



**PKGT**  
AUDYT

# Doing Business in Poland

**PKGT Audyt**  
**Business, Financial and Taxation Advisers**

**Doing Business in Poland**

**Issue May 2014**

<b>1.</b>	<b>PKGT AUDYT AND CONSULTING (IN POLAND)</b> .....	<b>4</b>
1.1.	THE PKGT AUDYT MISSION.....	4
1.2.	SCOPE OF SERVICES.....	4
1.3.	CONTACT DETAILS.....	4
1.4.	HOW TO USE THIS GUIDE.....	5
<b>2.</b>	<b>INTRODUCTION TO POLAND</b> .....	<b>5</b>
2.1.	BACKGROUND INFORMATION.....	5
2.2.	THE GOVERNMENT SYSTEM.....	6
2.3.	THE LEGAL SYSTEM.....	6
2.4.	THE MONETARY SYSTEM.....	6
2.5.	POLISH LANGUAGE.....	7
<b>3.</b>	<b>THE BUSINESS ENVIRONMENT</b> .....	<b>7</b>
3.1.	THE BANKING SYSTEM.....	7
3.2.	THE ACCOUNTING PRINCIPLES.....	7
3.3.	AUDIT REQUIREMENTS.....	8
3.4.	FOREIGN EXCHANGE CONTROL.....	8
3.5.	CONTROLS OF NORMAL BUSINESS ACTIVITIES.....	9
3.6.	FORMS OF BUSINESS ORGANISATION.....	9
3.6.1.	<i>Companies</i> .....	10
3.6.2.	<i>Branch Operations</i> .....	10
3.6.3.	<i>Limited liability partnerships</i> .....	10
3.7.	INCENTIVES FOR BUSINESS ACTIVITIES.....	10
3.8.	OWNERSHIP OF REAL PROPERTY IN POLAND.....	11
<b>4.</b>	<b>TAXATION</b> .....	<b>11</b>
4.1.	TAXATION OF CORPORATIONS.....	11
4.2.	CORPORATION TAX (PODATEK DOCHODOWY OD OSÓB PRAWNYCH).....	12
4.3.	ORGANISATIONS TAXABLE AS CORPORATIONS.....	12
4.4.	TAXABLE INCOME OF RESIDENT CORPORATIONS.....	12
4.4.1.	<i>The Tax Base</i> .....	12
4.4.2.	<i>Dividends Received</i> .....	12
4.4.3.	<i>Depreciation</i> .....	13
4.4.4.	<i>Capital Gains</i> .....	13
4.4.5.	<i>Net Losses</i> .....	14
4.4.6.	<i>Groups (with the exception of tax groups)</i> .....	14
4.4.7.	<i>Charges by Parent</i> .....	14
4.4.8.	<i>Transfer pricing</i> .....	14
4.4.9.	<i>Foreign Taxes</i> .....	14
4.4.10.	<i>Thin capitalisation</i> .....	14
4.4.11.	<i>Tax residence</i> .....	15
4.5.	TAXATION OF NON-RESIDENT CORPORATIONS.....	15
4.5.1.	<i>Taxation of Registered Branches or Other Permanent Establishments</i> .....	15
4.5.2.	<i>Taxation at Source of Investment Income Paid to Non-Residents</i> .....	15
4.6.	LIQUIDATIONS.....	15
4.7.	TAXATION OF SHAREHOLDERS (CORPORATIONS AND INDIVIDUALS).....	16
4.7.1.	<i>Capital Gains Realised by Non-residents</i> .....	16
4.8.	RETURNS.....	16
4.9.	VALUE ADDED TAX (PODATEK OD TOWARÓW I USŁUG).....	16
4.9.1.	<i>General Rules</i> .....	16
4.9.2.	<i>Obligation for a foreign entity to register for VAT in Poland</i> .....	17
4.9.3.	<i>Registration of a foreign entity for VAT purposes</i> .....	18

4.9.4.	<i>Refund of VAT for entities carrying out their activities outside of the territory of Poland or in Poland but without a permanent place</i>	19
4.9.5.	<i>Repayment of excess input VAT to a VAT registered entity</i>	20
4.10.	<b>OTHER SIGNIFICANT TAXES</b>	21
4.10.1.	<i>Excise Duties</i>	21
4.10.2.	<i>Personal Income Tax</i>	21
4.10.3.	<i>Social Security</i>	22
4.10.4.	<i>Other Taxes</i>	22
4.10.5.	<i>Customs Duty</i>	22
4.11.	<b>TAXATION OF INDIVIDUALS</b>	22
4.12.	<b>SOCIAL SECURITY</b>	23
4.13.	<b>CAPITAL TAXATION</b>	23
4.14.	<b>TAX TREATIES</b>	23
<b>5.</b>	<b>EMPLOYMENT REGULATIONS AND INDUSTRIAL REGULATIONS</b>	<b>26</b>
<b>6.</b>	<b>CHARGES ON PURCHASED ASSETS</b>	<b>26</b>

## **1. PKGT AUDYT (IN POLAND)**

### **1.1. The PKGT AUDYT Mission**

PKGT AUDYT Poland is headed up by Andrew Kinast who for 18 years was the founding and managing partner of Grant Thornton in Poland – one of the leading global advisers to entrepreneurial businesses. In that time Andrew helped clients invest more than 1 billion Euro in the Polish economy.

