

# Doing Business in Poland

2010



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# 1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 78 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Poland has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at January 2010.

We look forward to helping you to do business in Poland.

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## **2. Business environment**

Poland is a parliamentary republic. The supreme law of Poland is the Constitution, passed on 2 April 1997 and ratified by a national referendum. The governmental system of Poland is based on the separation of powers and balance between the Legislature, Executive and Judiciary.

Since 1989 Poland has implemented a package of economic reforms which have laid solid foundations under the economy. After the introduction of successful reforms, Poland has become the Central European leader in attracting foreign direct investment.

Poland's macroeconomic stabilisation and rapid economic development have turned the country into one of investors' most desired target locations. Poland has never experienced any currency or fiscal crises.

The success of political and economic transformation in Poland has found international recognition, as evidenced by accession to the Organisation for Economic Cooperation and Development (OECD) in 1996, the North Atlantic Treaty Organisation (NATO) in 1999 and the European Union (EU) in 2004.

Throughout the economic turmoil of 2008-2009, its economy has been one of the strongest – if not the healthiest overall – in the EU. It has avoided most of the traps which have mired other regional economies. It did not participate in the sub-prime mortgage market, there have been no major bank failures and no political implosion. Economic growth has slowed, but recession has been avoided thus far. According to Eurostat data, Poland is one of the few European countries likely to note economic growth in 2009.



Official name	Republic of Poland
Population	38.6 million
Area	312,685 sq km
Population density	123 people per sq km
Language	Polish
Religion	Roman Catholic (95%), Protestant, Russian Orthodox and other (5%)
Largest cities (population)	Warszawa (Warsaw) - capital 1,701,000 Łódź 800,110, Kraków 738,150
Membership of major international organizations	NATO, OECD, WTO, Council of Europe
Currency exchange rates 2009 yearly average rates	USD 1 = PZL 3,1162 EUR 1 = PZL 4,3273

### 3. Foreign investment

#### **Incentives for investors in Poland**

Factors especially favourable for investment in Poland include: the size of Polish market, its low labor costs, accessibility of educated staff, stable political situation and favorable geographical location.

Poland also offers numerous instruments supporting investors, such as:

- Investment incentives in special economic zones and municipalities (e.g. income tax - CIT or PIT depending on the legal form used to run the business);
- Exemptions or purchase of land for competitive prices, sites already developed with infrastructure and utilities;
- Assistance of authorities trained to ease the often complicated task of setting up a new venture in Poland;
- A favourable quality-cost ratio;
- The possibility to make use of EU funds;
- The possibility to locate an investment within industrial or technology parks, equipped with modern entrepreneurship infrastructure;
- The low cost of conducting business (corporate income tax rate of 19%).

Currently, there are 14 Special Economic Zones in Poland. The regulations regarding investment and the benefits thereof vary according to the investor and the special economic zone, but in all cases the prospective investor needs to apply to the SEZ's management board for an operating permit.

In general, the minimum value of an investment entitled to public aid in a special economic zone is E100, 000.

The costs qualifying for cover under regional aid in a SEZ, i.e. costs forming the basis for calculating the maximum amount to be exempted from tax, could be costs of new investment or costs of work of newly employed workers, depending on whether the tax exemption is in the form of aid for a new investment or as aid for new workplaces.

There is also the possibility of utilising both forms of aid simultaneously, on a condition that the joint amount of aid does not exceed the permitted maximum in a given investment; so that the maximum aid level is determined by the ratio of the aid's intensity to the highest level of costs: the new investment, or two year costs of the newly employed staff.

These are only general descriptions of the rules governing SEZ investment. Interested parties should consult with the zones themselves or with the Polish Information and Foreign Investment Agency.

### **Governmental grants**

Foreign investors carrying out new investments in Poland can count on receiving support under the "Scheme for the promotion of investments of priority interest for the Polish economy" (hereinafter referred to as the 'Scheme'), a document adopted by the Council of Ministers on 23 September 2008. The main objective of the Scheme is to boost innovation and productivity of the Polish economy by increasing the inflow of technologically advanced investments and creating highly productive jobs.

Support is provided in the form of a grant on the basis of a bilateral agreement concluded between the Minister of Economy and the investor, pursuant to the Council of Ministers' resolution on the establishment of a multi-annual programme of support for the completion of the investment. The agreement lays down detailed conditions for the payment of the grant whilst respecting the principle that the grant is paid proportionately to the degree of fulfilling one's commitments.

Support can be applied for exclusively by entrepreneurs planning investments in the following priority sectors: automotive sector, electronic sector, aviation sector, modern services sector, research and development, biotechnology.

The Scheme is to provide support for initial investments under the two following categories:

- Aid intended to cover the costs associated with the creation of new jobs;
- Aid intended to cover eligible costs of the new investment.

The investor shall contact The Polish Information & Foreign Investment Agency in order to receive detailed information on support.

### **Exemption from local taxes**

One of the basic investment incentives which are available for entrepreneurs in gminas (municipalities) is the exemption from local taxes and charges.

#### *Real estate tax exemption*

The municipal council (gmina council) may, by way of a resolution, establish exemption from real estate tax for entrepreneurs as one of the

forms of state aid. The aid provided in the form of exemption from real estate tax is equivalent to the value of the tax exemption. Tax aid granted under resolutions of municipal councils constitutes the so-called “automatic aid”, which means that an entrepreneur is automatically entitled to exemption after fulfilling the conditions set out in the resolution of the municipal council.

Exemptions from local taxes and charges may be introduced taking into account the conditions specified in:

- Decree of the Council of Ministers adopted pursuant to Article 20d of the A.l.t. (the Decree of the Council of Ministers of 5 August 2008 on conditions for exemptions from the real estate tax and the tax on means of transport, constituting regional investment aid (Journal of Laws 2008, No. 146, item 927);
- Acts governing the award of de minimis aid;
- Acts governing the award of aid within the framework of group exemptions.

### **Investment protection treaties**

Poland has concluded investment protection treaties with many countries.

These treaties provide that investments made by entrepreneurs from one contracting state will be treated fairly and on an equally favourable basis as domestic investments in the other contracting state.

## 4. Setting up a business

### Forms of business activity in Poland

The principal legal act governing business activity in Poland is the Economic Freedom Act of 2 July 2004. It regulates the establishment, running and closing of businesses in Poland, as well as relevant public administration tasks.

The Act has simplified setting up a business in Poland. Fewer documents are required to register a business in Poland, and according to the World Bank, the registration process takes just 31 days.

**Foreign persons** from the EU and European Free Trade Agreement zones who belong to the European Economic Area (EEA) may undertake and run businesses on the basis of the same rules applicable to Polish entrepreneurs.

The same rules also apply to foreigners living outside the EEA who:

- Have received a permit to settle on Polish territory;
- Have consent for tolerated stay or the status of refugee granted in the Republic of Poland;
- Enjoy temporary protection within this territory.

Other foreign persons have the right, unless international agreements state otherwise, to undertake and run business activities only in the following forms:

- Joint stock companies
- Limited liability companies
- Limited joint-stock partnerships
- Limited partnerships.

They have also the right to enter these kinds of partnerships or companies and to purchase shares.

