to 1/12 of the previous year tax due possible);
- No filing obligation during the year;
- Annual tax return should be filed and the remaining balance paid within three months after the end of each tax year.

Tax rate

The standard corporate income tax rate is 19 percent. A 15 percent preferential CIT rate is available as of January 1, 2017. This preferential tax rate is available to small taxpayers, i.e. entities whose sales revenue (including the VAT amount) did not exceed the PLN equivalent of EUR 1,200,000 in the preceding tax year and to new taxpayers in their first year of operation (specific anti-avoidance rules should be observed).

Withholding tax rates

On dividends paid to non-resident companies

19 percent.

Dividends paid to EU, EEA and Swiss parent companies are exempt subject to:

(i) a minimum holding requirement: 10 percent (25 percent for Switzerland), and

(ii) a minimum holding period of two years.

Reduction / exemption of WHT available under DTTs.

On interest paid to non-resident companies

20 percent.

Exemption on interest paid to specific EU/EEA and Swiss related companies available from July 1, 2013.

Reduction of WHT applicable under DTTs.

On patent royalties and certain copyright royalties paid to non-resident companies

20 percent.

Exemption on payments to specific EU/EEA and Swiss related companies available from July 1, 2013.

Reduction / exemption of WHT applicable under DTTs.

On fees for technical services

20 percent for the use of, or the right to use, industrial equipment, including means of transport, commercial or scientific equipment, or for the use of know-

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how (exemption on payments to specific EU/EEA and Swiss-related companies available from July 1, 2013).

Reduction / exemption of WHT applicable under DTTs.

On other payments

20 percent, unless DTT provides otherwise, on payments for intangible services (accounting, marketing, HR, management, etc.).

20 percent on payments for services provided by foreign entities in the area of entertainment or sports performed/organized through individuals or companies operating in the area of artistic events, entertainment or sports on Polish territory.

Reduction / exemption of WHT applicable under DTTs.

Branch withholding taxes

No.

Holding rules

Dividend received from resident/non-resident subsidiaries

- Credit method. Underlying credit available for non-EU and non-EEA treaty countries except Switzerland:
  – Minimum holding requirement: 75 percent;
  – Minimum holding period: 2 years.
- Participation exemption for dividends from Polish subsidiaries and subsidiaries located in EU Member States, EEA states and in Switzerland, provided that:
  – Minimum holding requirement: 10 percent (25 percent for Switzerland);
  – Minimum holding period: 2 years.

Capital gains obtained from resident/non-resident subsidiaries

Generally taxable.

Tax losses

Losses may be carried forward for five years. Up to 50 percent of the loss may be offset in each year. Loss carry back is not allowed.

Tax consolidation rules/Group relief rules

Resident companies with an average share capital of at least PLN 1,000,000 may form a fiscal group. It must be formed for at least three years. Additional requirements:

- The parent company must hold 95 percent of the shares in the subsidiaries;
- The subsidiaries may not hold shares in the other companies of the group;
- The companies may not be exempt from corporate income tax;
- The annual ratio of net income to gross income must be above 3 percent.

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Registration duties

Capital duty on incorporation of a company and on share capital increase (0.5 percent of share capital or increase of share capital). Capital allocated to share premium is not taxed.

Transfer duties

On the transfer of shares

1 percent (share-for-share deal may be exempt under specific conditions).

On the transfer of land and buildings

2 percent if not subject to VAT or VAT exempt.

Stamp duties

Yes, on some legal actions such as issuance of the certificate or submitting a power of attorney.

Real estate taxes

Yes, the tax rates are set by the local authorities, subject to the maximum rates.

Controlled Foreign Company rules

Yes (CFC legislation in force since January 1, 2015).

Transfer pricing rules

General transfer pricing rules

OECD Guidelines apply. APA available.

Documentation requirement

For most related party transactions statutory transfer pricing documentation required within seven days upon request (any transfer pricing adjustments taxed at 50 percent if no documentation).

Thin capitalization rules

Old thin cap rules

Under the grandfathering clause, the old thin cap rules still apply to loans granted before January 1, 2015, provided the loan (money) was actually transferred to the borrower before that date, which should be understood as a physical transfer.

Interest paid on a loan is non-deductible in proportion to the amount exceeding the debt-to-equity ratio of 3:1, if the loan is granted:

- by a shareholder holding directly at least 25 percent of the share capital or by a group of shareholders holding directly in total at least 25 percent of the share capital; or
- between companies in which the same company holds directly at least 25 percent of the share capital of both the lending and the borrowing company.

New thin cap rules

Under new thin capitalization rules, effective as of January 1, 2015, the debt-to-equity ratio was changed to 1:1. The abovementioned provisions regarding debt providers continue to apply.