The aim of the firm is to provide clients with total support in realising their business objectives in their dealings in Poland. These may be met via our in-house experts in taxation or auditing for example or by liaising with our strategic partners on areas such as employment legislation or locating the right joint venture partner. Each client is allocated a single contact who will be in charge of coordinating the work of individual specialists as well as outside consultants. This means that areas of key need are addressed, the necessary resources are made available and all expertise is effectively co-ordinated and tailored to meet the particular clients individual needs and expectations.

By offering an extensive range of business advisory services, in addition to auditing, accountancy and taxation, clients can rely on PKGT Audyt at all stages of their business relationship with Poland: from preparing market entry strategies prior to investment, via designing and implementing computerised accounts and management systems, to restructuring and corporate finance activities.

### **1.2. Scope of Services**

Whilst concentrating on strategic advise, tax planning and value added consulting PKGT Audyt specialises in project managing the development and implementation of business strategy.

### **1.3. Contact Details**

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### **1.4. How to Use this Guide**

This guide is broken down into the key areas of doing business in Poland and focuses on providing answers to the most frequently asked questions. In addition to this brochure we also publish extended guides to particular areas such as property investment, accounting

legislation and new developments. These can be accessed under the knowledge base on our web site.

This brochure is designed to give an overview of doing business in Poland from the point of view of a Western business professional considering the Polish market. However, it also provides relevant background information of use to those organisations already doing business in Poland, since each issue is updated to keep businesses abreast of the latest revisions to the law as they affect business.

The most common way of doing business in Poland is through a fully or partly owned subsidiary (either a limited liability entity or a limited liability partnership) or branch of the foreign company. The information in this document has been prepared with these entities in mind. Banks and insurance companies are not covered, as they are subject to special regulations.

Due to frequent changes in legislation, users of this publication should seek advice direct from PKGT AUDYT rather than placing reliance on information contained in this brochure.

The information contained is intended for guidance only and should not be relied upon as a source of specific advice.

## **2. INTRODUCTION TO POLAND**

### **2.1. Background Information**

Poland is the only European Union member country which during the crisis avoided recession.

Poland covers 3% of the landmass of Europe and its people make up 5% of the continent's population, making it the largest and most populous single market in Central Europe. This market, consisting of 40 million potential customers is still developing and continues to grow at a rate faster than most other European Union member states. It is a country rich in natural resources with a wide range of industrial and agricultural enterprises.

In 1989, Poland embarked on the momentous task of transforming the country's command economy into a free market environment. The stabilisation programme, reduction of inflation, removal of a number of trade barriers and privatisation of the state sector has resulted in one of the highest GDP growths in Europe.

Because of this and together with its educated, entrepreneurial population, natural resources and proximity to huge neighbouring markets, Poland is fast becoming the emerging market at the top of many foreign investors' lists. In March 1999 Poland

became a full member of NATO. On 1<sup>st</sup> May 2004 Poland joined the European Union. Poland is currently the beneficiary of one half of EU structural funds made available to the 12 new member states. This is an ongoing process and it is therefore vital that prior to embarking on any business activities and at regular intervals, foreign companies and individuals should seek local professional advice. This brochure is produced and updated

on a regular basis to ensure our current and potential clients are given the most accurate information possible.

## **2.2. The Government System**

Poland is a constitutional republic with a President, Government and a Legislature composed of two Houses (the Sejm and the Senat). Elections of the President, Sejm and Senat are held under universal suffrage with those for the Houses of Parliament being governed by a complex system of proportional representation. The President, the Government and both Houses of Parliament have the right to introduce new legislation. The process of Government is ruled by the 1997 Constitution.

## **2.3. The Legal System**

As already stated, the legal system is undergoing a process of profound change. On 1 January 2001 a new Commercial Code was introduced in order to comply with EU Directives. The Commercial Code is regularly updated to reflect the development of the Polish economy. Foreign investment is regulated by the Law on Freedom of Economic Activity.

Foreigners other than EU and EEA nationals normally require Interior Ministry approval to purchase land in Poland although permission is usually obtained. Nationals of the EU EEA and other countries with which Poland has signed mutual protection of business treaties may freely register as entrepreneurs and benefit from flat rate 19% tax on economic activity.

The Criminal Code is adequate for the purposes of protecting property rights and in the case of foreign owners assets compensation is guaranteed by the Ministry of Finance in the case of expropriation. Clients however should consider using Arbitration wherever possible as proceedings before the courts can be very slow and cumbersome. Legal advice should be sought before signing any contracts. The bankruptcy law introduces severe penalties in respect of fraudulent bankruptcies and imposes penalties on directors of companies, which continue to trade when insolvent.

Contracts may specify arbitration as an alternative to resource to the courts which can be very slow in hearing disputes.

## **2.4. The Monetary System**

The Polish zloty (PLN) was denominated by a factor of 10,000 on 1 January 1995. The current exchange rate is approximately 1 EURO = 4.15 Polish zloty, 1 US \$ = 3.1 Polish zloty. Please note that as a result of inward investment as well as activity of the Warsaw Stock Exchange the Polish currency has seen wide variations and clients are advised, wherever possible, to hedge their currency exposure. Clients should however avoid speculative derivative based products which have been mis sold in the past.

## **2.5 Polish Language**

It is acceptable to prepare and sign agreements in foreign languages with some exceptions concerning employment agreements and contracts with consumers. In the case of court

dispute or presentation of the documents to the Polish authorities such agreements have to be sworn translated into Polish.

### **3. THE BUSINESS ENVIRONMENT**

#### **3.1. The Banking System**

The banking system consists of the National Bank of Poland (NBP) which performs supervisory, lender of last resort, foreign exchange and money issuing functions, a number of universal banks, a number of specialist quasi merchant and commercial banks, a myriad of agricultural credit unions, several small private banks and a large number of subsidiaries and branches of Western banks.