Furthermore, **foreign entrepreneurs** may run business activities in the form of branch offices and may also set up representative offices in Poland.

Polish law defines a **foreign person** as:

- A natural person residing abroad, without Polish citizenship;
- A legal person with a seat (registered office) abroad;
- An organizational unit with a seat abroad, which is not a legal entity but has a legal capacity.

According to the law, a **foreign entrepreneur** is a foreign person running a business activity abroad.

### **Individual business and civil partnerships**

Among the least complicated forms of conducting business which are available to Polish entrepreneurs and (according to article 13 of the Economic Freedom Act) to entrepreneurs from the EEA, are the options of an individual conducting a business activity and a civil partnership.

Polish law offers various forms of conducting business activity, which enables entrepreneurs to choose between individually conducting a business, engaging in a civil partnership or other forms not having legal personality.

Neither individual businesses nor civil partnerships require initial capital outlays or high costs related to the establishment of business activity. Entry into the Business Activity Register (Ewidencja działalności gospodarczej) is fairly simple and requires the completion of several forms and it is free of charge.

### **Joint-stock company (spółka akcyjna)**

Purpose	Established to operate business on a large scale. Capital may be obtained through issuance of shares.
Founders	May be established by one or more legal or physical persons. However, it may not be established solely by a single-member limited liability company.
Minimum capital	PLN 100,000.
Legal personality	A joint-stock company is a legal entity.
Liability	The company is liable for its debts and obligations with its whole property. Shareholders are not liable for the company's debts and obligations.
Taxation	CIT Declaration - corporate income tax.
Establishment process	In the same manner as a limited liability company. Due to the complexity of this process, you are recommended to seek legal assistance.

No special requirements for foreign investors.

### **Limited liability company (spółka z ograniczoną odpowiedzialnością)**

Purpose	Established to conduct a business or established for any other purpose allowed by law.
Founders	Both natural persons and legal entities may be the founders. May be established by one or more persons.

	However, it may not be established solely by another single-member limited liability company.
Minimum capital	PLN 5,000 (contribution in cash and in-kind).
Legal personality	A limited liability company is a legal entity.
Company liability	The company is liable for its own debts and obligations with the whole of its property.
Partner liability	Partners are not liable for the company's debts and obligations.
Taxation	CIT Declaration - corporate income tax.
Established process	Article of Association or the Founding Deed must be executed in a notarised form before a notary in Poland. The company must be entered in the Court Register (Register of Entrepreneurs) and in the National Court Register, and must be registered with the Statistical Office where a REGON number must be obtained. The company will then generally open a bank account, and register with both the Revenue Office (NIP) and the Social Security Office.

No special requirements for foreign investors.

### **Limited joint-stock partnership (spółka komandytowo-akcyjna)**

Purpose	Established for the purpose of conducting business under its own business name. In practice, this type of partnership is most suitable for large-scale business (e.g. large family enterprises).
Founders	Must be established and conducted by at least two individuals or legal persons.
Minimum capital	PLN 50,000.
Legal personality	None, this is a personal partnership.
Liability	At least one partner is liable to the creditors for the debts and obligations of the partnership without limitation (the general partner), while at least one partner is not liable to debts and obligations.
Taxation	PIT declaration - personal income tax, or CIT - corporate income tax; each partner pays taxes separately.
Establishment	The deeds of the partnership should be executed in a

process                      notarised form and signed by all general partners. The partnership should then be entered into the National Court Register.

No special requirements for foreign investors

### **Limited partnership (spółka komandytowa)**

Purpose	Established for the purpose of operating business under its own business name.
Founders	Must be established and conducted by at least two persons, individuals or legal entities.
Minimum capital	N/A.
Legal personality	Not a legal person - a partnership.
Liability	At least one partner is liable to the creditors for the debts and obligations of the partnership without limitation (the general partner), while at least one other partner has limited liability.
Taxation	PIT Declaration - personal income tax, or CIT - corporate income tax; each of the partners pays taxes separately.
Establishment process	The deed of partnership should be executed in the form of a notarial deed, and then entered into the National Court Register. The company is created upon its entry into the register.

No special requirements for foreign investors.

### **Representative office**

A foreign entrepreneur may set up representative offices in Poland. A representative office operates for and on behalf of the business of the foreign entrepreneur within Poland and is part of the organisational and functional structure of his or her business. Therefore, the entrepreneur conducting the business activity is considered to be the foreign investor. A representative office must be entered into the Register of Representative Offices of Foreign Entrepreneurs, kept by the Minister of the Economy.

An entry is made by the Minister pursuant to the submitted application and in accordance with its contents, following consultation with the Minister responsible for the subject area pertaining to the foreign entrepreneur's business activity.

### **Branch offices**

Foreign entrepreneurs may set up a branch office in Poland to carry out business activity there. The rights of foreign entrepreneurs depend upon whether Polish entrepreneurs abroad enjoy equivalent rights under international agreements (the principle of reciprocity), and whether any international agreements ratified by Poland do not provide otherwise.

The business activity of a branch office must overlap with that of the foreign entrepreneur. However, its objectives do not have to be as extensive as those of the foreign entrepreneur's business activity carried out abroad. In other words, the business pursued by a branch office may constitute only part of the entire business operations conducted by the foreign entrepreneur.

A branch office may engage in business activity following its entry into the Register of Entrepreneurs. The principles of registration are laid down in the Law of 20 August 1997 in the National Court Register (Journal of Laws, No 121, item 769 as amended).

Accounts may be kept in accordance with requirements applicable in the entrepreneur's country of residence. Polish law requires a branch office to maintain separate accounts in accordance with the provisions of Accountancy Law of 29 September 1994 (Dz U. fo 2002 No 76 item 694).

### **Costs of company formation**

<b>Description</b>	<b>PLN</b>
An application of entry of an entity which is not a natural person into the Register of Entrepreneurs	1,000
Publication of a notice in the Court and Business Gazette	500
An application for entering a natural person in the Register of Entrepreneurs (publishing a notice of such entry in the Court and Business Gazette is not mandatory)	Free of charge
An application for changing the entry of an entity which is not a natural person in the Register of Entrepreneurs	400
The publication of a notice in the Court and Business Gazette	250
An application for changing the entry of a natural person in the Register of	100

Description	PLN
Entrepreneurs or for removing such person from the National Court Register (the publishing of a notice in the Court and Business Gazette is not mandatory)	
Entry of a representative office in the Register of Representative Offices of Foreign Entrepreneurs	6,713
Notarial fee charged for executing the Articles of Association or the Founding Deed calculated as a percentage of the share capital	<p>Up to 3.000 PLN – 100 PLN</p> <p>3 000 to 10 000 – 100 PLN + 3% of the amount over 3 000 PLN</p> <p>Over PLN 10 000 up to 30 000 – 310 PLN + 2% of the amount over PLN 10 000</p> <p>Over PLN 30 000 up to 60 000 - PLN 710 + 1% of the amount over PLN 30 000</p> <p>Over PLN 60 000 to 1 000 000 - PLN 1 010 + 0.4% of the amount over PLN 60 000</p> <p>Over PLN 1 000 000 up to 2 000 000 – PLN 4 770 + 0.2% of the amount over PLN 1 000 000</p> <p>Over PLN 2 000 000 – PLN 6 770 + 0,25% of the amount over PLN 2 000 000 but no more than PLN 10 000</p>
Tax on goods and services (VAT) imposed on notarial services	22%
CTT (Civil transaction tax)	0,5%

## 5. Labour market

### Employment contracts

The Labour Code is the key legal act regulating relations between employers and employees. It sets out conditions under which work can be carried out in Poland.