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General Anti-Avoidance rules (GAAR)

When establishing the nature of a transaction, tax authorities consider the intention of the parties and the purpose of a transaction, rather than relying solely on the representation made by the parties. If the transaction was fictitious and the parties intended to hide its real nature, the legal consequences of the real transaction will be taken into account.

New GAAR took effect on July 15, 2016. These rules give the tax authorities the right to determine the amount of tax payable without taking into account transactions that:

- were carried out primarily in order to obtain a tax benefit, which under the given circumstances would be contradictory to the spirit and intent of the tax provisions, or
- have an artificial character.

The transaction is considered to have been carried out primarily to obtain a tax benefit if its other economic objectives, as indicated by the taxpayer, are deemed to not have significant importance. A transaction is deemed to have an artificial character if, under the same circumstances, another entity acting reasonably and driven by legitimate objectives (thus not for the purposes of obtaining a tax benefit) would not have carried out the transaction in the same way as the relevant taxpayer.

If obtaining the tax benefit was the only reason for an action, then the tax benefits resulting from the artificial action will be forfeited, as if the transaction (action aimed at obtaining the tax benefit) had never taken place.

As a consequence of applying the GAAR, the taxpayer may be charged late payment interest on potential tax arrears. According to the new GAAR legislation, the tax benefit is defined quite broadly as:

- avoiding a tax liability, delaying the moment when a tax liability arises, reducing the amount of a tax liability, generating a tax loss or increasing the amount of a tax loss;
- realizing a tax overpayment or right to receive a tax refund or an increase in the amount of an overpayment or increase in the amount of a tax refund.

Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions

Certain exemptions apply only if there are legal grounds for the exchange of fiscal information between Poland and the relevant State.

Tax neutrality will not apply to a merger, a division or an exchange of shares if the transaction is not justified by sound economic reasons, but was entered into for the purpose of avoiding tax. Specific anti-abuse clauses apply under DTTs.

Certain transactions / arrangements are specifically excluded from the Interest and Royalties Directive exemption.

Tax exemption on dividends received by Polish resident companies from EU/EEA/Swiss subsidiaries does not apply if the amounts paid are tax deductible for the distributing company.

The taxpayer cannot benefit from the dividend distribution exemption if:

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- the dividend payment results from arrangements / transactions that are primarily aimed at benefitting from the exemption and the obtaining of the exemption results in more than merely elimination of double taxation, and
- these agreements / transactions are not of a genuine nature, i.e. business justification test.

Advance Ruling system	Yes
IP / R&D incentives	From 2017: tax deduction on R&D activities (R&D tax credit) – 50 percent of the salaries of employees involved in research and development activity and 30 percent or 50 percent of other costs connected with R&D. Until 2016: tax deduction on R&D activities (R&D tax credit) – 30 percent of salaries of employees involved in research and development activity and 10 percent or 20 percent of other costs connected with R&D. Until 2015: 50 percent extra tax deduction on new technology expenses.
Other incentives	Research and development expenditure can either be deducted in the year when it is incurred or through tax write-offs.
VAT	The standard rate is 23 percent, and the reduced rates are 0 percent, 5 percent and 8 percent.
Other relevant points of attention	As of January 1, 2017, a domestic definition of income earned within the territory of Poland was introduced. The definition will be used when determining the limited tax liability of non-Polish residents. The amendments to the CIT Act provide for a wide range of examples of situations when the income of a non-resident is explicitly deemed as earned “within the territory of the Republic of Poland” for the purposes of determining the taxpayer's limited tax liability in Poland. According to this definition, the following types of income qualify as Polish source income: ■ Income from all types of activities performed within the territory of Poland, including activities of a permanent establishment located in Poland. ■ Income derived from real estate located in Poland as well as from property rights to such real estate, including income from the sale of the real estate as a whole or in parts and the sale of any property rights to such real estate. ■ Income from securities and derivative financial instruments that do not constitute securities authorized for public trading on a regulated exchange market in Poland, including income from the sale of such securities and financial instruments or from the realization of property rights arising therefrom. ■ Income from the alienation of shares in a company, or participation in a partnership, investment fund or collective investment undertaking, where at least 50 percent of the total value of assets are directly or indirectly derived

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from immovable property located in Poland or property rights to such immovable property.

- Income from the settlement of receivables, including those put at disposal, paid or set-off by individuals, companies or entities without legal personality having a place of residence, registered office or management within the territory of Poland, regardless of the place where the agreement was concluded or the service was performed.

Source: Polish tax law and local tax administration guidelines, updated 2017.

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