The main sources of finance are:

- The banking system
- Specialist emerging markets funds
- Poland based private equity funds
- The Warsaw Stock Exchange
- European Union structural funds

Poland is open to all forms of inward investment although the process may in practice be slower than is desired.

#### **3.2. Accounting Principles**

In Poland the accounting principles and audit requirements are set out in the Law on Accounting.

The above regulations do not differ considerably from International Financial Reporting Standards (IFRS) and in the situations not regulated by the Law these standards can be applied. Moreover, entities as well as subsidiaries of entities quoted on a recognised EU stock exchange can prepare their financial statements in accordance with IFRS.

Statutory financial statements consist of: a balance sheet, profit and loss account, additional information, comprising of an introduction to the financial statements and additional information and explanations. Entities subject to obligatory audit are also required to prepare a statement of changes in equity (own funds) and cash flow statements.

The financial statements for the year must be accompanied by a management report on activity.

The accounting records, the financial statements and the management report must be prepared in Polish and in the Polish currency.

The financial statements should be prepared within 3 months from the balance sheet date and signed by all the members of the Management Board and the person in charge of maintaining the accounting records. The financial statements must be approved by an authorised body (usually the Annual General Meeting of Shareholders) not later than 6 months from the balance sheet date.

Within 15 days from the approval of the annual financial statements, the Management Board is obliged to present the documents for court registration purposes, together with an auditor's opinion (if the requirement of an obligatory audit is applicable), a copy of the shareholders' resolution approving the financial statements and resolving on allocation of profits/ loss coverage, and the management report on activity.

The approved annual financial statements must be kept in the archives permanently, whereas the accounting records, inventory documentation and other source documents must be stored for 5 years.

### **3.3. Audit Requirements**

Annual financial statements of banks, insurance agencies, investment and pension funds and joint stock companies are subject to an obligatory audit and must be published.

The audit requirement also applies to the financial statements of other entities where in the year preceding the reporting year to which the financial statements relate, two of the following three conditions are met:

- a) mid year employment level of 50 or more,
- b) balance sheet totals of assets and liabilities as at the year-end were at least EUR 2,5 million,
- c) turnover net of VAT (revenues from sales of goods and products and financial operations) exceeding EUR 5 million.

### **3.4. Foreign Exchange Control**

The Foreign Exchange Law came into force in October 2002. The Law introduced a distinction between non-resident individuals and entities from the EU, EEA, and OECD countries, non-residents from countries which signed Bilateral Investment Treaties (BIT) with Poland (and from countries treated equally with BIT countries) and non-residents from other countries (third countries). As regards foreign exchange transactions concerning EU, EEA and OECD countries almost full liberalization of trade took place. Polish residents may hold bank accounts as well as grant and take short term loans and bank loans without a permit. A slightly extended scope of restrictions applies to BIT countries and the larger one applies to transactions with non-residents from third countries.

There are no controls over the importation of foreign currency. Non-residents (both corporate and individual) after the payment of due taxes may convert into foreign currency and take out of Poland any share of profits due, remuneration paid, or proceeds from disposal of assets. The banks however impose their own rules, which often change, with regard to documentation which needs to be presented before a transfer will be made.

Payment of amounts due abroad in respect of imported goods and services sometimes requires the presentation at the paying bank of relevant documentation such as invoices and customs clearance documents (if they are relevant).

There are a number of situations where transactions have to be reported to the Central Bank of Poland.

### **3.5. Controls of Normal Business Activities**

With the exception of certain utilities regulated by a government regulator there are no price controls in operation. The Monopolies Board has the right to investigate any instances where it believes that a monopolist or cartel is using its monopoly position unfairly. The Board also has the right to investigate mergers and acquisitions, which could result in a monopoly position being established. In most mergers approval of the Board is required before the merger or acquisition can take place.

In the field of financial services there are strict controls, regulated by the National Bank of Poland, the Ministry of Finance the Warsaw Stock Exchange Commission and the Financial Services Regulator. Patent and intellectual property rights are still subject to common abuse, however the more obvious examples (e.g. pirating of software) are dealt with by a special division of the police.

Strict pollution controls are being introduced with heavy and exponentially rising fines being levied as an inducement to curb emissions. In particular a system of carbon emission offsets is in place.

The Public Works Office is responsible for conducting transparent tenders for major public sector projects, however very often price would appear to be the only consideration.

### **3.6. Forms of Business Organisation**

Foreign physical and legal persons from EU and EFTA zones belonging to EEA may establish and conduct business activities on the same terms as Polish citizens and entities. The same rules also apply to long term EU residents who have consent to stay in Poland and foreigners from other countries who have received a permit to settle in Poland. Furthermore, these persons may conduct business activities in the form of a branch or a representative office.

Foreign investors from other countries are limited to the following types of operating vehicle:

- Limited partnership (Spółka komandytowa)
- Limited joint-stock partnership (spółka komandytowo-akcyjna)
- Limited liability company (Spółka z ograniczoną odpowiedzialnością - Sp. z o.o.)
- Joint stock company (Spółka Akcyjna - SA)

In addition foreign entities and individuals living outside the EU and EEA may following relevant registration operate branches and representative offices subject however to obtaining a certificate from the relevant Polish Consulate confirming that the law of the other country allows Polish nationals and companies to operate in that country in a similar manner. Qualifying individuals may also operate civil partnerships or register as sole traders and be able to benefit from the 19% flat rate entrepreneurs tax.