An employment contract can be signed for:

- An indefinite term;
- A fixed term;
- The time it takes to complete a specific task; or
- To replace an employee - in the event of his or her justified absence from work, the employer can hire another worker under a fixed term employment contract for the period of absence.

All of these contracts can be preceded by an employment contract for a trial period of no more than three months. Once a third subsequent fixed-term contract is signed, it is deemed to have become an indefinite term contract.

An employment contract is concluded in writing and should be signed no later than on the day the employee starts working. Labour Code provisions set out the elements that should be included in the employment contract as well as some additional written information.

An employment contract can be dissolved:

- With the agreement of the parties;
- By one of the parties giving notice (employer or employee) with a notice period;
- By one of the parties giving notice without a notice period.

A contract concluded for a fixed term or for the time it takes to complete a specific task is dissolved at the end of the term or when the task is completed (although it can, in certain circumstances, be dissolved earlier).

### Working hours

Working hours cannot exceed eight hours in any 24-hour period or an average of 40 hours in an average five-day working week in a reference period applied by the employer of not more than four months. However, the Labour Code provides an exception to this rule, e.g. relating to work which, due to production technology, cannot be broken off.

Overtime is permitted in some cases and under some conditions but total working hours, including overtime, cannot exceed 48 hours in a week.

All employees are entitled to an annual unbroken paid vacation which is between 20-26 days per year

### **Exceptions under civil law contracts**

A civil law contract (freelance or service agreement, specific task agreement or agency agreement) is characterised by the variety of ways in which work can be provided and the independence of the contractor when carrying out a specified action. A person working under these types of contract does not have the employee rights set out in the Labour Code.

The minimum gross wage in Poland is PLN 1.317 as of 1 January 2010.

### **Social security system**

#### *Social security insurance*

Social security insurance in Poland is mandatory and consists of pension, disability, accident and sickness insurance. Contributions to pension and disability insurance are payable until the gross cumulative annual remuneration of the given individual exceeds the cap amount (94.380 in 2010). Contributions to sickness and accident insurance are paid at all salary levels.

The mandatory 'ZUS' contributions are payable on a monthly basis. The amounts of contributions payable by an employer and an employee to each kind of insurance are shown in the table below.

The employer is also obliged to pay a premium to the State Fund for Disabled (PFRON). The duty to pay the premium to this fund and the amount of premium depend on the number of people employed, their average remuneration and the total number of disabled employees.

### Components of social security premiums paid by employer and employee

Type of insurance	% premium	Breakdown of premium	
		Employer	Employee
Retirement	19.52% of remuneration	9.76%	9.76%
Disability	6% of remuneration	4.5%	1.5%
Accident	1,67% of remuneration if employer employs up to 9 employees, over this figure the contribution rate depends on the nature of the activities provided by employer and results from the table, or is determined by ZUS	1,67%	-
Sickness	2.45% of remuneration	-	2.45%
Labour Fund	2.45% of remuneration	2.45%	-
Guaranteed Employee Benefit Fund	0.10% of remuneration	0.10%	-

The employer is also obliged to pay a premium to the State Fund for Disabled (PFRON). The duty to pay the premium to the Fund and the amount of premium depends on the number of people employed, their average remuneration and the total number of disabled employees.

### Foreigners working in Poland

Joining the EU impacted on changes in regulations concerning the employment of foreigners. Basic principles of EU 'free movement of people and capital' were taken into account. The rules for a foreigner's employment in Poland depend on their nationality or profession.

Recent changes regarding the principles of employment of foreigners in Poland simplified procedures connected with the securing appropriate work permits (Regulation of the Minister of Labour and Social Policies of 29 January 2009 regarding defining circumstances in which a work permit is issued to a foreigner regardless of detailed terms defined for the issuance of a work permit to a foreigner (Journal of Laws No. 16 item 85).

The fundamental act regulating principles associated with the employment of foreigners within the Republic of Poland is the Employment Promotion and Labour Market Institutions Act of 20 April 2004 (Journal of Laws of 2008, No. 69 item 415, unified text as amended; the “Act”). The general principle arising from the Act is granting foreigners the right to perform work within the Republic of Poland.

The provisions in principle exempt the following persons from the requirement to possess a work permit:

- Foreigners employed by an employer having its registered office in one of the Member States or a European Economic Area member state who have been temporarily assigned by their employer to perform work in Poland;
- Foreigners holding a fixed term residence permit issued in conjunction with their intention to perform work or undertake business activities;
- To undertake or continue studies or vocational training;
- To conduct scientific research;
- To allow for the connection of families as well as foreigners holding a valid Poland Card.

Also the regulation of the Minister of Labour and Social Policy of 30 August 2006 on the performance of work by foreigners without the necessity to obtain a work permit (Journal of Laws of 2006, No. 156 item 1116 as amended) contains a list of 30 categories of persons that, due to the specific nature of tasks being carried out by them or their status, may perform work within Poland without the necessity to apply for a work permit. Those are among others:

- Persons running training sessions;
- Participating in vocational internships or supervising the performance of EU programs or other international aid programs;
- Foreign language teachers as well as those conducting classes in foreign languages under international agreements or understandings;
- Members of the NATO armed forces or civil personnel;
- Permanent correspondents of foreign mass media;
- Persons giving occasional lectures or presentations;

- Sportsmen representing Polish entities during sporting events;
- Students of Polish universities during the period July to September;
- Citizens of the Republic of Turkey and their families.

### **Visas**

A foreigner wishing to undertake work in Poland must, in addition to obtaining a work permit, obtain the appropriate visa or residence document issued by another Schengen area state if the foreigners stay in Poland is not regulated by visa-less regulations. The issue of granting a visa to foreigners is covered by the Aliens Act of 13 June 2003 (unified text in Journal of Laws of 2006, No. 234 item 1694 as amended). Pursuant to the provisions of this act, a foreigner entering the territory of the Republic of Poland is issued a visa in the form of:

- A unified residence visa;
- A transit visa;
- A domestic visa.

A unified residence visa or domestic visa may be issued, i.e. to allow the foreigner to carry out research activities, to conduct commercial activities or to undertake work. This last type of visa may be issued to a foreigner who presents a permit for work within the Republic of Poland or a written statement from the employer confirming the intent to give work to the foreigner if the securing of a work permit is not required.

A work visa is issued, or refusal to grant such is given, by the consul in the country of permanent residence of the foreigner or, if the foreigner is already residing legally in a Member State or EFTA country, by another consul. Decisions regarding the issuance or refusal to grant a visa are final.