Increasingly this right is covered by treaties signed by the EU on behalf of all member states.

In all aspects, foreign owned companies are treated on the same basis as Polish owned companies.

### **3.6.1. Companies**

The process of registering companies and branch operations is complicated: as a result of which the cost as well as the time taken may be significantly higher than is the case in other jurisdictions. We strongly recommend the purchase of a ready formed company or partnership.

More details on [www.blackstones.eu](http://www.blackstones.eu)

### **3.6.2. Branch Operations**

Branches are registered with the National Commercial Register. Representative offices are registered with the register of representative offices kept by the Minister of the Economy. In the case of foreigners from other than the EU and the EEA countries a certificate of mutual treatment has to be obtained from the relevant Polish Consulate.

### **3.6.3. Limited liability partnerships**

The limited liability partnership is being increasingly used particularly where some of the investors are individuals rather than corporations. The advantage is that partners are taxed individually on their share of profit (individuals under personal income tax rates, corporations under corporate income tax rates). Most individuals will be able to elect for the flat rate entrepreneurs tax of 19% and be able to offset the full amount of tax against home jurisdiction tax. There is no withholding tax on distributions and excess funds can be transferred to partners at any time. There are also fewer problems than with limited liability companies as far as shareholder funding is concerned. The unlimited partner can be a shell limited liability company holding 1% or less of the partnership which effectively means that the liability on owners is ring fenced. Using FIZ's (Polish close ended funds) it is possible to mitigate almost in full Polish corporation tax and withholding tax on distributions subject to the beneficial owner being tax resident in a jurisdiction with which Poland has a signed avoidance of double taxation treaty.

## **3.7. Incentives For Business Activities**

The current incentives for business activities are administered as part of EU grants and the special economic zone. New investments in Poland can be supported through a cash grant administered by the Minister of the Economy or in the form of corporate tax exemption

available for investors operating in Special Economic Zones. In these zones large enterprises can benefit from corporate tax exemption amounting up to 50% of the investment or the value of the labour costs of new staff employed over two years, whereas medium-sized and small enterprises can benefit from corporate tax exemption of up to 65% of the investment or the value of the labour costs.

Apart from the above incentives, either full or partial real estate tax exemption may be granted by local authorities. Companies investing in Special Economic Zones are usually granted 100% exemption.

There are separate sectoral aid regulations for investors from the automotive, steel, shipbuilding and transport sectors. Investors can benefit also from horizontal aid schemes

which are connected with the creation of jobs, research and development activities and environmental support.

### **3.8. Ownership of Real Property in Poland**

Permission is required in some cases for foreign entities and individuals to purchase land in Poland and also for foreign entities and individuals to hold more than 50% of the shares in a Polish company which as an asset has land.

Permission is obtained from the Ministry of the Interior and Administration. The process can take several months to complete and may require the agreement of other Ministries. Permission is given in respect of a specified property. Permission is not required to purchase apartments nor land up to 4,000 square metres in the city area by entities for their business purposes.

From 1<sup>st</sup> May 2004 permission is not required in the case of citizens of the EU and EFTA zones belonging to EEA and legal entities resident in these areas. Restrictions still apply to EU and EFTA zones belonging to EEA citizens in respect of the ownership of more than one property in Poland used for own housing purposes. Additionally, the purchase of agricultural and forestry land still requires permission in all cases.

There appears to be a loophole whereby an EU and EFTA zones belonging to EEA citizen or resident entity can acquire without permission shares in a Polish legal entity which owns agricultural and forestry land.

## **4. TAXATION**

### **4.1. Taxation of Corporations**

Corporations whose domicile or principal place of management is located in Poland are subject to corporate taxation in Poland on their world-wide income. All other corporations are subject to corporate taxation in Poland on income arising in Poland.

(This is usually taken to apply to branch or other permanent establishments operation in Poland, however the legislation is drawn wide enough to apply to all income arising in Poland e.g. one off contracts subject to the provisions of avoidance of double taxation treaties). Tax on dividends, royalties, interest etc. is satisfied by withholding tax (unless it is the income of a corporation subject to corporation tax in Poland).

Payments made for services provided from jurisdictions the Ministry of Finance considers to be tax havens are subject to withholding tax of 20% as well as irrecoverable reverse charge VAT of 23% unless it can be proved by the purchaser that the service was performed fully outside of the territory of Poland.

### **4.2. Corporation Tax (Podatek Dochodowy Od Osób Prawnych)**

Corporation tax is charged at 19% of taxable income and capital gains. The tax is payable monthly on account. Rates apply in full to both retained and distributed profits. There is a withholding tax of 19% on dividends paid out and certain types of payment (e.g.,

royalties, interest, patent dues, etc.) are taxed at source at a rate of 20%, or less where payments are remitted abroad and the relevant double taxation treaty stipulates lower rates. Furthermore, it should be noted that payments of dividends, interest and royalties to EU residents corporations are normally free of withholding tax subject to confirmation by home jurisdiction tax authorities.

### **4.3. Organisations Taxable as Corporations**

Corporation tax applies to all entities carrying out economic activities, which are not physical persons. In the case of partnerships not registered as a legal entity the taxation liability falls on the individual partners as if the partnership did not in fact exist. In the case of foreign owned entities the tax will in practice be assessed on one of the following bodies:

- Spółka Akcyjna (S.A.) - Joint Stock Company
- Spółka z ograniczoną odpowiedzialnością (Sp. z o.o.)- Limited Liability Co. From 1<sup>st</sup> January 2014 Limited joint Stock Partnerships (SKA)
- Branch or representative office, or by withholding tax on a foreign entity
- Tax holding groups - Special rules apply governing the ability of a group of companies to calculate tax liability as if they were a single entity.

### **4.4. Taxable Income of Resident Corporations**

#### **4.4.1. The Tax Base**

Taxable income is determined each month (or quarter in the case of smaller entities electing for this) of the financial year as being turnover and other taxable income net of value added tax to date less tax allowable expenses to date. The tax payable each month is determined as the difference between tax due and the cumulative payments on account made in previous months. There are a number of expenses which are not tax deductible and particular care needs to be taken over the form and presentation of for example employee expense claims.

#### **4.4.2. Dividends Received**

Dividends received by a resident corporation from another resident corporation will have been received under deduction of 19% withholding tax. The dividend income will be taxed at 19% with the withholding tax borne being deductible from the total amount of corporation tax due. Thus under current tax rates dividends received will not suffer any further taxation in the hands of the recipient.

Polish companies receiving dividends from companies located in the EU, the EEA or the Swiss Confederation will be entitled to a tax exemption, depending on the number of shares held and the period during which they were held. A similar exemption will apply to dividends received from domestic entities.

Please note that any double taxation treaty relief at lower rates of withholding tax may not be available on the "pass-through" of a dividend abroad from a Polish trading company via an intermediate Polish holding company if the Polish holding company does not have sufficient taxable income in its own right to offset the tax on dividend received.

Dividends received by a resident corporation from a non-resident corporation are subject to the full rate of corporation tax. Allowance will be made for withholding tax borne subject to the provisions of any double taxation treaties in force.

Payments of dividend from a Polish company to a EU registered company fulfilling certain minimum conditions are free of withholding tax.

#### **4.4.3. Depreciation**

The accountancy law requires depreciation to be calculated in accordance with commercial principles. Capital allowances are calculated at rates set out in an annex to the Corporate Income Tax Act.

In the case of motor cars the part of the depreciation charge attributable to the proportion in value of the car over 20,000 Euro is not tax allowable.

Accelerated capital allowances can be applied to new additions at twice the basic rate on a reducing balance method.

Fixed assets additions and improvements expenses up to 3,500 new zloty can be directly classified as tax allowable expenditure.

#### **4.4.4. Capital Gains**

Capital gains on the disposal of fixed assets and investments are normally taxed in the same way as operating profits. However where the sale price for the asset concerned is less than the market price the tax authorities have the option to substitute market price for actual transaction prices.

#### **4.4.5. Net Losses**

Net losses may be carried forward for up to 5 years and offset against taxable income in any of those years. However, no more than 50% of any previous year's loss may be relieved in any one subsequent tax year.

#### **4.4.6. Groups (with the exception of tax groups)**

Individual companies within a group are normally taxed on a stand-alone basis with no ability to surrender losses.

Strict restrictions govern the ability to register a tax group structure. Tax groups are taxed on a single entity basis but must meet a number of onerous criteria including minimum share capital and profitability which in practise makes them almost impossible to register.

#### **4.4.7. Charges by Parent**

Charges made by a related both foreign and domestic entity are subject to increasing scrutiny. Charges from tax "havens" are subject to irrecoverable VAT and 20% withholding tax on payment unless it can be proved by the purchaser that the service was performed fully outside of the territory of Poland.

#### **4.4.8. Transfer pricing**

Companies and individuals entering into transactions with connected entities or individuals (both domestic and foreign) as well as with any entities or individuals located in tax havens have to possess full transfer pricing documentation in the Polish language. Such documentation has to be made available within 7 days of request by a tax inspector. Profits assessed under a transfer pricing investigation are subject to penalty tax at 50% plus interest (currently 13% per annum). Connected entities and persons are defined as 5% or more direct or indirect ownership as well as direct or indirect participation in management or control. Transfer pricing definitions follow the OECD guidelines.

From January 2006 new provisions concerning Advance Pricing Agreements have been implemented. Such an agreement may be concluded between a taxpayer or several associated parties and the tax administration.

#### **4.4.9. Foreign Taxes**

Poland has signed avoidance of double taxation treaties with a large number of countries. Where relief is not available under a treaty, allowance will normally be made for the tax already borne in a foreign country subject to the amount of relief not exceeding the due proportion of Polish Corporation tax on the relevant income.

#### **4.4.10. Thin capitalisation**

Interest charged on a shareholder loan is non-tax allowable in respect of that part of the loan which exceeds three times the basic share capital of the subsidiary. The legislation applies to all loans from shareholders owning solely or jointly 25% or more of basic share capital. It applies also in the case where the same shareholder owns at least 25% of the voting shares in both (lender and borrower) companies.

#### **4.4.11. Tax residence**

In order for a Polish payer to withhold tax at reduced rates set by a relevant Avoidance of Double Taxation Treaty or the EU dividend Directive the recipient will have to provide the payer with a certificate of tax residence issued by the tax authorities of the recipient. Such certificate must clearly cover the day on which any payment is actually made.

### **4.5. Taxation of Non-Resident Corporations**

These are taxed on any profit arising in or attributable to trading within Poland.

#### **4.5.1. Taxation of Registered Branches or Other Permanent Establishments**

Non-resident corporations are subject to corporation tax on profits arising from economic activity carried on in Poland. The income arising (after deduction of attributable costs) is taxed as if it were that of a resident corporation. However where it is not possible to establish the amount of profit attributable it is possible to pay corporation

tax on the basis of estimated attributable profits. The profits are estimated as a percentage of turnovers arising in Poland as follows:

- 5% of turnover in the case of the import of goods
- 10% of turnover in the case of construction, assembly and transport services
- 60% of turnover in the case of commission income
- 80% of turnover in the case of attorney and surveyor services income
- 20% of turnover in the case of all other activities.