### **Employment policy regarding EU citizens**

The act on employment promotion and labour market institutions authorises the Polish government to apply to EU member state citizens regulations in Exhibit XII point 2 clause 11 of the Accession Treaty. These concern limits on employing citizens from the EU and transition periods during which citizens face difficulties obtaining employment.

The respective policies of particular EU member states towards Poles are different, as a result of which the Polish policy is not the same for all EU members.

The issue of freedom of employment of EU member states' citizens in Poland is regulated in detail under the ordinance, by the Minister of Economy and Labour, of 26 May 2004 on the scope of limitations in the

sphere of employment of foreigners in the Republic of Poland (Journal of Laws 123, item 1293).

The general rule is that in the case of citizens of a given state, limitations analogous to those imposed by that state to Polish citizens will apply.

### **Purchase of real estate by foreigners**

#### *General*

The purchase of property by foreigners is governed by provisions of the Purchase of Real Estate by Foreigners Act of 24 March 1920, with further amendments.

'Foreigner' within the meaning of the Act is:

- An individual who is not a Polish national;
- A corporate entity having a registered place of business abroad;
- A partnership of persons referred to above which does not have legal personality but has a registered place of business abroad and is incorporated under the laws of foreign countries;
- A corporate entity which has a registered place of business in Poland and is controlled directly or indirectly by persons or partnerships referred to above.

The general rule is that foreigners require a permit from the Minister of Internal Affairs and Administration to buy real estate.

#### **Cases where a permit is required**

A permit is required in each case of real estate purchase, i.e. acquisition of ownership title or perpetual usufructuary right to real estate, on the basis of a legal transaction.

The following transactions require a permit:

- Purchase of real estate;
- Purchase or taking up of shares in a commercial company which has a registered place of business in the Republic of Poland and is the legal owner of title, or perpetual usufructuary rights, of the real estate.

A permit is required if, by purchasing shares in a company which is the legal owner of, or holds perpetual usufructuary rights in, real estate, a foreigner will take control of that company; or if shares in an already-controlled company are acquired or taken up by a foreigner who is not the company's shareholder.

No legal acts or entries of ownership titles or perpetual usufructuary rights may be made without a permit from the Minister of Internal Affairs and Administration. If special conditions are specified in the permit, evidence must be produced in the form of official documents that those conditions have been complied with.

If made in breach of the provisions of the Act, the purchase of real estate or shares by a foreigner is null and void.

### **Issuance of permits to entrepreneurs from the EEA (EU plus Iceland, Norway and Lichtenstein)**

On 1 May 2004, the general rule whereby a permit is required for purchase by foreigners of real estate, or shares in companies which are legal owners or perpetual usufructuaries of real estate, ceased to apply to nationals and entrepreneurs residing or established in the territory of the EEA.

However, the Act provides for a number of derogations in this respect. EEA nationals and entrepreneurs must obtain a permit to purchase agricultural and forest land - for 12 years after Poland became a member of the EU (i.e. until 2 May 2016).

However, EEA foreigners will not be required to obtain a permit during those transitory periods to purchase agricultural land situated in:

- The following eight western and northern provinces: Dolnośląskie, Kujawsko-Pomorskie, Lubuskie, Opolskie, Pomorskie, Warmińsko-Mazurskie, Wielkopolskie, Zachodniopomorskie – after the end of the seven year period since the execution of a lease contract (date of execution must be certified), if during that period they have pursued farming in person on the land concerned and have legally resided in Poland;
- The following eight central and eastern provinces: Lubelskie, Łódzkie, Małopolskie, Mazowieckie, Podkarpackie, Podlaskie, Śląskie, Świętokrzyskie – after the end of the three year period since the execution of a lease contract (date of execution must be certified), if during that period they have pursued farming in person on the land concerned and have legally resided in Poland.

### **Obtaining a permit**

Permits are issued by the Director of the Department of Permits and Licences of the Ministry of Internal Affairs and Administration on authorisation from the Minister of Internal Affairs and Administration. Permits are issued in the form of an administrative decision on the basis of a foreigner's application. The provisions of the Administrative Procedure Code apply to proceedings connected with the purchase of real estate.

The permit is only a prerequisite for purchase and is not binding for the seller. The purchase of real estate must be executed in a notarised form. The permit is valid for two years from the date of issue. A binding purchase agreement should be made and executed within that time limit.

**Exceptions from the obligation to obtain a permit**

- Purchase by a controlled corporate entity, for its statutory purposes, of undeveloped real estate in urban areas if the total area in the entire country does not exceed 4,000 sq m;
- Purchase of independent residential premises;
- Purchase of real estate by a foreigner who has been residing in Poland for at least five years from the issuance of a permanent residence permit;
- Purchase by a foreigner, whose spouse is a Polish national and who has resided in Poland for at least two years from the issuance of a permanent residence permit, of real estate that will become the joint property of both spouses;
- Purchase of real estate by a foreigner if, on the day of purchase, the foreigner is entitled to statutory succession, after the assignor, of the real estate provided that the assignor was its legal owner or owner of perpetual usufructuary rights for at least five years;
- Purchase of real estate by a foreign bank, which is a mortgagee, after an ineffective auction under enforcement proceedings;
- Acquisition or taking up by an indirectly or directly controlled bank of shares in a company which has a registered place of business in the Republic of Poland and is the legal owner or holder of perpetual usufructuary rights of real estate in connection with enforcement of the bank's claims for banking services rendered.

Exemption from the obligation to obtain a permit does not apply to real estate situated in the vicinity of state borders and agricultural land of more than one hectare.

## 6. Taxation

Since the early 1990s, the Polish tax system has been gradually reformed, with the intention of encouraging investment in Poland and also creating jobs. Tax system reforms have been supported by the process of the adaptation of and harmonisation of Polish law with EU law.

The Polish tax system distinguishes 12 types of taxes, including:

Nine direct taxes:

- Corporate income tax (CIT)
- Personal income tax (PIT)
- Real estate tax
- Tax on civil law transactions
- Transportation tax
- Inheritance and donations tax
- Agricultural tax
- Forestry tax
- Tax on dogs.

Three indirect taxes:

- Tax on goods and services (VAT)
- Excise duty
- Gaming tax.

Tax	Rate/characteristics
Corporate income tax (CIT)	19%
Personal income tax (PIT)	Progressive scale – 18%, 32%
Tax on goods and services (VAT)	Basic rate - 22%; reduced rates - 7% or 3%; export and intra-community supply rate - 0%.  If the annual turnover is less than PLN50,000, then the business is exempt from paying VAT.
Excise tax (akcyza)	Calculated either as a percentage of the value of goods or on a quantitative basis (fixed rate per unit). Imposed, among others, on: cars, fuels, energy, alcohol, tobacco products, firearms, perfumes and cosmetics.

Real estate tax (podatek od nieruchomości)	Rates established by commune councils (rada gminy). Rates differ depending on type, location and purpose of use of the real estate.
Tax on means of transport (podatek od środków transportu)	Rates established by commune councils. Rates differ depending on the type of transport. Imposed on trucks and buses.
Tax on civil law transactions (podatek od czynności cywilnoprawnych)	Payable on certain civil law transactions e.g. purchase contracts, mortgage institution, company deeds. Rates differ depending on the type of transaction.
Stamp duty (opłata skarbową)	Payable on: certificates, permits, official applications, certain documents (e.g. bills of exchange). Rates differ depending on the subject of duty.