It should also be noted that branches are obliged to maintain full accounting records of all transactions arising in Poland.

#### **4.5.2. Taxation at Source of Investment Income Paid to Non-Residents**

The tax burden on interest, royalties and patent rights is satisfied by the deduction of withholding tax. The rate of withholding tax is 20%. In the case of dividends the rate is 19%. The rate is reduced in many instances by the provisions of double taxation treaties. Withholding tax is non-refundable and constitutes the final tax liability. Payments of dividends to EU resident companies will in most cases be free of withholding tax. Interest, royalties and patent rights paid to EU resident companies, under certain conditions, are subject to reduced 10% withholding rates unless the provisions of double tax treaty provided lower rate.

#### **4.6. Liquidations**

The corporate tax base is calculated in the same way as ongoing business activities. However the distribution of the excess over share capital is subject to withholding tax.

#### **4.7. Taxation of Shareholders (Corporations And Individuals)**

Dividends paid by a Polish resident corporation to non-residents are subject to a 19% withholding tax on the net of corporation tax distribution. The rate of 20% applies to interest, royalty and patent right payments. All the rates are subject to amendment by treaty. However payments of dividends to corporate shareholders registered in the EU and who holds at least 15% of the share capital in the Polish company for more than two years, are free of any withholding tax. Interest, royalties and patent rights paid to corporate shareholders registered in EU, under certain conditions, are subject to reduced 10% withholding rates unless the provisions of a double tax treaty provide lower rate.

##### **4.7.1. Capital Gains Realised by Non-residents**

In practice these are regulated by the relevant Avoidance of Double Taxation Treaty. In the case of non treaty jurisdictions the tax position will be the same as in the case of residents.

#### **4.8. Returns**

Monthly (or quarterly) tax payments on account of tax are due within 20 days of each month end. Special provisions apply to the last month (or quarter where applicable) of each financial year. The financial year is in most cases the calendar year.

It is no longer necessary to file tax returns during the year however an annual return has to be filed within 3 months of each financial year end. Annual financial statements have to be filed no later than 10 days following their formal approval by the shareholders meeting which should be held no later than six months after the year end. If subject to statutory audit the meeting of shareholders must also adopt the audit opinion and long form report.

#### **4.9. Value Added Tax (Podatek od Towarów i Usług)**

##### **4.9.1. General rules**

This tax was introduced in July 1993, replacing turnover tax. The new act on VAT came into force on 1<sup>st</sup> May 2004 following Poland's accession to the EU and is regularly updated and changed. As a general principle the tax should only apply to consumption, the entrepreneur being merely the collector of the tax, but in common with many other EU jurisdictions the tax is an increasing real cost for business. In particular problems affect private health care where the exemption, rather than zero rating of medical services means that private health care providers cannot reclaim the 8% input tax on medical equipment.

The basic rate of VAT is 23 %. Apart from the basic rate there is a preferential rate of 8% applicable to sales of certain agricultural means of production (fertilisers, pesticides, agricultural machinery), some goods for children, goods connected with health protection, construction and repair services related to social housing, and some other services such as passenger transport (except taxi cabs). There is also a 5% rate applicable to certain unprocessed agricultural products. There is also a zero rate applicable to export of goods outside the territory of the EU. Moreover, social and cultural services are VAT-exempt. Examples include education and health services, as well as postal services. Intra-Community supply of goods is zero rated, provided that the required EU VAT number has been allocated to the recipient.

The VAT rate on unprocessed agricultural products is 5%. Normally, the principle of VAT liability on sales of agricultural products is that a farmer who is a non-VAT taxpayer (who is subject to lump-sum payments), selling his products, beside the sales price will receive a lump-sum VAT refund from the buyer of these products. This refund will amount to 5% of the sum due for the sold products less the lump-sum tax return.

Companies and individuals must register for and charge VAT if their annual turnover exceeds PLN 150,000 (approx. EUR 36,000). VAT is chargeable on supplies of goods and services unless they are specifically relieved by way of exemption or zero rating. Just like in most European countries, VAT is refundable to foreign (non EU) tourists leaving Poland and exporting products from Poland. Foreign tourists are eligible for VAT reimbursement for purchases exceeding a minimum PLN 200 (incl. VAT) only if the customs authorities confirm that the goods have left the Polish territory intact and no later than on the last day of the third month following the month the goods were purchased in.

Specific rules apply to VAT registration obligations of non resident traders. Suppliers of mail and internet order goods must, in most cases, register for Polish VAT irrespective of the jurisdiction from which goods are supplied.

Following Poland's accession to the European Union the VAT treatment of intra community sales and purchases has been significantly simplified. However the process by which non resident entities can obtain a repayment of VAT suffered in Poland remains as difficult as ever.

#### **4.9.2. Obligation for a foreign entity to register for VAT in Poland**

Any entity which carries out economic activity in Poland which would be subject to Polish VAT if carried out by a registered entity is prima facie obliged to register for Polish VAT if sales within Poland exceed the amount of PLN 150,000 (approx. EUR 36,000). It is also required to register a branch in Poland which entails full compliance with Polish accounting regulations. Although the existence of a permanent establishment does not have a direct bearing on VAT registration liability it may be indicative. In practise the definition of the place of supply is significant. In the case of goods this is usually clear cut however the place of supply of services can cause problems.