## Corporate income tax

### *Tax rates*

As of 1 January 2004, the corporate income tax rate was set at 19% of the tax base. The tax is now a flat rate tax and does not depend on the amount of tax base. In some cases the CIT Act provides for other tax rates. 19% tax rate is also applicable to incomes from dividends and other incomes (revenues) from participation in profits of legal persons having their seat in Poland.

For taxpayers with unlimited tax liability in an EU Member State, an exemption from the withholding tax on dividends paid out by Polish companies is provided (participation exemption). The application of the above-mentioned exemption is possible if the foreign shareholder holds or will hold minimum 10% of shares in the Polish company during the period of at least 2 years.

In case of dividends gained from abroad Polish tax provisions provide for two exemption methods: *participation exemption* (relating to income generated in EU Member State, another EEA Member State, and Switzerland) and *underlying tax credit* (regarding states other than EU, EEA Members and Switzerland with which Poland has a valid double tax treaty).

Participation exemption is applied if the Polish company has held at least 10% capital participation in the foreign subsidiary for an uninterrupted

period of at least two years. However, the required minimum participation of a Polish parent company in a Swiss company is 25%.

The tax actually paid by a foreign company on the part of its profits from which a dividend was paid can be credited – up to some limit against income tax payable by the Polish parent company in Poland (*underlying tax credit*). To apply the underlying tax credit, the Polish recipient shall hold at least 75% of the capital in the company paying dividends.

Notwithstanding the above the Polish recipient of dividends from abroad can also – up to the limit – credit the withholding tax paid abroad against tax payable in Poland.

As of 1 July 2013, **on certain conditions, a total exemption from withholding tax will also refer to interest and royalties** transferred from Poland to related companies from the EU. At present, the withholding tax rate in the circumstances in which finally the exemption shall be applicable accounts for 10%, and in the period from 1 July 2009 until 30 June 2013 it will account for 5%.

#### **Subject to taxation**

Entities liable to pay CIT include:

- Legal persons (e.g. limited liability companies, joint-stock companies, foundations, co-operatives)
- Capital companies in organisation
- Organisational units having no legal identity, except for partnerships (i.e. excluding a partnership, a registered partnership, a professional partnership, a limited partnership and a limited joint-stock partnership)
- Tax capital groups.

#### **Object of taxation**

Generally, the corporate income tax is imposed on income, irrespective of the source of revenue from which the income has been earned.

Entities having their seat or management in Poland are subject to taxation with respect to their global income irrespective of where it was generated (unlimited tax liability). The other entities are subject to taxation in Poland only with regard to income generated in Poland (limited tax liability).

The income is considered to be the surplus of total revenues over tax deductible costs gained in a tax year. If tax deductible costs exceed the amount of revenues, the difference constitutes a loss.

Tax losses incurred in previous tax years may reduce a taxable income of a taxpayer. A loss may be carried forward for five years following the year in which it was incurred, however the amount deducted in a given year shall not exceed 50% of the loss value (i.e. the shortest period of a one year loss settlement is two years)

A tax year is defined as a calendar year. However, after meeting certain criteria specified in the CIT Act, a taxpayer may decide that the tax year is a period of other 12 consecutive calendar months.

### **Revenues**

Revenues for CIT purposes are revenues received by a taxpayer. In case of business activity a revenue due even if not yet actually received generally constitutes taxable revenue after exclusion of the value of goods returned as well as rebates and discounts granted.

Revenues in foreign currencies shall be expressed in PLN on the basis of the Polish National Bank's average rate of exchange from the last working day proceeding the day of receiving the revenue.

### **Tax exemptions regarding object of taxation**

A catalogue of tax exemptions regarding the object of taxation includes the following items:

- Income received by taxpayers from governments of foreign states, international organisations or international financial institutions, deriving from non-returnable aid, including funds from framework projects regarding research, development and introduction of the European Union and from NATO projects;
- Income earned from economic activity carried on within a Special Economic Zone on the basis of an appropriate permit;
- Grants, subsidies and other gratuitous benefits received in order to cover costs or as costs' refunds if the costs refer to fixed assets;
- Revenues gained abroad, if an adequate double tax treaty so provides.

### **Tax deductible costs**

In order to be recognized as tax deductible cost, an expenditure incurred by a taxpayer should jointly meet the following criteria:

- The expenditure was incurred with purpose of generating income, retaining or protecting sources of income,
- It is not listed in the catalogue of expenditures not being tax-deductible costs.

The revenue earning costs can be classified as direct costs or other costs.

As a rule, direct costs are deductible in the tax year in which the related revenue was earned. Other costs are deductible on the date they were incurred.

Tax deductible costs incurred in foreign currencies, should be converted into PLN on the basis of the average exchange rates of the National Bank of Poland from the last working day preceding the day the costs were incurred.

Since 1 January 2007, the new rules of calculating exchange rate differences are in force. According to the new law, the exchange rate differences shall respectively increase revenues as foreign exchange rate gains or increase tax deductible costs as foreign exchange rate losses.

### **Tax base**

Generally, the tax base is considered to be income (defined as the excess of revenues over tax deductible costs), reduced by certain deductions made by the taxpayer during the tax year.

The tax base may be reduced by donations for public utility purposes and for religious purposes. The deduction in total may not exceed 10% of income.

Furthermore it is possible to deduct from the tax base 50% of expenditures for acquisition of **new technologies** from scientific entities. A new technology is defined as technology knowledge which has been in use for less than five years. The deduction does not impact the right to depreciate the acquired technologies.

In order to recognize given income as a tax base, a taxpayer is obliged to keep proper accounting records. If it is not possible to determine income (or loss) on the basis of records kept by a taxpayer, the income (or loss) shall be assessed by tax authorities.

### **Collection of tax**

Tax-payers are obliged to transfer to the bank account of a tax office monthly tax advance payments in the amount of the difference between the tax due on the income earned from the beginning of the tax year and total advance payments due in preceding months. Monthly tax advance payments shall be remitted by taxpayers by the 20th day of each month for the preceding month. There is no obligation to submit monthly tax returns.

A final settlement of tax is deemed to be finalized on the day a yearly tax return is submitted by a taxpayer to the tax office and the tax due is paid.

This should be done at the end of the third month of the year following the tax year at the latest.

The CIT Act provides for a simplified form of calculation and payment of the tax advance payments. Taxpayers are entitled to make monthly advance payments in the amount of 1/12 of the tax due, as calculated in the yearly tax statement for the year proceeding given tax year. If there was no tax due in the said statement, taxpayers are entitled to make monthly advance payments in the amount of 1/12 of the tax due, as shown in the yearly tax statement for the year preceding by two years a given tax year.

The so-called “small entrepreneurs” who launch their business activities may benefit from the so-called tax credit. This is a relief consisting in deferral of tax on income generated in the first tax year. The taxpayer is also relieved from filing a tax return for that year. The tax due with reference to such income shall be paid by taxpayers in installments within the next five consecutive years.

## **Personal income tax**

### *Scope of taxation*

The Personal Income Tax Act (PIT) applies to individuals. For the purpose of the PIT Act, individuals are divided into two categories: Polish residents and non-residents.

Since January 2007, individuals are deemed residents when they have their centre of personal interests in Poland or when they stay in Poland for longer than 183 days in a tax year. Residents are subject to PIT in Poland in respect of their total (worldwide) income. Individuals not permanently residing in Poland (non-residents) are only subject to Polish taxation in respect of the income they derive in Poland.

## **Sources of income and rates**

### *Taxation of income from employment*

Personal income under an employment contract is subject to PIT at progressive rates of 18% and then 32%.

## **Taxation of self-employment**

Economic activity on the basis of self-employment may either be taxed at a flat rate of 19%, or at progressive rates of 18% and then 32%, jointly with other personal income subject to these rates (in accordance with general rules provided in the PIT Act).

Since January 2007, the PIT Act has provided for a new definition of economic activity. From now on, taxpayers will not be considered entrepreneurs within the meaning of the applicable tax regulations, if the following three conditions are jointly met:

- Liability towards third parties for the outcome or performance of certain activities (excluding liability for unlawful acts) rests with the commissioning party thereof;
- Activities in question are performed under the supervision of, in the place and at the time determined by the commissioning party;
- Persons performing such activities do not bear any economic risk in connection therewith.

Taxpayers can elect which scheme to follow, but there are some restrictions on choosing the 19% flat rate where individuals provide services to an entity for which they previously worked under an employment contract.

#### **Dividends, interest, royalties and capital gains**

Dividends and interest paid abroad are subject to a 19% withholding tax (royalties at 20%), unless the relevant tax treaty states otherwise. Capital gains related with the sale of shares are not combined with other types of income and are subject to 19% PIT rate.

#### *Taxation of foreign tax residents*

The income of non-residents arising from certain management or freelance contracts is taxed at a flat rate of 20%.

#### **Returns and payments of tax**

##### *Income from employment*

Polish employers are required to withhold advances of PIT from their employees' income and to remit them by the 20th day of the month following the month in which the relevant income was paid. Taxpayers are required to file an annual tax return by 30 April in each year for which they report either additional tax due or overpayments of tax. From the tax settlement for 2010, under certain conditions, employers will be obliged to file and submit annual tax returns for their employees.

##### *Self-employment*

Self-employed individuals working in Poland are personally liable for settling monthly (or under certain conditions quarterly) advance tax payments (without having to submit monthly returns) by the 20th day of the following month (quarter). The advance payment for last month (quarter) is payable by the 20th day of January of the following year (as of 1 January 2010). An annual tax return must normally be filed (and any tax

due must be paid) by 30 April of the following year, stating all sources of income and showing any additional tax due.

#### *Other*

A separate annual return of income from capital gains (e.g. sale of shares) must be filed.

### **Deductions and exemptions**

A deduction of around PLN 100 per month is available in respect of the cost of earning income from employment.

Individuals providing services under freelance contracts (save for non-residents with limited tax liability or those with management contracts) may deduct 20% of their revenue as a cost of earning income, irrespective of whether that cost was actually incurred. Certain activities, e.g. exploiting a copyright, attract a 50% deduction.

Taxpayers may benefit, under certain conditions, from several forms of tax relief (including child relief, internet relief, disabled relief, etc.). Social security contributions are deductible from the taxable income; a significant percentage of health care contributions is also deductible from the due income tax. From the tax settlement for 2009, social and health security contributions paid abroad can also be deducted.

Except as provided in the tax law, any costs arising from self-employment business activity can be deducted in total, as long as they are incurred to generate revenue.

### **Value added tax (VAT)**

#### *Legal basis*

Legal provisions governing VAT issues may be divided into two groups Community law and National law.

1. **Community law** - in particular, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.
2. **National law** - the act on Tax on Goods and Services of 11 March 2004 r. (Journal of Laws No 54, item 535, with amendments) and over 30 executive decrees, of which the most important is Decree of the Minister of Finance of 24 December 2009 regarding execution of some provisions of the act on Tax on Goods and Services (Journal of Laws No 224, item 1799) and Decree of the Minister of Finance of 28 November 2008 regarding reimbursement of tax to certain groups of taxpayers, issuance of invoices and manner of their

storage and a list of goods and services which cannot enjoy tax exemptions (Journal of Laws No 212, item 1337 with changes).

### **Scope of VAT**

According to the Polish Tax on Goods and Services Act ("VAT Act"), VAT applies to the following transactions:

- Supply of goods and services for consideration in Poland;
- Export of goods outside the EU;
- Import of goods from outside the EU;
- Intra-community acquisition of goods for consideration in Poland;
- Intra-community supply of goods.

The following transactions are outside the scope of VAT:

- Disposal of a business as a going concern, or organized part of it;
- Acts that cannot be made on the basis of legally binding agreement.

### **Taxpayers**

According to the VAT Act, taxpayers are defined as legal entities, organizational units or individuals independently carrying on any commercial activity, irrespective of the purpose or result of that activity.

Employees under contracts of employment persons providing services under 'ad-hoc' agreements, if that relationship is similar to employment, given the working conditions, remuneration and the employer's liability are outside the scope of VAT.

### **VAT registration**

Entities should register for VAT before they first conduct any taxable activity. As a result of registration, an entity acquires active VAT payer status.

If the taxpayer plans to carry out intra-community transactions, it is additionally required to register as an EU VAT payer. Some taxpayers are exempt from the requirement to account for VAT. This exemption applies to taxpayers whose annual taxable sales do not exceed PLN 100,000 (PLN 150,000 from 2011).

VAT payers from outside the EU must appoint a fiscal representative, who is jointly liable with the entity.

### **Place of supply rules (services)**

From 2010, new rules for identifying the place of supply for VAT purposes applies. In principle, the place of supply of services is the place where the purchaser of the service has established its business, another fixed place of

business, or place of residence. However, there are some special rules for identifying the place of supply including those that concern:

- Services connected with immovable property - the place of supply is the location of property;
- Transportation services - the place of supply is the place where the transport takes place, having regard to distances covered;
- Artistic, sport, educational, science services rendered for VAT payers, services supporting transport services, services concerning movable property or evaluation of such property, catering and restaurant services - the place of supply is the place where the service is actually performed;
- Services provided for non-VAT payers - the place of residence/registered office of the supplier (with plenty of exceptions, i.e. concerning intangible services for non-VAT payers, which are taxed in the place of residence/registered office of a purchaser being a non-VAT payer).

#### **VAT rates and taxable base**

The VAT Act prescribes the following rates of VAT:

- A standard rate of 22%;
- A reduced rate of 7%;
- A zero rate (with the right to deduct input VAT);
- A transitional reduced rate of 3% (valid until 2010 - applies mainly to food products).

The taxable base for VAT is calculated as turnover, net of output tax, this base must be increased by grants and subsidies received and decreased by rebates and documented and legally acceptable discounts.

On the import of goods, the taxable base is the customs value increased by all customs duties, including excise duties, where relevant.

The taxable base for intra-community acquisition of goods is the amount the purchaser is obliged to pay.