An EU registered entity selling only to Polish VAT registered entities can escape the need to register so long as all sales are treated as an intra community supply.

A non EU resident entity selling to Poland will normally sell under customs clearance procedures and does not have to register for VAT.

A non EU resident entity registered for VAT in Poland must appoint a Polish fiscal representative (there are severe conditions placed on who may act as a fiscal representative).

Please note that a non resident entity, that does not have a fixed establishment in Poland from which business transactions are effected, may elect to be registered for VAT in Poland or can, alternatively apply for repayment of any Polish VAT suffered.

#### **4.9.3. Registration of a foreign entity for VAT purposes**

To register a foreign company as a VAT taxpayer in Poland, the following steps must be taken:

Lodging an application to register for VAT purposes in the relevant tax office.

This application must be accompanied by:

- A copy of the registration document from the relevant Registry of Business Entities, together with a sworn translation;
- Memorandum or Articles of Association of the company together with a sworn translation;
- A copy of the contract with its Polish customer under which a given foreign entity carries out activities subject to VAT taxation;

- A power of attorney in the form of a notarial deed authorizing a person to represent the foreign entity being the VAT taxpayer before the tax office.
- A non EU resident entity must appoint a Polish fiscal representative

In addition, the place where the documents are to be stored (within the territory of Poland) must be identified as well as the person or registered accounting/ tax advisory bureau which will prepare the (usually monthly) VAT returns. If the VAT returns are to be prepared by a bureau, it is necessary to provide the tax office with an agreement signed with the bureau.

Moreover, the foreign entity must open a bank account in a Polish bank.

VAT can only be treated as offsetable/ recoverable tax on invoices received by the entity on or after the day of lodging the VAT registration. Accordingly foreign entities which decide to register for VAT must file a reclaim application prior to lodging the registration form.

#### **4.9.4. Refund of VAT for entities carrying out their activities outside of the territory of Poland or in Poland but without a permanent place**

The rules of the EU and the national law constitute the basis for applying for VAT refund. Entrepreneurs are eligible for VAT refund if they do not have a seat of economic activity in Poland nor a place of domicile nor a fixed establishment in Poland from which business transactions are effected. To obtain a VAT refund, entrepreneurs have to lodge an appropriate application in the relevant (Warsaw) tax office.

In Poland, like in other countries of the EU, there is a minimum limit of VAT amount claimable. The de minimis amount of the claimed refund is determined taking into account the time covered by the application. In cases where the application relates to a whole fiscal year or a period of time shorter than the last three months of the fiscal year, the minimum amount to be refunded is fixed at the Polish zloty equivalent of EUR 25. However, when the application relates to a shorter period of time than a fiscal year, but not shorter than three months, the limit is fixed at the Polish zloty equivalent EUR 200.

An eligible entity may apply for tax refund with respect to acquisition of goods and services or import of goods effected within a period not shorter than three months and not longer than one fiscal year. The application must be submitted (in specified written form in the Polish language and enclosing the relevant originals of VAT invoices) to the head of the Second Tax Office for the Śródmieście district in Warsaw (*II Urząd Skarbowy Warszawa Śródmieście*) by 30 June of the year following the fiscal year to which the application relates.

The VAT refund should be made within six months from the date of lodging the application. Prior to the transfer of money to the bank account indicated in the application, the entrepreneur will receive a decision issued by the head of the Second Tax Office of the Śródmieście district in Warsaw informing about the acknowledged

amount of tax refund. The procedure may last longer if the tax office decides that the legitimacy of the VAT refund application needs to be further verified. It is the practise of the tax office to wait almost six months before requesting arbitrarily additional information.

From information published in the press the typical period for a refund to actually be made is well in excess of one year and less than 20% of claims are actually admitted. A foreign entity is not entitled to any compensation on that account (foreign entrepreneurs are not entitled to interests).

The applicant is obliged to enclose with the application the originals of invoices and customs documents, showing the input VAT and a declaration confirming that the applicant is a taxpayer of VAT in the country where it is resident and carries out its business activities.

#### **4.9.5. Repayment of excess input VAT to a VAT registered entity**

Polish regulations provide two basic time-limits for refunding of excess input tax by tax authorities: 60 and 180 days from the date of submitting the application regarding VAT refund.

1. In the 60-day period from submitting a declaration, the difference between the input tax and output tax is refunded in a limited amount. The amount of the tax refunded in this period cannot exceed the amount of:
  - a) Input tax on the purchase of fixed tangible and intangible assets that are subject to tax depreciation and the purchase of land.
  - b) 23% of the net value of sales taxed at rates lower than 23% (7% and zero rated but not exempt)
2. The tax is refunded in all other cases in a period of up to **180** days from submitting the application.

However, a taxpayer may apply for the shorter periods of refund namely 25 days in the cases mentioned in point 1 above or 60 days in other cases if the refund is connected with:

- VAT invoices fully paid by a taxpayer to issuer of invoices or
- VAT declared in customs clearance documents or resulting from decisions taken by the customs authorities which has been paid by a taxpayer or
- intra-community acquisition of goods, import of services or supply of goods for which the purchaser is the taxpayer, in the case where in the tax return proper output VAT has been declared

Taxpayers who have been registered for less than 12 months and who are also registered as EU VAT taxpayers (required to be able to effect intra community sales) are subject to

a 180 day repayment period in all cases unless they post a security bond or bank guarantee of PLN 250,000.

As with refunds the repayment period may be extended pending completion of investigation by the tax authorities. However, in the case where the legitimacy of the VAT refund application has been positively verified, a taxpayer is entitled to interest amounting currently to 6.5% per annum.