## **Tax point**

### *General rules*

The default rule provided by the VAT Act is that a tax point arises when goods are released or services are completed. In practice, this rule is rarely relevant as it only applies to transactions with natural persons acting in a non-commercial capacity.

In most cases, the tax point is the time when an invoice is issued, which may be no more than seven days after goods have been released or services completed. For some supplies the tax point is established by separate rules (e.g. electricity, telecommunications, construction, transport, leasing).

The tax point for an advance payment is the date on which payment is received.

### **Intra-community transactions, export and import of goods**

When goods are imported, tax is chargeable when customs liability is incurred.

From December 2008, in the case of export goods, the tax point is established according to general rule described above.

For the intra-community supply and acquisition of goods, tax is chargeable on the 15th day of the month following the month in which the goods were supplied, unless the invoice documenting the transaction was issued before that moment.

## **Recover of input VAT**

### *General rules*

A taxpayer is allowed to recover input tax charged on goods and services supplied to him, which he later uses in his taxable business. Generally, recovery is made by the deduction of input tax from output tax. In some situations input tax is not recoverable (e.g. purchase of fuel) or it is only partially recoverable (e.g. purchase of a passenger car).

Since 2008, taxpayers have not been allowed to deduct input tax from invoices documenting transactions that are not subject to VAT, or are VAT exempt, even where the amount resulting from the invoice was paid. Effective December 2008, the deduction of input VAT is no longer dependent on the qualification of expenditures as tax deductible costs for the purpose of income tax.

### **Refund of VAT**

The normal term for tax refunds is 60 days. In some situations this period may be reduced to 25 days. Under certain circumstances, an advance refund of VAT is possible.

Surplus input tax may also be credited against the taxpayer's future VAT liabilities.

### **VAT returns and tax payment**

VAT returns should be filed and any tax due should be paid by the 25th day of the month following the month in which the tax point arises. "Small taxpayers", i.e. those whose annual sales do not exceed the PLN equivalent of EUR 1,200,000, may file VAT returns and pay any tax due quarterly (by the 25th day of the first month in the following calendar quarter).

From 2009, all VAT payers are allowed to opt for quarterly VAT settlements.

In this situation, taxpayers are obliged to file VAT returns by the 25th day of the first month of the following calendar quarter. However, they are still obliged (apart from "small taxpayers") to pay VAT monthly (i.e. advance tax payments generally calculated as one-third of the due amount from the previous quarterly settlement).

### **Special procedures**

Under Polish VAT regulations, special rules apply to: small businesses, flat-rate farmers suppliers of tourist services, suppliers of second-hand goods, works of art, collectors' items and antiques, investments gold, tax refunds for tourists, foreign entities supplying electronic services to non-tax payers within the EU.

### **Excise duty**

#### *Scope of application*

In March 2009, a new Excise Act came into force. According to the new legislation, the following groups of goods are subject to excise tax: cigarettes and other tobacco products, alcohol, oils and energy (jointly considered as 'excise goods') and passenger cars.

The indicated excise goods form a special group of products taxed with excises according to common rules applying all over the EU. Cars are taxed on the basis of Polish legislative decisions. Under Polish excise regulations, the following transactions are subject to tax:

- Production of excise goods;
- Release of excise goods from a bonded warehouse;
- Sale of excise goods in Poland;
- Export and import of excise goods;
- Intra-community acquisition and supply of excise goods;
- Imports or intra-community acquisition of passenger car unregistered in Poland, or first sale of a passenger car in Poland.

There are certain specific institutions that unique to excise tax (such as bonded warehouses, registered traders, transfer of excise goods in the course of excise suspending procedure, excise securities etc.) Some excise products (e.g. wines and spirits, cigarettes etc.) are subject to a special procedure that involves sealing them with fiscal seals.

There are three methods of calculating excise tax rates:

- Value basis, i.e. a percentage of the value of goods (e.g. cars)
- Volume basis, i.e. a fixed rate per unit of product (e.g. oils, alcoholic beverages)
- Mixed method (a combination of the above methods, e.g. cigarettes).

In the case of many goods subject to duty, tax constitutes the most significant element in their price.

## **Real estate taxes and fees**

### *Taxes on turnover (VAT, CTT)*

The supply of real property is, in principle, subject to VAT calculated on the value of land and buildings alike. The standard rate of VAT for such transactions is 22%, though a preferential rate of 7% applies to some transactions.

The supply of residential developments, or parts thereof (but not commercial premises), will be taxed at 7%, if the usable area of residential premises does not exceed 150 square meters, or 300 square meters with respect to houses.

The supply of buildings and structures after their "first domiciliation" (understood as giving for use of buildings, structures or their parts in the course of their VAT supply to their first purchaser or user after their construction or their improvement exceeding 30% of their value established for tax depreciation purposes), is VAT exempt if the period between the first domiciliation and subsequent supply exceeded at least two years. If these conditions are not met, the supply of buildings and

structures can be also exempted from VAT assuming that the seller had no right to deduct VAT on the purchase of such building/structure and the improvements to such building/structure do not exceed 30% of the value established for tax depreciation purposes (unless the improvements were used for at least five years). However, parties to the transaction may opt for taxation in VAT of such supply if both parties are registered VAT payers and notice their intention to the proper tax authority.

If one of the parties to a transaction concerning the sale of real estate is acting as VAT payer, the transaction will be exempted from the Civil Transaction Tax (CTT). However, if the transaction is exempt from VAT, it will be subject to CTT. Transactions between individuals, acting in a non-commercial capacity, will be subject to CTT, at 2% of the transaction value.

Effective 1 December 2008, in-kind contributions of real properties are, in principle, subject to VAT as a supply of goods at the VAT rate applicable for contributed real property (this does not concern the situation where contributed real property is VAT exempt under VAT regulations).

#### **Income tax**

In the majority of cases, income derived from the disposal of real property will be subject to income tax the general rule is that the disposal of real property will be taxed at 19% where an individual, acting in a non-commercial capacity, sells property:

Depending on the circumstances, the tax liability on the disposal of real property will be calculated on one of the following bases:

- After five years from the end of calendar year in which the real property was purchased or developed - no tax;
- Purchased or developed before 31 December 2006 (if the rule from the point above cannot yet be applied), in the case of re-investing funds from the sale for the taxpayer's "residential purposes" (indicated in the PIT Act) - no or reduced tax (proportional to the percentage of re-invested funds from the sale);
- Purchased or developed between 1 January 2007 and 31 December 2008, in which he has been registered for administrative purposes as resident for more than 12 months before the sale - no tax;
- Purchased or developed after 31 December 2008, in the case of re-investing funds from the sale for the taxpayer's own "residential purposes" (indicated in the PIT Act) - no or reduced tax (proportional to the percentage of re-invested funds from the sale).

Where an individual sells property acquired for business purposes - flat tax at 19% or progressive tax at rates of 18%, 32% (depending upon which scheme the taxpayer has elected to follow).

For the entities subject to corporate income tax, the disposal of real property will be taxed at 19%. Buildings and structures are entitled to claim tax depreciation. The standard rate of amortization for buildings is 2.5% per year, over a period of 40 years. Where residential buildings/premises were used prior to their acquisition by a taxpayer for more than five years, a taxpayer is entitled to claim an accelerated rate of amortization of 10% per year, over a period of ten years.

In the case of commercial buildings/premises, a 40-year tax depreciation period may be reduced by each full year from the year in which they were first entered into the fixed assets register, but it cannot be shorter than ten years.

### **Real estate tax**

Real estate tax is levied on land, buildings, structures and construction equipment. The rate of tax for a given locality is determined by the municipal authority, up to a maximum imposed by the Local Taxes Act, which regulates this tax. When setting the rate of real estate tax, a municipal authority is obliged to consider the following aspects of the property: its location, the activity carried out there, the type of development, its designated use and the method of exploiting the land. The authority has the power to grant some exemptions from real estate tax (where they are not provided by the Local Taxes Act).

### **Civil transaction tax (CTT)**

#### *General information*

Civil transaction tax ("CTT") is levied on agreements not related to commercial turnover. The following transactions and civil law actions fall within the scope of the tax (closed list):

- Sale (exchange) of goods and property rights
- Loan agreements
- Donation agreements (if they involve the acquisition of debts)
- Annuity contracts
- Agreements on the division of a deceased's estate
- Mortgage contracts
- Grant of usufruct for consideration irregular deposit agreements
- Articles of association - the following events are treated as changes to the articles of association: The increase in a company's initial capital or the assets of a partnership additional contributions by

shareholders, loans granted by partners to a partnership transformation, merger or division of a company or companies, resulting in an increase in their initial capital;

- The transfer to Poland from a country other than an EU Member State of an effective place of management if its registered office is not located within an EU Member State, and the registered office of a company, if its effective place of management is not located in an EU Member State even if such activities do not involve an increase in a share capital of a company.

### **Tax rates**

The rate of CTT differs according to the type of transaction:

- Sale (exchange) of goods and property rights connected with real estate (i.e. perpetual usufruct or ownership), loan agreements and irregular deposit agreements - 2%
- Articles of association - 0.5%
- Sale (exchange) of other property rights - 1%.

### **Exemptions**

The CTT Act prescribes a long list of exemptions from tax, including:

- Sale of foreign currency;
- Sale of movable property with a value below PLN 1,000;
- Sale of securities to or through brokerages or banks offering brokerage services certain types of loans (e.g., granted by foreign financial institutions or by shareholders to companies - loans granted by partners to partnerships are subject to 0.5% CTT);
- Articles of association and amendments connected with transformation or merger of a company if the value if the increase in share capital was previously subject to civil;
- Transactions tax or indirect taxes on the raising of capital levied in other EU Member States.

In principle, transactions where at least one of the parties acts as a VAT payer are not subject to CTT. This rule, however, does not apply to sale transactions of real property and articles of association, if the transaction is VAT exempt.

Since 2009, contributions in-kind of enterprises or their organized parts, transfer of packages of shares giving a majority of voting power in a company (calculated jointly with shares already held by the purchaser), as well as share capital changes related with mergers of companies or transformations of companies into other types of company, are all out of the scope of CTT. The CTT Act also prescribes some discretionary

exemptions covering entities such as charities, disabled persons (to meet rehabilitation needs), foreign diplomats and public sector units.

### **Settlement of Tax**

In principle, the obligation to pay CTT rests with the party that is considered the taxpayer under the provisions of the CTT Act. A declaration should be filed and tax should be paid to the relevant tax office within 14 days of the transaction. Where a transaction is made before a notary, he will remit CTT and is obliged to account for the tax.

### **Tax on means of transport**

Tax on means of transport is related to the ownership and use of specific means of transport. Taxpayers are naturalised and legal persons who are owners of the means of transport. The organisational units having no legal personality (e.g. partnerships), under whose name the means of transport were registered, are also considered as owners.

### **International agreements**

#### *International treaties*

Tax rates may be lower under double taxation treaties concluded with the country in which the taxpayer's registered office or management board is located. Poland has signed double taxation treaties with over 60 nations including the UK, US and Germany.

#### *Certificate of residence*

Tax rates envisaged in the double taxation treaties may be applied only if a taxpayer holds a certificate of residency issued by the given country's tax authorities. This certificate confirms that the foreigner has residency in a country with which Poland has concluded a double taxation treaty, under which tax preferences are granted. A translator should translate the documents into Polish. A certificate of residency is valid for one year from the date of its issue.

#### *Tax representative*

Entities with no registered office in Poland, nor fixed place of business nor permanent place of residence are under an obligation to register for VAT purposes in Poland as the so-called 'active VAT taxpayers' and are obliged to appoint a tax representative in Poland.

The tax representative is jointly and severally liable with the taxpayer he or she represents for all VAT liabilities. It means that tax authorities may claim possible tax arrears from: the taxpayer, the tax representative or the taxpayer and tax representative jointly.

The obligation to appoint a tax representative does not apply where the taxpayer who performs VAT-able activities is an entity with a registered office, fixed place of business or permanent place of residence on the territory of a Member State.

## 7. Accounting & reporting

### **Accounting regulations**

Due to recent amendments, Polish accounting standards do not differ significantly from international standards. Furthermore, in cases where there is no national accounting standard, the appropriate International Accounting Standard may be applied.

All accounting (documentation, records and reports) must be prepared in Polish and maintained in the Polish currency. Only the primary documents need not be translated into Polish. However, at the request of the control authorities or an auditor, a reliable translation of indicated book-keeping vouchers made out in a foreign language shall be provided. All primary documents, records and reports for the last five years of activity (including tax returns) must be held by the company. The approved annual financial statements must be retained permanently.

Entities must apply the accounting principles provided for in the Accounting Act to ensure a true and fair presentation of their property and financial position, as well as their financial results. Events including business transactions must be entered into accounting books and shown in the financial statements according to their business nature. In the application of the accounting rules, an entity may adopt certain simplifications, provided that these do not significantly affect the attainment of the above objectives.

The manager of an entity is responsible for the fulfilment of duties regarding accounting.

### **Company financial statements**

The annual report consists of a balance sheet, profit and loss account, additional information including an introduction to the financial statements, as well as supplementary information and explanations. Together with annual financial statements, the manager of the entity must prepare a report on the entity's activities including, in particular, information on major events of significance of the entity's activities, the expected development of the entity, major achievements, and the entity's present financial condition and projections.

## **Audit**

Annual consolidated financial statements and annual statements of joint stock companies, banks, insurers and investment and pension funds must be audited. Other companies must be audited if two of the following three conditions were met in the preceding financial year:

- Average annual employment exceeded 50 people;
- The total of net turnover and financial income exceeded €5 million;
- The value of assets at the end of the accounting year exceeded €2.5 million.

An audit must be conducted before the financial statements are accepted at the meeting of shareholders and must be performed by an independent entity licensed to perform audits.

All entities obliged to audit their financial statement must publish their balance sheet, profit and loss account, and cash flow, together with the auditor's opinion discharge, granted by the meeting of shareholders, and decision on profit distribution.

## 8. UHY firms in Poland

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## 9. UHY offices worldwide

For contact details of UHY offices worldwide, or for details on how to contact the UHY executive office, please visit [www.uhy.com](http://www.uhy.com).