#### **4.10. Other Significant Taxes**

##### **4.10.1. Excise Duties**

In addition to VAT some commodities are subject to excise duty. This applies to harmonised within EU and non-harmonised products, encompassing goods such as passenger cars, fire-arms used for hunting, fuels and lubricants, plastic packaging, salt, alcoholic beverages, tobacco products, and certain consumer goods such as hi-fi equipment, video cameras, yachts and motor boats, perfumes, etc. Excise duty is calculated either as a percentage of the value of goods produced or on a volume basis.

##### **4.10.2. Personal Income Tax**

Employers are obliged to operate deduction and payment systems in respect of their employees and to deduct 19% withholding tax on payments made to certain sub-contractors.

##### **4.10.3. Social Security**

A highly complex system with liability shared between the employer and employee was introduced on 1<sup>st</sup> January 1999. Broadly the joint liability is some 40% of gross salary.

##### **4.10.4. Other Taxes**

Real estate tax (podatek od nieruchomości) is levied by local municipalities within limits set in the Law on Local Taxes and Fees.

##### **4.10.5. Customs Duty**

From the day of Poland's EU accession, the European Customs Code applies.

#### **4.11. Taxation of Individuals**

All persons resident in Poland are subject to taxation in Poland on their world-wide income. However, foreign domiciled individuals who take up temporary residence in Poland and are protected by a relevant avoidance of double taxation treaty will normally only be taxed on income arising out of employment duties performed in Poland (irrespective of where that income is actually paid) and on any other income arising in Poland.

From 1<sup>st</sup> January 2007 any individual who is in Poland for more than 183 days in any calendar year will be prima facie liable to Polish tax on their world-wide income in that year.

However in most cases the application of the relevant avoidance of taxation treaty will mean that non Polish income will be taxable where it arises and in the country of domicile but not in Poland. The test will therefore, in respect of non Polish income, be one of permanent residence. In individual cases the “tie breaker” rules will apply as most individuals will be treated as tax resident in both countries (home jurisdiction by virtue of domicile – permanent residence and in Poland by virtue of the 183 day rule).

Please note that individual treaties contain different clauses and in practice the Polish tax authorities may demand proof of domicile in a country outside of Poland and may also, irrespective of such proof, try to tax non Polish income.

Please note that assessments can be raised for a period of five years and that penalty interest will be added in respect of any tax deemed by the tax office to be due but not paid.

Personal income tax (podatek dochodowy od osób fizycznych) is normally deducted by the employer although in many instances individuals will need to declare income and pay any due tax themselves (payments are normally due on a monthly basis).

In 2014 cumulative income up to PLN 85,528 is taxed at 18% with the excess taxed at 32%.

From 1 January 2004 taxpayers running an economic activity are free to chose flat rate tax of 19% in respect of income from that activity. The right to register economic activity applies automatically to EU citizens whilst others have to hold proof of reciprocal treatment in their country of origin. Tax payers must elect to apply the flat rate either before the first income arises or by the 20<sup>th</sup> January in a tax year in which the flat rate is to be applied.

Income from all sources is cumulated for taxation purposes with the exception of dividend income, interest received on bank deposits and government securities, which are taxed at 19% at source (withholding tax). Married couples may elect to be taxed on the basis of one half of the joint income rather than actual individual income.

Individuals subject to limited liability are taxed at a flat rate of 20% on remuneration received as members of the Management or Supervisory Board of a Polish company. Care needs to be taken in structuring the base employment contract and resolution of shareholders.

#### **4.12. Social Security**

Social security payments are shared (equally) between the employer and employee. Joint contributions amount to some 40% of gross taxable income. The payments due are made up of 5 elements two of which are borne by both employer and employee, one paid only by the employee and two are borne only by the employer. The bulk of the

elements of the contributions are capped at a level of yearly remuneration of PLN 112,380 in 2014.

#### **4.13. Capital Taxation**

Proceeds from the sale of domestic property are free from taxation subject to property having been held for at least five years.

Most other capital gains are cumulated with other sources of income to arrive at the total taxable for the year. There are no indexation allowances. However the gains on sale of shares are taxed at a flat rate of 19%.

In many instances double taxation treaties will exempt certain categories of capital gain from taxation in Poland. A certificate of tax residence will be required.

#### **4.14. Tax Treaties**

Details of tax treaties are available on the Ministry of Finance website (enter Umowy o unikaniu podwójnego opodatkowania).

### **5. EMPLOYMENT REGULATIONS AND INDUSTRIAL REGULATIONS**

Employment matters are regulated by the Employment Code. Amongst others, the legislation provides for protection against unfair dismissal and sets minimum notice periods. There is a minimum wage, which currently stands at 1,126 Zloty per month.

Foreigners require work permits to enable them to work in Poland. However, most EU citizens are allowed to work in Poland without permission.

From 2002 the duty of obtaining a work permit was extended to cover management and supervisory board members of Polish companies whose stay in Poland in any calendar year exceeds 30 days. However procedures for service engineers etc. entering Poland to install and service equipment supplied from abroad have been simplified.

Employers employing more than 5 employees are obliged to put into effect detailed internal rules governing remuneration, employee rights and obligations, etc. The normal retirement age is 65 for men and 60 for women although in a large number of industries lower retirement ages apply.

### **6. CHARGES ON PURCHASED ASSETS**

The tax authorities may charge assets acquired in respect of the unpaid tax liabilities of the vendor. Acquirers can avoid this happening by obtaining a tax clearance certificate from the relevant tax office at the time of acquisition.